The Legal News.

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There is one particular in which we do not adhere to English practice, and the divergence is most certainly not an improvement. In England vacancies which occur on the bench are filled promptly—usually within a few days after the decease or resignation of the previous occupant. Here the Chief Justiceship of the Superior Court has been vacant for several months, and still there is no intimation that a successor to Chief Justice Meredith is about to be named. Meanwhile the Court is incomplete, for the law says that the Superior Court "shall consist of a Chief Justice" and so many *puisné* judges.

It should be clearly understood by the profession that the attempt which, it is said, is about to be made to revive the *Jurist*, is projected in defiance of the unanimous decision of the Editorial Committee to abandon it, of which decision the printer received notice in writing early in October last. If persisted in, it will, in effect, be an undertaking entirely new so far as the preparation of the contents is concerned.

The annual report of the Council of the Montreal Board of Trade again treats of the subject of insolvency legislation. It is stated that the Council has been in correspondence with chambers of commerce in Great Britain, viz.: those of London, Liverpool, Glasgow, &c.,—copies of the bill laid before parliament having been supplied to those bodies. The expression of opinion by these and other chambers is to the effect that the credit of Canada is imperilled by the want of legislation that will protect the interests alike of the home and foreign creditor. The report proceeds to say that "the Council has noticed that, during the recent visit of Sir John A. Macdonald to Toronto, he was waited upon by a deputation from the Board of Trade of that city, on the subject of insolvency legislation. In his reply, the Premier referred to the popular objections to insolvency legislation, which have thus far proved sufficiently powerful to prevent the passage of a bill. The Council would venture, however, to point out that those objections apply only to the provisions for composition and discharge, which were undoubtedly greatly abused under the old law. They in no way apply to a measure confined in its scope to the equitable distribution of the estates of insolvent debtors, which is all this board has been asking for. Efforts will be continued to secure the passage of a law, during the approaching session of parliament, providing for such equitable distribution."

The Council also urges the necessity for a revision of the Extradition Treaty. "This question," the report states, "was brought under consideration in consequence of the frequent instances that have occurred of flagrant criminals, fugitives from justice, having found sanctuary either in the United States or Canada, as the case may be, in consequence of its being alleged that the crimes charged against the parties did not come within the scope of the existing treaty between Great Britain and the United States. A letter embodying the views of the Council regarding the necessity for a revision of it was sent to the Minister of Justice."

The *Montreal Law Reports* for February are now issued. The Queen's Bench series comprises pp. 49 to 112, and the Superior Court series pp. 49 to 96, making 112 pages in all. A number of important decisions are contained in these issues. In *Gauthier* v. *St. Pierre* the privilege of counsel while pleading or examining witnesses is fully treated by Mr. Justice Jetté. In *Joubert* v. *Walsh*, an important question of substitutions is decided by Mr. Justice Rainville. In the case of *St. Laurence and Chicago Forwarding Co. & The Molsons Bank*, the opinions of the Court are unusually elaborate, the case involving questions of considerable importance upon the law of bills of lading, and the position of banks making advances thereon. Mr. Justice Monk, who dissented, contributes to the

discussion an able and interesting opinion, in which the case for the bank is presented with great clearness. Justices Cross and Ramsay, on the side of the majority of the Court, adopt a view which would require greater circumspection on the part of banks making advances upon such security.

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

QUEBEC, Dec. 6, 1884.

Before DORION, C.J., RAMSAY, TESSIER, CROSS, and BABY, JJ.

YOUNG et al., Appellants, and RATTRAY, Respondent.

Executor, Powers of — C. C. 914 — Legacy— Value of Services—Acquiescence.

The general powers of an executor include the engagement of clerks to keep the books of the estate, and to carry on its affairs. These general powers are not restricted by the fact that the executor has received a legacy under the will, unless it be apparent from the terms of the testament that the legacy was intended as compensation for special services.

The clerk employed by an executor to keep the books of the estate went on for several years receiving $400 per annum for his services, and himself entered the amount in the books: Held, an acquiescence in that rate of remuneration.

RAMSAY, J. This is an action brought by the respondent on a *quantum meruit* for work done as clerk and agent of the estate of the late D. D. Young, against the representatives of that estate.

The first question that presents itself is whether the representatives of the estate are liable at all, not having employed the respondent. On this point there seems to be no difficulty. Rattray, who was the clerk of the executor Knight, was employed by the latter to do the work, and there is no doubt in my mind that the general powers of an executor justify him in employing those necessary to keep the books of the estate and carry on its business, precisely on the same principle that an executor employs a carpenter or any other mechanic, or a labourer to repair the houses or cultivate the fields forming part of the estate. Further, I don't think that this general power is modified in the least by a legacy to the executor, unless it should appear by the terms of the will that this legacy was to be the equivalent of certain services. When the law says that the duties of an executor are performed gratuitously, it merely means that for those duties which specially and particularly belong to the executor, and which can be performed by no one else, he shall not charge—for instance, for the exercise of his judgment in making investments, signing documents, and other such acts of a purely personal character. It would be a most extraordinary disposition of the law if it said that when an estate of perhaps $100,000 passed into the hands of an executor, it should be relieved of the costs of administration. But the law does not say that, but the very reverse. (See 914 C.C.)

The next question is, was there an engagement, express or implied, by Mr. Knight? This question can only be cleared up by Mr. Knight's testimony, and by the circumstances of the case. As to the engagement it is perfectly clear by the testimony of Knight no rate of remuneration was fixed upon at first. He says:—"We should pay him what was right and fair. At that time I believe there was nothing said about a special rate." The difficulty then is to establish what was a "right and fair remuneration." Respondent desires to establish this by general testimony; appellants say that though not settled at first, it became settled by the acquiescence of the respondent, and by his taking deliberately and for a series of years, a remuneration at the rate of $400 a year. But Mr. Knight tells us that it was worth $800, and $800 has been allowed by the judgment appealed from.

The question as to what certain work is worth is often a very doubtful one. It depends much on the scale of remuneration the person performing it receives in other work he does, or what he is able to obtain. It is then much safer to establish the price of work at the rate the parties have agreed upon. Now, in this case, we have ample opportunity of discovering by the course of events what the parties considered

under the circumstances to be sufficient. It is proved that respondent made up the accounts year after year, and took without protest $400 a year. It is also proved that he made up the accounts of the estate to arrange a *partage*, so that one of the heirs, arrived at the age of majority, might get his share; and there again he calculated his remuneration at $400 a year. He also on one occasion complained that $400 was not enough. Mr. Knight put him off, not intending to raise his salary, and he went on taking annually his $400. In answer to all this, we are told that Rattray was only a clerk; that he entered what he was told, and that his writing does not establish an acquiescence. This is very ingenious, but when it is remembered that efforts were made to show that Rattray was entitled to great remuneration because he really managed the whole estate, it looks very much like a contradiction. But one thing is clear, that he must have known that the estate calculated his services at $400, and he remained silent for years. Therefore he either acquiesced, which is altogether the more likely presumption, or he was lying by with the dishonest intention of gaining an advantage over his employer. The whole account appears to me to be got up in the utmost bad faith. There are two charges for extra work as a clerk, one of which is abandoned, and both are perfectly unfounded. It is proved that the respondent owes more to the appellants than any claim he has, and therefore his action must be dismissed with costs.

In the case of Rattray & Young et al., the appeal will be dismissed with costs.

TESSIER and CROSS, JJ., dissented.

COURT OF QUEEN'S BENCH.

QUEBEC, Dec. 6, 1884.

Before MONK, RAMSAY, TESSIER, CROSS and BABY, JJ.

PEACHY et al. (plffs. below), Appellants, and O'NEIL (deft. below), Respondent.

Mur mitoyen—Console.

RAMSAY, J. This is a paltry action, evidently suggested by the desire to go to law. The respondent's proceedings were not strictly legal, but under the circumstances were almost excusable. At any rate he has offered a settlement which ought to have been accepted, because it gave all the remedy this court could give. The appellants seek to establish now that the portion of their action which asks that the *mur* should be declared *mitoyen* is still unsatisfied, and that they had a right to a judgment on that head, inasmuch as the sign of *mitoyenneté* had been destroyed. If the fact had been as he states, there would have been a good ground for the appeal; but it is not so. *Le console* is simply moved up, and therefore if it indicated *mitoyenneté* before, it does so still. Again, raising it did no special damage to the plaintiff's house; it was neither an ornament to his house, nor could it be useful as a cut-fire, for it did not accord with the top of the wall. It had been placed to suit respondent's house, and when its place was altered it was to carry out the original intention.

Judgment confirmed.

COURT OF QUEEN'S BENCH.

MONTREAL, Nov. 19, 1884.

Before DORION, C. J., MONK, RAMSAY, CROSS and BABY, JJ.

THE MONTREAL, PORTLAND, & BOSTON RAILWAY COMPANY (deft. below), Appellant, and HATTON, Respondent.*

Appeal Bond—Security in Appeal—Condemnation under C.C.P. 1025.

Held, that on an appeal by the defendant from a judgment ordering a railway company to call the annual meeting within one month, or to pay a fine of $2,000, security for costs only is insufficient: the security must be to satisfy the condemnation.

M. S. Lonergan for the appellant.

J. L. Morris for the respondent.

COURT OF QUEEN'S BENCH.

MONTREAL, Nov. 19, 1884.

Before DORION, C.J., MONK, RAMSAY, CROSS and BABY, JJ.

OUIMET, es qual. (plff. below), Appellant, and NORMANDIN (deft. below), Respondent.*

School Municipality—Action against Secretary-Treasurer—Jurisdiction of Superintendent of Education—40 Vict., c. 22, s. 22 (Q.).

Held (confirming the judgment of Tasche-

* To appear in Montreal Law Reports.

reau, J.), 1. That an action by the Superintendent of Education does not lie under s. 22 of 40 Vict. cap. 22 (Q.), against the secretary-treasurer of a school municipality, after he has rendered his account, and the account has been approved at a regular meeting of the ratepayers and also by the trustees.

2. That even supposing that the action by the Superintendent in this case could be regarded as an action instituted under sect. 36 of the above-mentioned Act, and sect. 19 of 41 Vict., c. 6, the action would not lie until after the trustees had been duly put in default to bring such action, and had refused or neglected to do so.

Abbott, Tait & Abbotts for appellant.

Archambault & Archambault for respondent.

COUR SUPÉRIEURE.

MONTRÉAL, 14 nov. 1884.

Coram LORANGER, J.

HUS v. CHARLAND.*

Signification—Cour—Exception à la forme.

JUGÉ: Que la signification d'un bref de sommation, ou de toute autre pièce de procédure, peut être faite dans aucune des chambres du palais de justice, pourvu qu'au moment de la signification la cour ne siège pas.

Loranger & Beaudin, pour le demandeur.

C. A. Geoffrion, C.R., pour le défendeur.

RECENT ONTARIO DECISIONS.

Fire insurance—Damage by removal of goods—Salvage.—The plaintiff's stock-in-trade was insured against loss by fire in the company defendant. A fire occurred in an adjoining building, and the plaintiff's warehouse being in danger of destruction, he removed his stock, which was damaged thereby, and some of it lost. *Held*, that there was a loss covered by the policy, and no salvage to which the defendants were liable to contribute under the fifth statutory condition, which declares that in case of removal of the property to escape conflagration, the company will rateably contribute to the loss and expenses attending such act of salvage. *Maclaren* v. *Commercial Union Assurance Co.* (Q. B. Division), 20 C.L.J. 420.

*To appear in Montreal Law Reports.

Private international law—Administrator—Right to sue for moneys payable in foreign State.—To an action by the administrator in Ontario of W. M., deceased, on a policy on the life of W. M., which, by one of the terms thereof, was payable in Montreal, P.Q., the defendants pleaded that the policy was issued from their office in Montreal; that by its terms the moneys were payable there; that the defendants had no office in Ontario for the payment of moneys by them; and that the plaintiff had not obtained letters of administration in Quebec, and had no right or title to sue for the moneys. *Held*, on demurrer, a good defence.—*Pritchard* v. *Standard Life Assurance Co.*, Q. B. Division, 5 C.L.T. 32.

Constitutional law—Dominion Election Act—Penalty—Civil remedy.—Held, affirming the judgment of the Court below, that the Parliament of Canada has power to prescribe a civil remedy for breach of the Dominion Election Act by private action for a penalty. *Doyle* v. *Bell*, Court of Appeal, 5 C.L.T. 30.

Principal and agent—Continuance of relationship—Reasonable time—Evidence.—Held, that an agreement, whereby the defendant placed his lands in the plaintiff's hands for sale, and was at liberty to withdraw them or sell the farm himself on payment of a commission, bound the plaintiff for a reasonable time only, no time for the continuance of the agreement being expressed in it. *Held*, also, that what passed verbally between the parties might be received in evidence on the question of what was a reasonable time.—*Adamson* v. *Yeager*, Court of Appeal, 5 C.L.T. 30.

RECENT ENGLISH DECISIONS.

Trustee — Removal — Misconduct. — It is the duty of a court of equity to see that trusts are properly executed, and therefore, even though no charge of misconduct is made out against a trustee, the court will remove him if satisfied that his continuance in office would be detrimental to the proper execution of the trusts. Friction or hostility between the trustee and the immediate possessor of the trust estate is not of itself a reason for the removal of the trustee, but it will not be disregarded by the court when grounded on the mode in which the trust has been adminis-

tered. Judgment of the Court below affirmed with a variation. Jud. Com. Priv. Council, March 21, 1884. *Letterstedt* v. *Broers.* 51 L.T. Rep. (N.S.) 169.

Receiving stolen goods — Evidence — Account given by the prisoner—Evidence to negative.—On an indictment for receiving goods, knowing them to have been stolen, the prisoner's account being that he had purchased them of a tradesman in the same town, other circumstances in the case tending to negative it, though the tradesman was not called for the prosecution, *held*, that it was not necessary to call him on the part of the prosecution, there being other circumstances in the case from which the jury might fairly infer the falsehood of the prisoner's story. Crown Cas. Res., June 28, 1884. *Reg.* v. *Ritson.* Opinions by Grove, Hawkins, Stephen, Watkin Williams, and Mathew, JJ. 50 L. T. Rep. [N. S.] 727.

False pretenses — Obtaining goods by —Proof that the goods were delivered on the faith of—On an indictment for obtaining goods by false pretenses, the false pretense charged and proved being that the prisoner was daughter of a lady of the same name, residing at a certain place, there being no evidence that the goods were not delivered to the prisoner before her name and address were asked for, *held*, that there was no sufficient evidence to sustain the indictment, it being essential on a prosecution for obtaining goods by false pretenses to prove that the goods were delivered on the faith of the false pretense charged. Crown Cas. Res., June 28, 1884. *Reg.* v. *Catherine Jones.* Opinion by Grove, Hawkins, Stephen, Watkin Williams, and Mathew, JJ. 50 L. T. Rep. [N. S.] 726.

RECENT U. S. DECISIONS.

Indecent exposure—Public place.—The crime of indecent exposure is committed if a person intentionally makes such exposure in the view from the windows of two neighboring dwelling-houses. It is not necessary that any person should actually see such exposure if it was made in a public place with the intent that it should be seen, and persons were there who could have seen if they had looked. If it were the law that a man could lewdly expose his naked person to inmates of two dwelling-houses, as was said in the case of *Reg.* v. *Holmes*, 6 Cox C. C. 116, "this would not be a country fit to live in if such an abominable outrage could go unpunished." According to the law of this offense the place is a public one if the exposure is such that it is likely to be seen by a number of casual observers. In the case of *Reg.* v. *Farrell*, 9 Cox C. C. 446, which is an authority relied upon by the defence in the present instance, it was declared that by an indecent exposure in a place not far from a highway the common-law offence had not been committed, but the court was careful to supplement its decision with the remark "that it is not to be taken that we lay down that if the prisoner was seen by one person, but there was evidence that others might have witnessed the offence at the time, we would not uphold the conviction." Sup. Ct., N. J., February, 1884. *Van Houten* v. *State.* Opinion by Beasley, C. J. (46 N. J. L. 16.)

Evidence—Assault and robbery—Declarations —Res gestæ.—In cases involving personal injury, evidence of declarations of the injured party, touching the cause or circumstances of the injury, made soon after and in close connection with the event, and appearing to grow out of and be dependent upon it, and under such circumstances that they could not reasonably have been contrived for the purposes of the declarant, is admissible as part of the *res gestæ*. The complaining witness was waylaid, knocked down, and robbed in a public street at night. The assailants then fled, and the witness immediately gave the alarm, returned to his house near by, and a few minutes later, on the arrival of a police officer, described to him the appearance of the persons who made the assault. Upon the trial, after the details of the assault and robbing had appeared in evidence, *held*, that the trial court might properly receive proof of the statements of the injured party made to the officer, under the circumstances, as being sufficiently connected with the principal event to be the natural outgrowth of it, and free from the suspicion of plan or after-thought. Upon this subject the authorities are not uniform. Some courts are inclined to hold the rule with much strictness as to the time and circumstances

under which the statements proposed to be shown are made, while others allow a wider range for its application, leaving it to be applied largely in the sound discretion of the trial court. 15 Am. Law Rev. 85; *Com.* v. *Densmore*, 12 Allen, 537; *People* v. *Davis*, 56 N. Y. 102; *Com.* v. *McPike*, 3 Cush. 184; *Insurance Co.* v. *Mosley*, 8 Wall. 397; *O'Connor* v. *Railroad Co.*, 27 Minn. 171; S. C., 6 N. W. Rep. 481. Our examination leads us to conclude that especially in cases of tort involving personal injury, the weight of authority in this country is in favor of allowing evidence of the declarations or statements of the injured party, touching the cause or circumstances of the injury, made so soon after the event, and under such circumstances as to warrant the trial court in presuming that they grew out of and were dependent upon it, and could not have been devised or contrived by the declarant for his own purposes. *Insurance Co.* v. *Mosley*, 8 Wall. 397; *Harriman* v. *Stowe*, 57 Mo. 93; *Driscoll* v. *People*, 47 Mich. 416; S. C., 11 N. W. Rep. 221; Jordan's case, 25 Grat. 945; *People* v. *Vernon*, 35 Cal. 51; *Burns* v. *State*, 61 Ga. 194; *Augusta Factory* v. *Barnes*, Ga. Sup. Ct. April, 1884. In the last case the party was severely injured while employed in a factory. She was removed to her home, and about one half hour after, while enduring severe bodily suffering, which had continued in the interval, she made a statement to her father of the particulars of the cause of the accident, which the court held proper to be received as part of the *res gestæ*. In *O'Connor* v. *Railroad Co.*, 27 Minn. 173; S. C., 6 N. W, Rep. 481, this court after reviewing the cases and in considering this subject generally, say "that a considerable time may elapse and yet the declaration be a part of the *res gestæ*," and "that each case must depend on its own peculiar circumstances, and be determined by the exercise of sound judicial discretion." In the case at bar the withess had been waylaid and robbed. He had suffered personal violence. A great crime had been committed. He had specially observed and marked his assailants at the time. And while great care and discrimination should be exercised in receiving evidence of this kind, we are unable to say that the court erred in its judgment in this case in admitting the evidence in question. It might be considered that when the declarant thus described the men who had assaulted him, whom it appeared he had never before seen, his mind was still so occupied and absorbed with his exciting and hazardous experience as to maintain for so brief a period a close and natural connection between the event and his statements to the officer, and that hence such statements would be the direct and natural outgrowth of the robbery and its concomitants, and they would derive a special credit from that fact (though they would otherwise be hearsay), and would also be relieved from the suspicion of device or afterthought. See Whart. Ev., § 259; 1 Greenl. Ev., § 108. It was clearly competent for the witness to testify that he recognized and identified the same parties the next morning at the police station, and the particulars of such identification were properly received. We see no error or abuse of discretion in the refusal of the court to grant a new trial on the ground of newly discovered evidence. Order affirmed. Sup. Ct. Minn., Oct. 13, 1884. *State* v. *Horan*, 30 *Albany L. J.* 20.

Larceny—Description of owner.—In an indictment for larceny, a description of the person from whom the property is alleged to have been stolen, is sufficient, if a name is given by which he is well known, even though his real name is different. Sup. Ct. Cal., March, 1884. *People* v. *Woods*. Opinion by Ross, J., 3 Pac. Rep. 466.

Partnership—Sale of goodwill—Injunction.—(1) M., a member of a firm at Kalamazoo, and doing business under the name of Kalamazoo Wagon Company, composed of himself, H., L., and L.'s wife, for an adequate consideration purchased of his partners all of their interest "in the property, assets, money, goodwill, and all other property, of every name and nature, in and to the firm of Kalamazoo Wagon Company," and continued the business under the old name. L. and other parties organized a corporation under the name of Kalamazoo Buggy Company, located their place of business in the immediate vicinity of M., and sent out circulars soliciting business, resembling the circulars in use by him, and thus interfered with and injured his business and trade. *Held*, that under the contract of sale M. was entitled to the good-

will of the business purchased; that L. was guilty of a breach of the contract; and that he and the other members of the corporation should be perpetually enjoined from using the name of Kalamazoo Buggy Company, or the circulars resembling those used by M. in the transaction of their business. *Beal* v. *Chase*, 31 Mich. 490. (2) The decree of the Circuit Court, in addition to enjoining defendants from use of the name of Kalamazoo Buggy Company, and the use of the circulars resembling M.'s circulars, enjoined defendants from receiving mail from the post-office addressed to the Kalamazoo Buggy Company, with a provision requiring M. to deliver to defendants any mail received by him and intended for defendants, or either of them. *Held*, that this part of the decree was erroneous, and could not be sustained. *Myers* v. *Kalamazoo Buggy Co.*, Supreme Court, Michigan. Opinion by Cooley, C.J. Decided Sept. 23, 1884; 30 Albany L.J. 517.

Copyright—Lecture—Publication—Injunction. The publication by one who had attended lectures delivered orally by an eminent surgeon, of a summary or epitome thereof, under the name of the lecturer, as author of such epitome, will be enjoined. The publication of a book containing the substance of such lectures, however, will not be restrained. *Miller's Appeal*, Supreme Court, Pennsylvania. Decided April 21, 1884; 30 A.L.J. 514.

SALE OR BAILMENT.

It is the glory of the common law, that its "plastic and accommodating nature" lends itself readily to the varying exigencies of modern civilization, yet occasionally, a case arises where it is as difficult to accommodate old principles to new facts as old wine to new bottles. For example: it is at present the universal custom to store grain in "bulk"—that is, to put all grain of like kind and quality in the same bin of an elevator. The convenience of this method is obvious. It greatly economises space, and thereby reduces the expenses of storage. If a special bin were required for every particular bailment, it would be necessary to construct elevators like beehives with an infinite number of cells whose division walls would require as much space as the grain stored. For convenience and economy, therefore, it is usually agreed that all grain of the same kind and quality shall be mixed together. Receipts are issued to depositors for the number of bushels stored—who become "tenants in common" of the entire mass.* So far, little difficulty is found in determining the mutual rights and obligations of the depositors and warehouseman. The contract is one of bailment. The warehouseman is bound to use reasonable care in the conduct of his house. If loss is suffered without his fault, it falls upon the depositors—who share *pro rata*. A different state of facts may, and in fact, usually does, arise, in the conduct of elevators. Grain is put in at the top of a bin as fast as it is drawn out at the bottom, and it may well happen, that none of the identical grain for which receipts are outstanding, will remain in store. The question now is, upon whom shall a loss fall, in case of damage by fire or inevitable accident? The holder of a receipt urges that none of his grain has been injured. It passed through the elevator and was delivered to other parties. The bailee is bound to replace his property by an equivalent and cannot deliver to him damaged inferior grain. In support of this position, it may be urged that the facts above stated, constitute a sale and not a bailment. They cannot be brought within any definition of bailment, found in the books. "Bailment is a delivery of goods in trust upon a contract express or implied, that the trust should be duly executed, and the goods restored by the bailee." If we add "as delivered to the agent or representative of the bailor,"—the definition is broad enough to cover all disputed ground.†

Where the grain stored has been delivered to any one except the holder of the receipt issued for it, it cannot be returned to the bailor. If done without authority, the grain has been converted; if by permission, the transaction is a sale and not a bailment, for wherever a thing is declared to be accounted

* *Chase* v. *Washburn*, 1 Ohio St. 244; *Cushing* v. *Bond*, 14 Allen, 380.

† Bouv. Dict. Story Bail, Sec. 2; 2 Black. Com. 395; Jones on Bail, 1,117; *Coggs* v. *Bernard*, 2 Ld. Raym., 917; Schouler on B. 2; Hammond, Lectures on Bail, 3; 2 Kent, 550.

for in kind or value the property in it passes to the bailee or vendee. In either case where a loss occurs it must fall on the bailee or vendee, for on the one hand he has converted the goods to his own use, on the other, he has the property therein.‡

The obvious injustice of such a conclusion, its manifest inconsistency with the intention of the parties and its practical inconvenience have led to its final rejection, notwithstanding the cogency of the argument by which it is sustained. If it had been permitted to prevail, every warehouseman who carried on the business of storing grain, as now conducted, would be an insurer of the grain in his elevator—against all casualties whatsoever, whether or not he contracts to the contrary.

The holder of a receipt would be in no better position than a general creditor of the warehouseman, to the amount of grain deposited. The warehouseman might conduct his business like a bank, and issue certificates of deposit. So long as he keeps on hand grain enough to meet current demands, no one has a right to complain. The statutes of most of the States and the parties themseves contemplated quite a different relation. The holder of a warehouse receipt is presumed to be the owner of goods actually in store, if not of the identical goods originally deposited, yet goods of an equivalent amount of equal quality, by which they have been replaced. No one would be more ready to proclaim this theory of right than the holder of the receipt himself, where he is brought into conflict with a general creditor of a warehouseman, although he might be reluctant to confess it, if the elevator and contents were destroyed by fire or inevitable accident. The courts have cured the anomaly by confessing it. The contract more nearly resembles a bailment than a sale; accordingly the principles of right applicable to bailments determine the rights of the parties. Where, therefore, grain is stored in an elevator, with the understanding that it may be mixed with and accounted for in other grain of like quality and kind, the transaction is a bailment and not a sale, definitions to the contrary notwithstanding.§—*I. L. Lionberger in Central Law Journal.*

‡ *Chase* v. *Washburn*, 1 Ohio] St. 244; *Richardson* v. *Olmstead*, 74 Ill. 213. See civil law Mutuum Inst. lib. 3 tit. 15, Dig. lib. 44 tit. 9. Pothier Pand. lib. 12, tit. 1 Nos. 9 and 10; Jones on Bailment, 64-102, etc. *Johnston* v. *Browne*, 39 Iowa 200; *Norton* v. *Woodruff*, 2 Comst. 155; *Smith* v. *Clarke*, 21 Wend. 84; *Hurd* v. *West*, 7 Cow. 752; *Baker* v. *Roberts*, 8 Green]. 101: *Ewing* v. *French*, 1 Blackf. 354; *Wilson* v. *Cooper*, 10 Iowa 565: *Ruffman* v. *Merry*, 3 Mason, 478; 3 Kent Com. 589; Story on Bail, 193; 7 N. Y. 433; *Brown* v. *Hitchcock*, 28 Vt. 452; *Richardson* v. *Olmstead*, 74 Ill. 213; *Mallory* v. *Willis*, 4 Comst. 77, 85; *Pilice* v. *Schenck*, 3 Hall, 28; *Carlisle* v. *Wallace*, 12 Ind. 252; *Dickson* v. *Cass Co.* etc. 42 Iowa, 38.

§ *Nelson* v. *Brown*, 44 Iowa 455; *Nelson* v. *Brown*, 53 Iowa, 555; *Chase* v. *Washburn*, 1 Ohio St. 244; *German Bank* v. *Meadowcroft*, 4 Brad. 636; *Ledyard* v. *Hibbard*, 14 Rep. 213; *Dows* v. *Ekstrone*, 1 McCrary 434; *Greenlief* v. *Dows*, 3 McCrary 27; *Young* v. *Miles*, 20 Wis. 615.

GENERAL NOTES.

"*Grip*" sends out with its Christmas number a beautifully executed coloured portrait of the Canadian Premier in the official robes of his latest dignity. The picture has considerable artistic merit.

Lord Bacon, in his paper on the "Amendment of the Common Law," wrote:—"Great judges are unfit persons to be reporters; for they have either too little leisure or too much authority, as may appear well by those two books, whereof that of my Lord Dyer is but a kind of note-book, and those of my Lord Coke hold too much *de proprio*."

In *Nash* v. *Battersby*, 2 Ld. Raym. 986 and 6 Mod. 80, the plaintiff declared with the addition of gentleman. The defendant pleaded in abatement that the plaintiff was no gentleman. The plaintiff demurred, and it was ill; for, said the Court, it amounts to a confession that the plaintiff is no gentleman, and then not the person named in the count. He should have replied that he is a gentleman.

The late John Rea, of Belfast, who defended Mr. Biggar, M.P., at Sligo, did not entertain the highest opinion of magisterial wisdom. In the course of an interminable speech before a local stipendary, he was interrupted with the remark, "You may speak till midnight, Mr. Rea, but I assure you all you say simply enters into one of my ears and goes out of the other." To which Mr. Rea retorted, "I have always been distressed by the suspicion that there is nothing between your worship's ears to intercept anything!"

The Baltimore & Ohio Railroad Co., a corporation having its home office in Baltimore city, in the State of Maryland, leased and operated several lines of railroad in the State of Virginia, using its own rolling stock. A portion of this stock was seized by officers of latter State in an effort made by it to enforce the payment of a tax levied thereon. The B. & O. R. R. Co. obtained an order restraining the sale, and, on motion to dissolve this order, the Court held that the rolling stock was personal property and as such was liable to taxation at the home office of the corporation, and in the absence of legislation on the subject was not liable to taxation in Virginia or elsewhere.—(*Baltimore & Ohio R. R.* v. *S. Brown Allen et al.*, U. S. Dis. Ct. of Va.)—*Boston Law Record.*