

## COMMENTS ON CURRENT ENGLISH DECISIONS.

The Law Reports for October comprise (1892) 2 Q.B., pp. 573-586, and (1892) 2 Ch., pp. 461-526.

ROAD—SUMMARY PROCEEDING TO RECOVER FOR REPAIRS TO ROAD RENDERED NECESSARY BY EXTRAORDINARY TRAFFIC—EXECUTOR—ACTIO PERSONALIS MORITUR CUM PERSONA.

*Story v. Sheard* (1892), 2 Q.B. 515, was a summary proceeding brought under 41 & 42 Vict., c. 77, s. 23, whereby a county road surveyor is empowered to recover the expenses of repairing a road consequent upon injury thereto by extraordinary traffic, and it was held by Pollock, B., and Williams, J., that the proceeding was in the nature of an action for a personal tort, and therefore would not lie against the executor of the person by whose order the extraordinary traffic had been conducted, as being within the rule *actio personalis moritur cum persona*.

CRIMINAL LAW—CONVICTION INSUFFICIENTLY DESCRIBING OFFENCE—CONSPIRACY AND PROTECTION OF PROPERTY ACT, 1875 (38 & 39 VICT., c. 86), s. 7—(CANADIAN CRIMINAL CODE, s. 523).

In *The Queen v. McKenzie* (1892), 2 Q.B. 519, an application was made to quash a conviction on the ground that it insufficiently described the offence. The prosecution was instituted under the Conspiracy and Protection of Property Act, 1875, s. 7 (Can. Criminal Code, s. 523), which imposes a penalty on any person who wrongfully and without lawful authority, "with a view to compel any other person to abstain from doing . . . any act which such other person has a legal right to do, follows him in a disorderly manner with two or more other persons in any street or road." The defendant was summarily convicted of an offence under this section, and the conviction stated that he wrongfully and without legal authority followed the informant in a disorderly manner, with two or more persons, in certain streets, "with a view to compel him to abstain from doing acts which he had a legal right to do." Collins and Bruce, JJ., held that the conviction was bad for not stating specifically what these acts were, and that this was a defect of substance, and not merely of form, and they therefore quashed the conviction. It appeared from the magistrate's affidavit that it was proved that the defendant had followed the informant in a disorderly manner, and with two or more persons, "with a view to compel him to abstain from following his occupation as the agent of the Shipping Federation (Ltd.), an act which he had a legal right to do." But Collins, J., says: "Obviously, the following of an occupation must consist of a large number of acts, and I think unless the prosecution could specify some particular act which the defendant desired to compel the informant to abstain from doing, and which his disorderly conduct was intended to compel the informant to abstain from doing, it is impossible to say that he was properly convicted of an offence under the section." All of which goes to show the extreme difficulty of framing any statute which the ingenuity of the judicial mind will not nullify in the process of construing.