The Legal News.

Vol. XIII. OCTOBER 11, 1890. No. 41.

A curious case of keeping a cause of action alive against a defendant during half a lifetime occurs in *Hume* v. *Somerton*, 59 Law J. Rep. Q.B. 420. A writ was taken out in 1861, and renewed every six months since. The point of the long-cherished weapon has at length been turned aside by the Court, it being held that though the writ had been renewed every six months under the old Act, it had become a nullity, because it had not been renewed under the rules of 1883, which require the order of the Court for such a purpose. The case serves as an illustration of the propriety of the new rules.

The *Law Journal* (London), in an article on the protection of wild birds, directs attention specially to the fact that during five months of the year, beginning 1st March, and ending July 31, all the wild birds of the kingdom are entitled to enjoy absolute immunity from molestation from the snare of the fowler, as well as from the fowling-piece of the gunner, subject to certain unimportant exceptions. This monition is evoked by the fact that one day last spring, a party of "officers and gentlemen" deliberately invaded the island rock of Grasshlom, the home of innumerable sea-birds, for purposes of "sport." It seems that their idea of sport consisted in wandering about the rock, picking the eggs out of the eyries, smashing the bad ones, and knocking down the parent birds with sticks, because, as one of the sportsmen said, "it was better sport and fun than shooting them." This novelty in sport, however, led to an interpellation in Parliament, and the Government having declined to prosecute, a prosecution was duly instituted by the Royal Society for the Prevention of Cruelty to Animals, and a fine was imposed on the offenders.

A correspondent sends us a clipping from a New York journal, containing an account of the origin of the now famous chicken case. It appears that the magistrate or petty judge decided in favor of the hen that hatched out the egg, or her owner. This decision has been criticized. One critic says:—

"Hatching is a 'mechanical' process, and not at all characteristic of motherhood. Indeed, science has demonstrated that it isn't a hen at all which hatches, but heat, so that the sitting hen is simply a natural radiator. Moreover, you cannot imagine a mother without there being a father, and though no chick has ever asked who its father is, yet it is clear, only the hen that 'laid' the particular egg could have been mother to that father; and hence, *q. e. d.* to the chick. Besides, it seems to me, the judge should have noticed that it is the hen which lays that is constantly voicing motherly joy and pride over every newly laid though undeveloped offspring. Isn't the strutting about in great style, saying: 'This is my little lay. This is my little lay.' Or can it be that our great jurist and linguist hasn't yet mastered the cackle language? Down, say I, with the sitting hen. It is the hen that lays which justly claims the proud title of motherhood."

Another critic observes:—

"Judge McAdam makes the mistake of mixing up eggs and chickens, when it is merely a question, not between hen and hen, but between farmer and farmer. The law is clear, and the maxim 'that he who does a thing through another does it himself,' applies. Therefore, farmer A, through his duly authorized hen, laid the egg himself on B's premises. What stress or urgency of circumstances forced him to lay this egg in the wrong place need not concern us. The egg being there, farmer B came, and by his duly authorized agent, his sitting hen, hatched out the egg, whence the chicken in dispute. Now there was nothing which compelled farmer B, through his hen, to hatch out that egg. Having chosen to do so, he must be held to the consequences, and I think he is clearly chargeable with notice in the eyes of the law, that he, farmer B, had not, through his hen, laid this egg, and that therefore it was the egg laid by some other father. This being so, the law is clear. Farmer A is entitled to the egg which he laid and its proceeds and natural increase; at most farmer B is entitled to a mechanic's lien for work, labor and services in hatching out the egg. * * * * There is no need further to addle our brains over the matter."

There is no doubt that the process of hatching may be regarded as mechanical; still, without that process, the embryo chick would never have seen the light. The egg, if not taken care of by the sitting hen, would soon have been worthless. We find some support for the hatcher's claim in the articles of our Civil Code. Art. 429 says: "The right of accession, when it has for its object two movable things, belonging to two different owners, is entirely subordinate to the principles of natural equity." Art. 430 says: "When two things belonging to different