

RELATIVE IMPORTANCE OF CASE-LAW.

other defects of form, as to date or erasure of the stamps or wrong date thereon,—but this only in the hands of an innocent holder.

We notice that the index of this volume still exhibits the time-honored nuisance of referring from one title to another before the required page can be found. Thus, for example, if one looks up "Promissory Notes," all one finds is "See Bills and Notes." Would it not be much better and simpler to give the page at once, and not add another element of bitterness to the much-vexed life of the busy practitioner?

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English Case-Law may be divided for the purposes of the present inquiry into Reported and Unreported decisions.

As to the reported decisions, a distinction has been made regarding the value to be attached to different reports of the same case, and particularly as to whether or not the decision has appeared in what are known as the Regular Reports. Again, as to reported decisions, a further subdivision may be made, based upon the difference in the tribunals where the decision has been given, as for instance in Chambers, at Nisi Prius, in Banc or in Appeal.

Dealing first and briefly with unreported decisions, they are generally the refuge of the hard-pressed counsel, who, finding nothing to justify his position, adopts the expedient of invoking the shadowy authority of some traditional case "just in point." These sort of authorities have been jocularly called "pocket-pistol law," and the citation of them is hardly justified even by the necessities of counsel. The judicial estimate of such authorities is well indicated in the observations of the Master of the Rolls, in *Knight v. Bowyer*, 23, Beav.

627. Referring to an unreported decision which had been cited, he remarks, "This case is not reported either in print or manuscript, but the case is cited from the proceedings in the cause filed in the Chancery office. It is extremely difficult to rest safely on a case not reported by any competent person, when the grounds of the decision are to be picked out of the facts appearing on the recorded proceedings alone, when, if the case had been reported, it might have been found that, in truth, some other matter than that supposed was the principal cause of the dismissal of the bill. If the case had been seriously argued it would probably have been reported."

Next, as to the so-called unauthorized reports, the rule is now pretty well established that no Judge will refuse to refer to and act upon a case simply because it does not appear in the regular reports. The decisions reported in the *Law Journal*, *Law Times* and *Weekly Reporter*, in advance of the regular series, are and have long been of great value to the profession. Indeed, in many cases it has been matter of observation from the Bench that a report in the serials has elucidated the more obscure report of the same case in the official reports. In *Francome v. Francome*, 11 Jur., N. S., 123, Lord Chancellor Westbury observed, "I do not decline to follow the case cited because it is reported in the unauthorized reports (18 Jur., 1051). It is of such materials that the law of England is made up, and I should be denying myself much valuable assistance in ascertaining what the law is, if I were to refuse to receive the citation of cases reported by barristers in those useful publications." See also per Stuart, V. C., in S. C. 11 L. T. N. S. 666. In a recent decision of the full Court of Chancery, in this Province, *Bank of Montreal v. McFaul*, 17 Gr., 234, the majority of the Court gave effect to a decision reported only in the *Weekly Re-*