

the former condemned to pay, judgments which may have been correct when taken in connection with the cases in which they were rendered, were applied to this case, to which they had no relation. In this way a case which ought to have been decided, following the rule of non-appealable courts, according to equity and good conscience, was not so decided.

Had the judge received a good grounding in legal logic he would have said, after hearing the argument of Mr. Code, "There are three maxims of Civil Law which apply here: 1. *Consensus tollit errorem*. 2. *Modus et conventio vincunt legem*; and, 3. *Cessante ratione legis, cessat ipsa lex*. Mr. Wicksteed signed this cheque as an authorized person on behalf of the company, and was such to the knowledge of all parties to the cheque. It is the company's cheque." Action dismissed with costs, and a little advice to the plaintiff's attorney to study *Roman law*—which is written reason.

The letter killeth, the spirit giveth life. English, Roman and Christian interpretations of law agrees in this; the spirit, and not the letter, must be the rule of decision, and the spirit of a contract is the intention and understanding of the parties. Neither plaintiff nor defendant in the case before us intended or understood that the defendant should be personally liable on the note signed by the defendant for the company.

Judge Lyon says in effect by his judgment, everybody knows this to be the company's cheque, the company never repudiated it and is willing to pay it when called on; but I won't allow the company to be asked to pay. You are all wrong in thinking that *to be* which you know *is*, for I see that several decisions—in cases, to be sure, very different from this one, but then they are *decisions*—say that the defendant is personally liable; though it may seem contrary to equity and even to good conscience.

"Our judges, of course, are recruited from the bar, and a bad training for lawyers results in correspondingly poor judges. And, in defence of the crimes, or rather errors and mistakes, charged against judges, I must say that I am only surprised that they do not make more. A man cannot help being what he is, when, under the training he received, he could not have been anything else. And a lawyer who is trained, or trains himself, to a subserviency to precedents and authorities, will, if he reaches the bench, be, more or less, a slave to them still. And then when out of the mass of legal literature available, crude, undigested, confusing, contradictory and irreconcilable masses of law—or alleged law—are hurled at him by opposing counsel, is it any wonder that he should often make mistakes?" (George H. Christy, in CANADA LAW JOURNAL, 1 December, 1886.)

Blackstone foresaw the evils which would result from a case of apprenticeship and study in England, similar to what is now adopted in the Province of Ontario. He thus writes, at page 32 of his celebrated commentaries:—

"Making, therefore, due allowance for one or two shining exceptions, experience may teach us to foretell that the lawyer educated for the bar in subservience to attorneys and solicitors will find that he has begun at the wrong end. If practice be the whole he is taught, practice must also be the whole he will ever know; if he be uninstructed in the elements and first principles upon which the