The Legal News.

VOL. XI. APRIL 7, 1888. No. 14.

The *Edinburgh Law Journal* has the following:—"The law of murder has within recent years been the subject of judicial discussion and definition. In *Reg.* v. *Dudley*, 14 Q.B.D. 273, it was held that self-preservation, as distinct from self-defence, will not make homicide justifiable. Therefore if A and B, two shipwrecked sailors, lay hold of a floating plank, which will support one but not both of them, and A, considering his own life to have the greater 'real value' to society, push B into the water, and escape to land, he is guilty of murder. In *Reg.* v. *Serne*, tried at the last Old Bailey Sessions, Mr. Justice Stephen gave the weight of his high authority to 'the domestic fowl' *dictum* of Mr. Justice Foster. A, intending to *steal* B's fowl—which is felony—tries to shoot it and kills B by mistake. A has murdered B. But the act would not be murder—if Sir James Stephen is right—had A only fired at B's fowl in fun."

In *Thatcher* v. *Weeks* (25 Rep. 202), the Supreme Judicial Court of Maine was asked to pronounce upon a claim for certain drums which had been taken from the Salvation Army by the mayor and city marshal. The officer did not bring the drums before the magistrate, nor had he obtained any order disposing of them. The Court held that an officer who has taken from a prisoner the instrument with which he has committed an offence, cannot justify its detention after the trial of the accused is over, except by an order of the court. The Court observed: "The officer claims, that for the purpose of preventing any further violation of the city ordinance, he could lawfully take the drums thus being unlawfully used, and could lawfully retain them in his own possession so long as he had reason to believe and did believe, that the plaintiff would immediately again use the drums in the same unlawful manner if restored to him. The principle thus contended for by the officer would enable him to detain the team of a person arrested for too fast driving, so long as he (the officer) believed, with reason, the owner would immediately repeat his offence of too fast driving, if the team were restored to him. There is an evident difference, also, between articles which can only have an unlawful use, like counterfeit coin, and articles in themselves innocent, like drums. If an officer may indefinitely hold the former, it does not follow that he can so hold the latter." The judgment of of the lower court in favor of the defendant was overruled.

The reply to a question put by a correspondent with reference to the report of *Anders* v. *Hagar*, 6 Leg. News, 98, may have an interest to our readers generally. He asks for the result of the appeal which was granted by the Court of Queen's Bench from the decision reported on the page above mentioned. It appears that the appeal was never proceeded with.

Mr. Wicksteed, our senior Q.C., has supplemented his collection of "Waifs" by a translation of Mr. Louis Fréchette's "Les Excommuniés," a touching episode in the history of Canada, relating how five of the old subjects of France braved the terrors of excommunication rather than submit to the new rulers of the land. The incident is said to be true, and the names of the five are given. Mr. Wicksteed has preserved very faithfully the pathetic simplicity of the original, which loses none of its interest in its English rendering.

NEW PUBLICATION.

THE CRIMINAL STATUTE LAW OF CANADA, Relating to Indictable Offences. By H. E. Taschereau, Justice of the Supreme Court of Canada. Second Edition. Carswell & Co., Law Publishers, Toronto.

The new edition of Mr. Justice Taschereau's well-known work will be received with satisfaction by the profession in Canada. The author states that it has been rendered necessary by the proclamation, on the 1st March, 1887, of the Revised Statutes.

In the new edition the references, notes, commentaries and forms are adapted to the Criminal Acts as they now stand consolidated and revised. The present work, however, contains more than this. The references to the English Crown cases have been brought down to the 1st January last, and 800 additional cases have been cited. Another interesting addition has been made in the form of notes by Mr. C. S. Greaves, Q.C., a distinguished writer upon English criminal law, which are published with Mr. Greaves' permission. The notes are printed under the sections of the Statutes to which they refer. Some of them are quite detailed. Thus, the note on new trials occupies thirty-two pages, and the note on rape nineteen pages. The whole work, now published in one volume (pp. 1157), forms an extremely valuable compilation on the subject of statutory offences, and will be widely appreciated throughout the Dominion.

SUPERIOR COURT.

DISTRICT OF OTTAWA, 1888.

Before WURTELE, J.

JUDGY v. LA SOCIÉTÉ FRANÇAISE DE PHOSPHATES DU CANADA.

Jurisdiction—Convention between parties.

The facts of the case and the arguments of counsel are fully set forth in the judgment of the Court, which reads as follows:—

"Considérant que le demandeur est un résidant de la Province de Québec et que la Société défenderesse a été incorporée par la Législature de Québec par le statut 45 Vict., c. 67, dans le but d'exploiter des mines de phosphates dans la dite Province;

"Considérant que la demande du demandeur est pour le prix et la valeur de certains services qu'il allègue avoir rendus à la société défenderesse dans le district d'Ottawa;

"Considérant que la défenderesse allègue que l'engagement du demandeur a été fait et consenti en France par acte sous seing privé signé à Bordeaux le 22 janvier et à Paris le 23 janvier 1883, et que le dit acte contient la clause ou stipulation suivante: 'Dans le cas de difficulté pour l'exécution des présentes elles devront être réglées par les tribunaux de Bordeaux à l'exclusion de toutes autres juridictions;'

"Considérant que la défenderesse plaide par son exception déclinatoire qu'en conséquence de cette clause ou stipulation dans le contrat de louage de service personnel intervenu entre les parties et sur lequel l'action est basée, ce tribunal n'a pas de compétence dans la matière, et que les tribunaux de Bordeaux seuls ont juridiction pour juger le procès en cette cause;

"Considérant que la compétence des tribunaux est une matière d'ordre public, et que la convention des particuliers ne peut pas donner à un tribunal une juridiction qu'il n'a pas ni enlever à un tribunal la juridiction qu'il possède;

"Considérant, par conséquent que la clause ou stipulation ci-dessus citée n'a pu affecter la compétence des tribunaux de cette Province et que la prétention de la défenderesse est mal-fondée;

"Renvoie la dite exception, etc."

Authorities cited by the plaintiff: Carré-Ch., Q. 721; Story, Conflict of Laws, Nos. 556-60.

T. P. Foran, for plaintiff.

Rochon & Champagne, for defendant.

(T. P. F.)

COUR DE CIRCUIT.

MONTREAL, 21 février 1888.

Coram DOHERTY, J.

DELORME v. THE CANADIAN PACIFIC RAILWAY COMPANY.

Voiturier — Responsabilité — Chemin de fer — Délai — Conditions.

JUGÉ:—1o. *Qu'une Compagnie de chemin de fer est responsable des dommages qu'elle cause par le délai dans le transport des marchandises qui lui sont confiées.*

2o. *Que lorsque les tables de départ et d'arrivée des trains indiquent que la distance d'un endroit à un autre doit se faire dans deux heures, un délai de vingt-quatre heures dans le transport de viandes fraîches, durant l'été, n'est pas raisonnable, et la compagnie doit être condamnée à payer le prix de la viande gâtée.*

3o. *Que les conditions contenues sur un connaissement ou lettre de voitures ainsi que le reçu de livraison sur lequel est imprimée une reconnaissance que les marchandises ont été délivrées en bon état, ne lient que les personnes qui en ont eu connaissance.*

Le 6 mai 1887, le demandeur livra au gardien de la station du chemin de fer de la défenderesse à Ste. Anne des Plaines, (distance de deux heures de Montréal) deux porcs tués de la veille pour être transportés à Montréal et livrés à un nommé Racette, boucher, auquel le demandeur avait vendu la viande pour $41.60. Ces porcs qui auraient dû être livrés vers les neuf heures du matin du 6 mai, ne furent livrés que vers midi le 7 mai, mais alors la viande s'était gâtée, et le demandeur ne put obtenir que $15.00 pour ce qui en restait.

De là l'action pour la différence, savoir, $26.60.

La défenderesse plaida qu'elle n'était pas responsable: 1o. parce que le délai pour un train de fret n'avait pas été irraisonnable; 2o. parce qu'il y avait sur le dos du connaissement une clause par laquelle la défenderesse déclarait ne pas se rendre responsable du transport de viandes fraîches; 3o. parce que le consignataire avait signé un reçu déclarant qu'il avait reçu la viande en bon état.

La Cour rendit jugement en faveur du demandeur, considérant que dans les chaleurs de l'été un retard de 24 heures pour le transport de viandes fraîches, lorsque le temps ordinairement employé est de deux heures, est un manque de diligence qui rend la défenderesse responsable des dommages que le demandeur en a souffert; que pour tirer avantage des conditions contenues dans le connaissement, et du reçu de délivrance en bon état, la défenderesse aurait dû prouver que le demandeur et le consignataire en avaient eu connaissance et y avaient consenti, au contraire, il a été prouvé que le demandeur ne savait ni lire, ni écrire, et quant au reçu, il a été prouvé que le consignataire n'avait pas lu la déclaration que la viande était en bon état, cette déclaration étant écrite en anglais, langue qu'il ne comprenait pas.

Jugement pour le demandeur.

J. J. Beauchamp, avocat du demandeur.

Abbott, Campbell & Meredith, avocats de la défenderesse.

(J. J. B.)

COURT OF QUEEN'S BENCH—MONTREAL. *

Location ticket—Right of holder to injunction to restrain trespassers from cutting timber—Disputed title.

Held:—1. That a location ticket issued under Sect. 13 of Ch. 22, C. S. C., is, in effect, a promise of sale of the lands to which it applies, subject to the fulfilment on the part of the locatee of the conditions on which it is granted, and gives the locatee absolute possession of such lands, and all the rights of action against trespassers which he might exercise if he held such lands under a patent from the Crown.

2. That the holder of such location ticket was entitled to an injunction, to restrain lessees of Crown Timber Limits under a licence from the Commissioner of Crown Lands for the Province, from cutting timber on the lands held under the location ticket, until the question of title should be determined by the Courts.

3. The Court will not, as a general rule, decide a question of title upon a writ of injunction, more especially when there is a third party interested (here the Government of Quebec) who is not a party in the cause.—*Gilmour et al. & Par adis*, Dorion, C.J., Tessier, Cross, Baby, Church, JJ., (Cross & Church, JJ., diss.), Sept. 23, 1887.

Sale—Real estate sold as free and clear of incumbrances—Existence of hypothec.

Held:—That where real estate is sold free and clear of incumbrances, and it appears that the property is charged with a hypothec, the purchaser is not bound to take a deed until the vendor has caused the hypothec to be discharged.—*Burroughs & Wells*, Dorion, C.J., Tessier, Cross, Baby, JJ., Feb. 22, 1887.

THE COMMON LAW AS A SYSTEM OF REASONING.

(Continued from page 96.)

Harvard testimony—Albany law school.

I have since been startled still more. Not to mention other instances, the very famous law school connected with our oldest university, some of the professors whereof have pro-

* To appear in Montreal Law Reports, 3 Q. B.

duced books which have occupied the first place in our esteem, has swept the whole line of text-books away, and declared that none, whether written by its former professors or others, are fit to be used by persons ignorant of the law in acquiring a knowledge of it. This method is sometimes inaccurately termed the teaching of the law by cases. But the use of the decided cases in elementary instruction has always been common, and I believe universal; yet not heretofore commonly practiced to the exclusion of such books as Blackstone's Commentaries, Kent's Commentaries, Greenleaf on Evidence, and Story's Equity Jurisprudence. So that the new method consists simply in banishing books like these. And the brief explanations of the reason of the change demonstrate that, while the university does not choose to pronounce in words the common law's utter lack of jurists, it believes it to have none, and adapts its curriculum to this belief.

Last year, at the celebration of the two hundred and fiftieth anniversary of the university, an association of its law graduates was formed, a meeting was held, and the change was publicly explained. The statement of the president of the association is too long to quote; but, in effect, it is that our only original sources of the law are the adjudged cases, to which, therefore, the student must go or take law "at second-hand" from our text-books; denying that our text-books amount to anything more. Words could not be more emphatic in declaring that we have no jurists. The president of the university, though not a lawyer, came forward specially to speak for the school, and describe its method. After naming one of the professors, he said:—

"He told me that law was a science; I was quite prepared to believe it. He told me that the way to study a science was to go to the original sources. I knew that was true, for I had been brought up in the science of chemistry myself; and one of the first rules of a conscientious student of science is never to take a fact or a principle out of second-hand treatises, but to go to the original memoir of the discoverer of that fact or principle. Out of these two fundamental propositions,—that law is a science, and that a science is to be studied in its sources, there gradually grew, first, a new method of teaching law; and secondly, a reconstruction of the curriculum of the school."

These words, also, when taken in connection with the fact that all text-books are banished from the school, are the university's clear and emphatic declaration that the common law has not so much as a solitary jurist; for jurist writings are "original sources." They are not the stolen productions, the "second-hand treatises" I have described, or the joint work of men and boys; but the "original memoirs of the discoverers," arrangers, and condensers of the principles of the law. They are not the apple which suggested to Sir Isaac Newton the law of gravitation, but his Organon. An adjudged case is the apple, and the showers of apples, and the glorious ingatherings of the fruit, not unfitly emblem the vast accumulations of our reports of adjudged cases.

Please bear in mind that I am expressing no opinion of my own, either as to whether or not we are thus absolutely destitute of jurist works, or as to whether, if we are, it is wise or unwise to cast out from a course of legal education the best of the books we have. I will simply pause to say that these words of the learned president of the university admirably illustrate the difficulty of learning abstract doctrine, such as it is a part of a jurist's functions to state, and necessary for a student of the law to understand, from words of judges which, as I have shown, must always be accepted as limited and qualified by narrow facts in controversy. He is speaking of Harvard teachings. Therefore, when he says that this school has adopted "a new method of teaching law," we do not understand him to deny that it—namely, the banishing of text-books—has been tried elsewhere. For example, at the very time it was taken up at Harvard, it was in the course of experiment in the Albany Law School, which has since become the law department of Union University. According to the prospectus at this period, the "reading" of the student—such are its words—"is not recommended to be elementary books, but the cases that are referred to in the lectures." It proceeds: "By these means he learns principles

in their applications,and acquires a facility in readily applying them to the facts with which they are in relation." I am not able to state how long this experiment was in the course of trial at Albany, but it was abandoned a considerable number of years ago, and text-books were re-instated in the curriculum.

Judge O. W. Holmes, who is a graduate of the Harvard Law School under its former system, and a thorough convert to the new, having been for a short time a professor teaching it, spoke of the text-books which the former professors prepared, in a way implying that they have no superiors. But he distinctly classed them with those which, we have seen, are not and cannot be jurist works. He said that they sprang "from ardent co-operation of student and teacher." A jurist work is a picture of the law. Necessarily, therefore, it is taken from a single standpoint, occupied by an eye not double or treble-visioned, and it is drawn by the one skilled hand. You go to an artist and tell him that a kind Providence has blessed you in the things of this life, has made you the head of a family sure to survive through succeeding ages as a specially glorious tribe, and you desire a picture of its founder from which those yet to be born can learn the exact features of their distinguished ancestor. He replies, "My dear sir, the heavenly hand is still with you; it has led you to me. I have a hundred students every one of whom is itching to get hold of the brush. From ardent co-operation of them and me, you shall have your picture." To this overture you do not need so much as to scratch your head for an answer; you say: "Great sir, the proposed work would undoubtedly be amazing, but it is not the sort for which I am looking."

I shall ask your attention to but a single further testimony delivered on this occasion. It is from Professor Gray, as follows: "When I was a law student, I read twenty or thirty text-books through; I fear little of them remained in my mind. I had to begin again with the study of particular cases and learn my law in that way. We try to save our students that experience, and start them in the way of practical learning three years earlier than if, as is often the case, they had to acquire such learning after they have been admitted to the bar."

It would be folly to pretend that books like these, so poor as to render the reading of twenty or thirty of them profitless to an exceptionably able young man, destined to become a professor of law in our oldest university, are jurist works. I am glad to be spared the anguish of saying for myself anything of them so hard.

Should you deem that I have occupied too much of your time with this Harvard testimony, my apology lies in its great importance. It is not the mere testimony of individual lawyers, eminent though they are. If a young judge were called upon to pronounce the death sentence on his own supremely illustrious father, who before him had presided in the Court where he sits, and given the position its glory, you may be sure that he would first scrutinize the evidence to the utmost, and become thoroughly satisfied with the verdict of guilty. And we may justly assume, without inquiry, that, of course, before this law school condemned the works of the great lawyers from whom its glory is derived, and adopted the now discarded Albany experiment, it consulted the most able lawyers and judges in every part of our great country, and not improbably also in England and throughout the British dominions. In its condemnation, therefore, of our law writings as being without exception less than jurist works, we have the collected opinion of all that part of the civilized world in which the common law prevails.

Other views qualifying Harvard testimony.

Too much looking into midnight is painful. And, much as I am bound to respect the testimony I have adduced to you, I cannot withhold my conviction that Professor Gray was unfortunate in the selection of books which those having the care of his early legal education made for his reading. I recall my own student days, not in a law school, but in the office of a firm of practising lawyers. I came in contact with many young men who were likewise students in offices, for the place was one of our large cities. In describing my own experience, therefore, I describe also theirs,

though chance may have given me more than the average facilities for practice. I read text-books, doubtless not the same over which Professor Gray stumbled, but such as were put into my hands, and in connection with them I read, as did the other students in offices, collateral cases to the extent necessary to make their teachings practical and distinct. I rendered to the lawyers under whom I was studying whatever assistance I could in their professional business. In return, they gave me such aid as I needed. After five or six weeks, I began to draft papers for them; and, not much later, I took the entire charge of their small Court business, consulting with clients and trying their causes in Court. And in less than half of Professor Gray's three years, I was practising as an admitted counselor before the full bench of the highest Court of the State. Doubtless we, whose course I have thus described, had shortcomings whereof we were ignorant. But, in consulting with our clients, we kept them in paths where no harm befell them; in Court, we won their causes, and the judges approved of all our steps; and our clients bestowed upon us both their gratitude and their money. Looking back through a long vista of years upon these happily remembered days, I can find it neither in my heart nor in my understanding to denounce, as utterly unworthy for purposes of legal education, those text-books which enabled me to make a successful entry into the profession from a period of study which I acknowledge to be too short, and so to practice the law as to draw around me clients whose sad regrets when I relinquished practice for law writing I can scarcely remember without emotions not for public utterance.

Nor can I forbear to put another testimony by the side of Professor Gray's. A young lawyer writes me, earnestly craving advice. He says that he studied law through cases, ignoring text-books, and became an enthusiast of the method. Opening an office for practice, he continued the study of cases alone. Thus he went on until his mind became overwhelmed with a mass which he could not wield. He now finds that he must change his method or give up all attempt at legal practice.

An experience of about forty years, not in writing the jurist works I am calling for, but in contributing thief-food, which, I trust, is performing its humble part in the fattening for a slaughter whereby the advent of jurists will become possible, brings me into sympathy with this young lawyer. The first step in preparing a book is to examine the mass of reported cases on its subject, ordinarily numbering many thousands. Herein I can get on with reading as many, or two or three times as many, as a student would do, without becoming conscious of the tangle in which my lawyer correspondent finds himself. But when the number read has reached up well among the thousands, not one of which contains a particle of general doctrine authoritatively stated, such as I must write, but each one is the conclusion of a Court only on specific and limited facts; or, if the judges announced in it what they deemed to be general doctrine, I am compelled still to interpret their words as qualified by the special facts: when I look at the enunciations in each case as made from a standpoint differing from that in any other; when my thoughts run forward to thousands upon thousands of differing prospective facts, with even more reference to which than to the past, my settings down of doctrine must be made; when I have thoroughly learned that, upon a large part of the questions, the uninterpreted words of the judges are directly adverse to one another, while yet I know that interpretation will melt away a part or all of the seeming discord; when I have discovered that not in all the cases did either the counsel or the Court have any clear or just comprehension of the doctrines wherewith they seemed to be dealing, and that in many of them, both failed to think of something which would have reversed the result had it been before their minds,—I find myself to have taken only the first step toward an understanding of the subject, consisting in the one beam of light, namely, that I know little or nothing of it. In this stage of the book's production, should I relinquish the making of it and return to practice, I could not satisfactorily advise a client on its particular topic. It is only after the book is written that I become conscious of having learned something. The

reading of the cases, unaccompanied by the text-writing, has only weakened my power to deal with the questions involved.

Further of need of Jurist writings.

Passing over the student period, about which I have promised to express no opinion, the practitioner, before he is competent to lead a client as to a particular question, must in some way have reached the point in relation to it where I stand when the book has been written. By nothing short of this can he exercise the functions of a lawyer, though a great way short of it he may be a very conceited quack.

But, though one cannot duly practice the law until, as to each particular question upon which he advises a client or carries his cause into Court, either he does this work or it is done for him, the labor of doing it all in person would be too great to permit the necessary progress in his professional business. Since, therefore, he must have help, poor help is for him, however it may be for the student, better than none. But surely I need not say a word further to make secure the proposition that jurist books, if we could but have them, would render all the paths of our professional labor inexpressibly more glorious, more inviting, and leading to higher and better results than now.

How obtain Jurists—Objecting to them.

In the economy of our earthly existence supply is always commensurate with demand. Therefore, you have jurists whenever you are ready to receive them. But receiving them, or demanding them, does not mean simply that you will not bring them to the public whipping-post, or shut them up in the penitentiary. You must give them in exchange for their labors something to eat and wear, and you must protect their work from the thieves. Especially you must enact, and, more than all, you must sustain by public sentiment, laws as efficacious for the preservation of the fruits of their intellectual toil as are those which protect the makers of jack-knives from shop-breakers.

The evils attending our law and its practice are, I believe, generally and perhaps universally admitted to be the same which I have thus pointed out. Nor, probably, would the remedy upon which I insist—namely, the introduction into our law of jurist works—be much objected to by the majority. Those who did not exactly cherish them could derive a sort of melancholy satisfaction in seeing that they were veritable bonanzas for the thieves. The objection would be to that without which these works can never come, namely, the suppression of piracy. And thus you see why I have said so much about piracy. While it continues to exist as it is now, our common law will remain dwarfed and undeveloped; and the danger of its death, of the death of the State, of our cherished liberties, and of whatever else has made us a glorious people, will impend over us.

(To be continued).

*RECENT ONTARIO DECISIONS.**

Company—Winding up—Contributory—Variations from prospectus in respect to amount of capital.

D. subscribed for 50 shares in a company to be formed, of which the capital was, according to the prospectus, to be $75,000 in 750 shares of $100. Subsequently the promoters obtained letters patent under the R.S.O. c. 150, by which the capital was fixed at double the amount, viz., $150,000, in 1,500 shares of $100. This change was not communicated to D., nor was there any allotment of stock to him; there was no entry of his name in any stock-book, no acting on his part as shareholder; the company was in process of winding-up.

HELD, that D. was not liable as a contributory in respect to any shares.

The amount of a company's capital is one of those things which when fixed cannot be varied without the consent of all who join the company. Here there was an important and material variance between the prospectus and the charter, to which D. did not assent, and of which he was not informed till after the winding-up had begun.—*In re London Steel Works Co., Delano's Case, Chancery Division*, Boyd, C., 15th Dec., 1887.

* Can. L. Times.

Trade-mark—Canadian and Imperial Acts—Colour—Seal—Former Action—Amount of profits—Necessity for Registration—Good-will—Assignment.

Actions by the plaintiff, a cigar manufacturer, to restrain the defendant from infringing certain of the plaintiff's trade-marks, amongst others a certain trade-mark consisting of a seal with portions of ribbon attached, and the letters "R.S." forming a monogram above, below, and beside it, and the words "Red Seal"; and also a similar seal, but made of wax or other composition, with portions of ribbon attached, and the letters "R.S." in monogram thereon.

HELD, that the above constituted a good trade-mark.

The Canadian Trade-mark and Design Act, 1879, s. 8, defines trade-marks in much more comprehensive terms than the Imperial Statute of 1883, s. 64, and some care must be used in considering decisions in the English Courts.

The word "Red," and the word "Seal" may each be admitted to be *publici juris*, but when combined and applied to a specific manufacture they cease to be so, and can well be protected as trade-marks. Single or more letters may also form a trade-mark, and more especially when combined, woven, or entwined into a monogram.

Under the Imperial Act, s. 67, a trade-mark may be registered in any colour, and the registration confers on the registered owner the exclusive right to use the same in that or any other colour, and our Act should be construed to have as extensive an application.

HELD, also, that the fact that the plaintiff had brought a former action against the defendant, which was discontinued upon the Court expressing the view that an action could not be brought until he had registered his trade-mark under the 4th Section of the Trade-mark and Design Act, 1879, did not prevent him, now that he had registered it, from ascertaining his right under the registration.

HELD, also, that the account of profits which the plaintiff was entitled to should not be limited to the date of the registration, although he might not have been able to sue on the trade-mark till it was registered, though this might admit perhaps of a different consideration if the defendant had infringed the trade-mark innocently, which, however, he had not in this case.

SEMBLE, that it is only where a trade-mark has been infringed innocently that a plaintiff must register before suing.

There is no provision in the Canadian Trade-mark and Design Act, 1879, similar to s. 70 of the Imperial Act of 1883, providing that a trade-mark when registered shall be assigned and transmitted only in connection with the good-will of business concerned in the particular case in which it has been registered.

HELD, also, that a plain seal of wax to be used on a cigar box is a good trade-mark within the statute. *Smith* v. *Fair*, Chancery Division, Proudfoot, J., Nov. 9, 1887.

Criminal law—Evidence—Character of Prisoner—Evidence of prior conviction in rebuttal.

An indictment for an assault occasioning actual bodily harm contained a second count charging a prior conviction for an indictable offence. The offence disclosed by the indictment upon which the prisoner was tried was not one of that class of offences for which after a previous conviction for felony additional punishment might be imposed. The first part of the indictment only was read in arraigning the prisoner, and no allusion was made to the second part charging the prior conviction. The prisoner in his defence gave evidence of good character. The Crown gave some general evidence in rebuttal and then tendered under 32 and 33 V. c. 20, s. 26, a certificate to prove a prior conviction, and read the second clause of the indictment charging such prior conviction.

HELD, that this evidence was not properly admissible as to character, and that such evidence can only be as to general reputation; evidence of a prior conviction going to the matter of punishment and not to general character.

Regina v. *Rowton*, 10 Cox C.C. 25, followed. *—Reg.* v. *Triganzie*, Queen's Bench Division, Feb. 6, 1888.