The Legal News.

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Mr. Justice Miller, of the United States Supreme Court, has contributed to the *American Law Review* an article upon the system of trial by jury, some portions of which will be found in the present issue. The experience of this learned judge supports the opinions which have been expressed on the same subject by eminent members of our own bench. The topic came up at a recent gathering of the Ohio State Bar Association. Judge Harris, one of the speakers, believed that the jury was an indispensable agency in judicial administration, though he admitted that sometimes jurors were encountered who had peculiar notions of justice. He related an incident of a Bohemian oats case in which the bench instructed the jury to the effect that a farmer who signed a note for $160, in payment for oats, was legally bound to pay it, but that if the holder was guilty of swindling the farmer, the note could not be collected. The jury returned a verdict for $80 in favor of the agent for the oats, because the foreman of the jury was once swindled himself in the same way, and had settled for fifty cents on the dollar, and he persuaded his associates that such a settlement was about right.

Judge Harris was disposed to think that women should be allowed to act as jurors, but Judge Green by no means entertained this opinion. He had had experience, he observed. He had had an associate justice all through his married life. Upon one occasion he came home late at night with an important case upon his mind. His wife asked him what was worrying him. He replied that he was undecided in regard to a case in which was involved a national bank and a pretty woman whom he knew. "There is no question at all," replied his wife, "the bank ought to have it." The judge was inclined to think, therefore, that the strong prejudices of ladies disqualified them from acting as jurors.

The recent decision in *Redgrave* v. *The Canadian Pacific Railway Co.*, which is concluded in the present issue, will be found useful in giving a *resumé* of the cases in which railway shipping notes and the conditions printed thereon are concerned. The condition in this case was maintained, and the company relieved of responsibility, though the findings of the jury were favorable to the plaintiff.

PUBLICATIONS.

WAIFS IN VERSE, by G. W. Wicksteed, Esq., Q. C., Ottawa.

Mr. Wicksteed, in the enjoyment of well-earned repose, after filling for 58 years the arduous office of Law-Clerk of the House of Commons and its predecessors, has found pleasant recreation in re-editing and publishing a number of fugitive pieces written at various periods of his career. Though the author is now past the venerable age of eighty-seven years, some of the "Waifs" bear comparatively recent dates, chief among which is the Jubilee Poem of 1887, briefly noticed on page 233 of our last volume. Mr. Wicksteed, in an "Apology for my Waifs," justifies his poetic effusions by weighty authority and ample precedent. We fancy, however, that his readers—and, we trust, they are many—will not require any apology, for many of these verses have, apart from their poetic merit, a special interest from their connection with noteworthy incidents in the history of our country. A poet or author who has counted among his tried and honored friends, men like Papineau, Viger, Vallières, Lafontaine and Cartier, not to mention others who are still among us, can hardly fail to hold the attention of the reader. On their own merits, however, the "Waifs" will be acceptable, for the muse of Mr. Wicksteed is both witty and scholarly, and we hope that Time, which has dealt so kindly by him hitherto, will spare him to make still further additions to his interesting collection.

MR. JUSTICE MILLER ON JURY TRIAL.

I must confess that my practice in the courts, before I came to the bench, had left upon my mind the impression that as re-

gards contests in the courts in civil suits, the jury system was one of doubtful utility; and if I had then been called upon, as a legislator, to provide for a system of trial in that class of actions, I should have preferred a court constituted of three or more judges, so selected from different parts of the district or circuit in which they presided as to prevent, so far as possible, any preconcerted action or agreement of interest or opinion, to decide all the questions of law and fact in the case, rather than the present jury system. * * * This impression upon me, growing out of my practice, I have since come to think, however, was largely due to the fact that, owing to popular and frequent elections of the State judges, and insufficient salaries, the judges of those courts in which I mainly practised were neither very competent as to their learning, nor sufficiently assured of their position, to exercise that control over the proceedings in a jury case, and especially in instructing the jury upon the law applicable to it, which is essential to a right result in a jury trial. It may as well be stated here that a case submitted to the unregulated discretion of a jury, without that careful discrimination between matters of fact and matters of law, which it is the duty of the court to lay before them, is but little better than a popular trial before a town meeting. * * * An experience of twenty-five years on the bench, and an observation during that time of cases which come from all the courts of the United States to the Supreme Court for review, as well as of cases tried before me at *nisi prius*, have satisfied me that when the principles above stated, (principles upon which judges should instruct) are faithfully applied by the court in a jury trial, and the jury is a fair one, as a method of ascertaining the truth in regard to disputed questions of fact, a jury is in the main as valuable as an equal number of judges would be, or any less number. And I must say, that in my experience in the conference room of the Supreme Court of the United States, which consists of nine judges, I have been surprised to find how readily those judges come to an agreement upon questions of law, and how often they disagree in regard to questions of fact which apparently are as clear as the law. * * * I am therefore of opinion that the system of trial by jury would be much more valuable, much shorn of many of its evils, and much more entitled to the confidence of the public as well as of the legal and judicial minds of the country, if some number less than the whole should be authorized to render a verdict. I would not myself be willing that a bare majority should be permitted to do this. There could be little difference in the confidence which would be reposed by the court, the public, or the parties, in the opinion of five men or of seven. It should be something more, then, than a bare majority. If the jury is to consist of twelve men, I certainly would not be willing that its verdict should represent less than eight, which is two-thirds, or probably nine, which is three-fourths. Many of what are called mistrials, produced by a failure of the jury to render a verdict, would be avoided if the power were given to nine or eight to render a verdict instead of requiring them all to unite in it, and such a verdict would be entitled to as much confidence as if it were unanimous. In respect to civil actions, where the question at issue is the right to specific property, or to damages for failure to fulfil a contract, or torts against the person or property of the plaintiff, this approach to perfect justice is perhaps as near as the fallibility of human nature permits, and the change removes the most serious objection to the system of trial by jury, the one which stands out as almost without support in reason or experience.—*American Law Review.*

COUNTY COURT (COUNTY CARLETON.)

OTTAWA, Dec. 30, 1887.

Before ROSS, J.C.C.

REDGRAVE v. CANADIAN PACIFIC RAILWAY CO.

Railway Company—Responsibility for freight—Condition of contract requiring notice of loss within thirty-six hours.

(Concluded from page 23.)

PER CURIAM (continued):—

The case was very fully and ably argued. The question now is whether upon the facts evidence and findings of the jury, the plain

tiff is entitled to recover for the loss, damage or detention of her goods. I agree unreservedly with the finding of the jury on every point: being of the opinion that the evidence adduced at the trial amply warranted the answers returned by the jury to every question left to them. Several questions were discussed by counsel in the course of the argument, but from the view which I hold in respect of this case, the liability of defendants turns upon the true answers to two questions: first, Whether the plaintiff is bound by the conditions upon the shipping request note and the receipt note—the conditions endorsed upon each being identical; and second, Whether in the circumstances shown in evidence and upon the correct construction of the said conditions, the defendants are relieved from liability for the loss of the plaintiff's goods.

As to the first point, Mrs. Redgrave in her evidence denied that she signed the shipping note. If she did not sign it, she is not bound by the terms endorsed on it, and in that case she ought to succeed in this action. Her evidence on that point was by no means satisfactory. On her cross-examination she is shown the shipping note and asked if she signed it. Her answers were: "I don't think "that the paper shown me is my writing. I "don't remember signing it. I don't believe it "to be my signature. It is not my signature." Mr. Barlowe, the then baggage master of the defendants at Quebec, before whom she signed the shipping note and who gave her the receipt note, proved that she did sign the shipping note in his presence and delivered it to him. The jury obviously hesitated before they would say that she signed the document, for after an absence of upwards of two hours they returned into court stating, "We wish to get this lady's signature." She wrote her name on three separate pieces of paper, with which and the exhibits in the case they retired into the jury room, and shortly after returned into court with the finding, amongst the others, that she did sign the shipping note. It seems to me that any person competent to form a correct judgment as to handwriting will not, upon a comparison of the signatures on the shipping note and the three pieces of paper signed by the plaintiff in compliance with the request of the jury, hesitate long in coming to the conclusion that the signature to each and all of them is in the same handwriting. At all events, the jury have found as a fact that she signed the shipping note. That being the case, is she bound by the terms endorsed thereon? Mr. McVeity contended that she is not. The form of the argument on that point I have very briefly indicated above.

Mrs. Redgrave, as plainly appeared from her examination at the trial, is a woman much above the average, quick and intelligent. She writes a very fair hand. In these respects she compares very favorably with the great mass of emigrants from the mother conntry. It was not pretended that any fraud was used in procuring her signature to the shipping note. What passed upon the occasion of signing that document, according to her own evidence and that of Mr. Barlowe was, in substance, that she was asked to sign it, and was told by Mr. Barlowe when he gave her the receipt note that it was a receipt for her box. These are the facts connected with the signature. Under these circumstances is she bound by the conditions indorsed on the shipping note signed by her —which are identical with the conditions indorsed upon the receipt note delivered to her by the Company's official?

I think the point is covered by authority which I am bound to obey: by which I am concluded. The decisions upon the subject are numerous. I shall refer to only a few of them. In *Lewis* v. *G. W. R. Co.*, 5 H. & N. 867 (A.D. 1860), the plaintiff delivered to the defendants certain goods to be carried on their line. He filled up and signed a receiving note describing the goods as "furniture." On the paper under the head "conditions" were these words, "No claim for deficiency, "damage or detention will be allowed unless "made within three days after the time of de-"livery of the goods; nor for loss unless made "within seven days of the time they should "have been delivered." To a declaration alleging that part of the goods was lost by the neglect of the defendants, they pleaded the above condition and then averred, admitting the loss of part of the goods through unintentional and accidental mis-delivery thereof,

that no claim in respect of such loss was made within seven days of the time when the same should have been delivered. The plaintiff on cross-examination said, "I de- "livered in a paper specifying what the "things were, I signed it. I did not read "the paper. A person told me to sign it. "He did not call my attention to the con- "ditions or read them. I think I must have "seen the word 'conditions.'" It was held that the judgment should be for the defendants. Bramwell, B., in delivering his judgment, said, "A person who signed a paper "like this must know that he signs it for "some purpose, and where he gives it to the "Company, must understand it is to regulate "the right which it explains; where the party "does not pretend that he was deceived, he "should never be allowed to set up such "defence."

In *Parker* v. *S.E.R.Co.*, 1 C.P.D. 618 (A.D. 1876), the plaintiff deposited his bag (of the value of £24. 12s.), in the defendants' cloak room, paid 2d. and received a ticket. The bag was lost or stolen, through, as alleged in the declaration, the negligence of the Company's servants. In an action to recover its value, the plaintiff swore that on receiving the ticket he placed it in his pocket without reading it, imagining it to be only a receipt for the money paid for the deposit of the articles; that he did not see the condition at the back of the ticket . . . . The Judge left two questions to the jury: 1. Did the plaintiff read or was he aware of the special condition upon which the article was deposited? 2. Was the plaintiff, under the circumstances, under any obligation, in the exercise of reasonable and proper caution, to read or to make himself aware of the condition? The Jury answered both questions in the negative and a verdict was entered for the plaintiff. Held, that upon these facts and findings, the Company was responsible for the loss of the goods.

From this judgment the defendants appealed. There was diversity of opinion upon the subject in the Court of Appeal, Lords Justices Mellish and Bagallay holding that there ought to be a new trial, on the ground that there had been a misdirection by the Judge, inasmuch as the plaintiff could be under no obligation to read the condition; and that the second question left to the jury ought to have been, whether the Company did that which was reasonably sufficient to give the plaintiff notice of the condition. Lord Justice Bramwell held that, on the facts proved, it was a question of law, and that judgment ought to be entered for the defendant.

In this case the plaintiff did not sign the ticket. As I understand the judgment of Mellish, L.J., it goes this length, that if the plaintiff had signed the ticket, the condition written on it would have constituted a contract between him and the Company, whether he read the conditions or not, or did not know what they were.

The cases in our own courts as to the effect of passengers or consignors by railways signing contracts similar or analogous to the one signed by Mrs. Redgrave, are more uniform and consistent than those rendered in the law courts in England—a point to which I shall refer presently.

In *O'Rourke* v. *G. W. R. Co.*, 23 U.C.R. 427 (1864), to an action for negligence in the carriage of cattle by the defendants on their railway for the plaintiff, the defendants pleaded that the cattle were delivered by the plaintiff and received by the defendants to be carried on a special contract, subject to the following conditions: That the plaintiff undertook all risk of loss, injury, damage or other contingencies in loading, unloading, conveyance or otherwise, whether arising from the negligence, default or misconduct, criminal or otherwise, on the part of the defendants or their servants.

At the trial it was proved that through negligence on the part of the defendants' servants, four of the cattle were injured and one killed. They had been put into a box car against the plaintiff's remonstrances.

For the defence, the station master proved that the plaintiff signed the paper containing the conditions; that he told the plaintiff that he must sign the conditions, but did not think that the plaintiff looked at it long enough to read it.

The court held that the plaintiff was bound by the conditions, though he might not have read or understood the paper.

Draper, C.J., who delivered the judgment of the court, said, in relation to that part of the case: "In the present case, it does not "appear that the plaintiff made any objec- "tion to sign the paper, nor that the defend- "ants' station master made any representa- "tion to him of its nature or contents, in "reliance on which he did sign it. He was "told he would have to sign it, though no "consequence of his refusing was stated, but "he might understand that his cattle would "not be carried unless he did sign it. We "should fear it would be a dangerous doc- "trine to establish, that if a man without "any misrepresentation to influence him or "mislead him, chooses to put his signature to "a paper which he is told contains the con- "ditions referring obviously to the carrying "of his goods, without taking time to read it "or making any enquiry to ascertain its "contents, he might afterwards avoid the "effects of his signing it by setting up that "he had no time to read it or did not under- "stand it."

In *Hamilton* v. *G. T. R. Co.*, 23 U.C.R. 600 (1864), the headnote is as follows:—"Defend- "ants (a railway company) received certain "plate glass to be carried for the plaintiff, "who signed a paper, partly written and "partly printed, requesting them to receive "it upon the conditions endorsed, which pro- "vided that they would not be responsible "for damage done to china, glass, etc., deliv- "ered to them for carriage, and the defend- "ants gave a receipt with the same upon it. "Held,—That such delivery and acceptance "formed a special contract, which was valid "at common law, and exempted the defend- "ants from injury to the goods, even though "caused by gross negligence."

In *Mason* v. *G. T. R. Co.*, 37 U. C. R. 163, so far as applicable to the case under consideration—to a count in the declaration—charging the defendants with damages for not delivering goods forwarded by the plaintiff by the defendants' railway, the defendants pleaded that the goods were delivered to and received by the defendants upon and subject to the terms of a special contract between the plaintiff and the defendants respecting the care and carriage of goods, and not otherwise, and that one of the conditions of the contract was "that no claim, loss or "detention of any goods for which the com- "pany is accountable shall be allowed, unless "notice in writing and the particulars of the "claim for such loss, damage or detention "are given to the station freight agent at the "place of delivery within thirty-six hours "after the goods in respect of which the "claim is made are delivered." Held,—That the plea being proved was a defence to the action. See also *Mayer* v. *G. T. R. Co.*, 31 U. C. C. P. 248 (1880.)

Vogel v. *G..T. R. Co.*, 2 O. R. 197 (1883) was a special action for the value of horses carried for the plaintiff on the defendants' railway and killed or lost by accident arising from defendants' negligence. The defence was re-ted on certain special contracts signed by the consignors, on the back of which was endorsed that live stock "was taken entirely "at the risk of loss, injury or damage," etc. It was admitted upon the argument at the trial that but for the special conditions the company would be liable. The case was tried before Wilson, C. J., with a jury. The jury found in substance that the horses were not carried under the special contract, and that the plaintiff did not know what the items on the back of the shipping bills were. The jury assessed the damages at $725.

The learned Chief Justice entered the verdict for the defendants.

A rule was obtained to set aside the verdict and enter it for the plaintiff.

The Queen's Bench Division of the High Court of Justice (Hagarty, C.J., and Armour and Cameron, JJ.) under the Railway Act of 1879—42 Vic., cap. 9, sec. 25, sub-sec. 4 (now R. S. C., cap. 109, sec. 104, and sub-secs. 2 and 3)—made the rule absolute, setting aside the verdict for the defendants and entering a verdict for the plaintiff for $275.

From this judgment the defendants appealed to the Court of Appeal for the Province of Ontario, and the case is reported in *Vogel* v. *G. T. R. Co.*, 10 O. R. 162 (1885.)

The Court of Appeal being thus equally divided, the appeal was dismissed with costs, and consequently the judgment of the Divisional Court stood. From this latter judgment the defendants appealed to the Supreme Court of Canada, and the proceedings on

this latter appeal are reported in *G. T. R. Co.* v. *Vogel*, 11 S. C. C. R. 612 (1885.)

The Supreme Court were also divided in their opinions, Ritchie, C.J., Fournier and Henry, JJ., holding that the company was subject to the General Railway Act and could not protect themselves against liability for negligence, while Strong and Taschereau, JJ., were of opinion that the words "notice, condition or declaration" in the statutes referred to contemplate a public or general notice, and do not prevent a company from entering into a special contract to protect itself from liability, and that the judgment of Chief Justice Wilson for the defendants should be restored.

Counting the judges who took part in the decision of *Vogel* v. *G.T.R.Co.* by heads, five were for giving a verdict and judgment in favor of the defendants, and eight in favor of the plaintiff.

The case which in its material circumstances most resembles the one under consideration is *Bate* v. *C.P.R. Co.*, 14 O.R. 625.

That was an action for damages sustained by the plaintiff for loss of passengers' baggage on the occasion of an accident on the Railway by the negligence of the defendants. The plaintiff claimed that the value of the lost baggage was $1077.40, which on the trial was admitted to be personal luggage, wearing apparel and suitable to the plaintiff's position in life, and of the value of $1077.50.

The defendants in their statement of defence, amongst other pleas, set up as a defence a special contract with the plaintiff which contained a condition limiting the liability of the Company to a sum not exceeding $100. The plaintiff signed the ticket having such a condition printed on it. The circumstances connected with the giving and signing of the ticket, were stated in the judgment of Rose, J., as follows:—

"The evidence showed that the plaintiff with her brother, went to the office of the Company at Ottawa to get a ticket for Winnipeg. She asked for a return ticket. At the time the ticket was purchased the agent asked her to sign her name to it. The plaintiff asked him why she was to sign it, and the agent said that the ticket was not transferable and that she was to sign it for identification and that she would also have to go to the office at Winnipeg and sign her name there. The plaintiff accordingly signed her name to the ticket. She said she did not read the ticket, because, she said, she could not do so as her eyes were sore. She said she heard nothing about different rates, and that her brother paid the money for the ticket.

"The plaintiff's brother corroborated the plaintiff's evidence. He said that nothing was said about reduced rates or different rates; but a return ticket was asked for and he paid for it.

"The ticket was a special form of ticket called a 'Land Seeker's ticket,' and was issued at a reduced rate. The price of an ordinary ticket to Winnipeg and return was $85, while the price of this ticket was $55.

"On the ticket was printed a condition limiting the liability of the Company in case of damage, to a sum of not more than $100. In case of an ordinary ticket there was no such condition and the purchaser was not required to sign it."

Held—(Rose, J., dissenting) that Sec. 25 of 42 Vic. Cap. 9 only applied to negligence in the management of the train or handling of goods during transport, or at the point of receipt or delivery . . . and therefore the defendants could avail themselves of the condition, which was one they were competent to make, and the plaintiff must be bound by it.

Cameron, J., in delivering his judgment, said, "I incline to the view," referring to the judgment in *Vogel* v. *G.T.R.Co.*, 10 O.R. 197; "that they"—the Railway Company—"could relieve themselves from responsibility by contract in any case in which the injury or damage was the result of negligence, where the contract conferred a benefit or advantage upon the passenger in abatement of fare or freight."

The result of the cases referred to, then, is that it is competent to railway companies to enter into such a contract as that made by the defendants in this case with Mrs. Redgrave, limiting their liability, except in cases of negligence on their own part or that of their servants. In this case there is no allegation that the loss, damage or detention

was caused by the negligence of the defendants. Therefore, Mrs. Redgrave having signed the shipping note, is bound by the conditions endorsed thereon.

The next question is whether the defendants, upon the facts in evidence and the proper construction of the said conditions, are relieved from responsibility for the loss of the plaintiff's goods. Some of the reasons applicable to the solution of this question have been already anticipated in the summary of decided cases above referred to, and need not be repeated here.

The facts in the present case—so far as regards the making of the contract is concerned—are in some respects similar to those in *Bate* v. *C.P.R.Co., ante.* The plaintiffs in both cases signed a contract with the defendants. In neither case did the passenger read the contract or know what was in it; and in each of the cases it has been contended on behalf of the plaintiff that the statement made by the officer of the defendants misled the plaintiff as to the nature and effect of what the passenger was asked to sign. In each of the cases the contract limited the liability of the Company; and in each case "the contract,"—to borrow the language of Cameron, J., in the *Bate* case, "conferred a benefit or advantage upon the passenger in abatement of fare" in the case of Miss Bate, "in abatement of freight" in the case of Mrs. Redgrave. The evidence in the case before me on this last point is this: Mrs. Redgrave wished to take the case in question with her on the express train; but she was told by Mr. Barlowe, the defendants' officer, that she would have to pay a much higher rate for freight on the case if she took it along with her on the express, than if it went by a freight train. She at once assented to its being sent by a freight train, and signed the shipping note. By the terms of the contract the defendants are protected from liability. In all the cases decided in our own Courts, it has been held that Railway Companies can by contract relieve themselves from responsibility for loss, damage or detention of goods, unless caused by negligence on their own part or that of their servants. Here no negligence is alleged. It does not seem to me that there is anything unreasonable or unjust in the defendants stipulating with the plaintiff, as in condition 12 indorsed on the shipping and receipt notes, "We will not be responsible to you for "the loss, damage or detention of your case "or its contents, unless within thirty-six "hours after it has been delivered to you, "you give us notice in writing, with par- "ticulars of your claim." The case was delivered to the plaintiff on 12th July. The first intimation given to the defendants of the loss or damages is on 25th August, and the notice then given contains no particulars of the loss as required by condition 12. That condition relieves the defendants from liability for the loss of plaintiff's goods.

Entertaining that view of the case it is not necessary for me to go into the consideration of the other questions raised by counsel during the argument of this case.

I am of opinion that the verdict should be entered for the defendants.

McVeity & Co for plaintiff; *Scott, McTavish & McCracken* for defendants.

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*COURT OF QUEEN'S BENCH—MONTREAL.**

Lessor and Lessee—C.C. 1629—*Responsibility of Tenant—Accidents by Fire—Burden of Proof—Police Regulations.*

Held, That the presumption of fault established by C.C. 1629, against the lessee, cannot be invoked by the lessor, who by the terms of the lease stipulated for the delivery of the premises in as good order, etc., at the expiration of the lease, "accidents by fire excepted,"—and more particularly where the lessees undertook to pay all extra premiums of insurance, which might be charged to the lessor consequent on the nature of the business carried on in the premises by the lessees. In such case, the burden of proof is on the lessor to establish fault on the part of the lessees.

2. Where in such circumstances the cause of the fire is not established, it will be considered an accidental fire for which the lessees cannot be held responsible. And the fact that the lessees did not conform strictly

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

to the regulations of police with reference to the deposit of ashes, will not affect the case in the absence of any proof that such negligence on their part was the cause of the fire.—*Skelton & Evans*, Dorion, Ch. J., Tessier, Cross, Church, JJ., (Church, J., *diss.*,) Nov. 26, 1887.

Quasi-délit—Négligence—Responsabilité.

Jugé, Que lorsqu'un accident sur un chemin de fer est arrivé par suite de la rupture d'un rail, c'est à la compagnie à prouver que cette rupture est due à un cas de force majeure et sans sa faute, autrement il y aura présomption de négligence et elle sera responsable des dommages qui en sont résultés.—*The Canadian Pacific Ry. Co. & Chalifoux*, Dorion, J.C., Tessier, Cross, Baby, JJ., (Cross, J., *diss.*,) 24 septembre 1887.

HIGH COURT OF JUSTICE.

(*Crown Case Reserved.*)

London, Dec. 10, 1887.

REGINA v. BUCKMASTER.

Larceny by a Trick—Betting on Racecourse—Money Deposited to abide Event.

Case stated by the chairman of the Berkshire quarter sessions.

The prisoner was convicted for stealing certain moneys under the following circumstances: The prisoner had a betting stand at the Ascot races. Prosecutor made two bets with the prisoner, at the same time depositing two sums of five shillings with him, the prisoner stating that if a certain horse won, the prosecutor would receive back so much money, including his own ten shillings. The horse did win; but the prosecutor, on going back to the place where the stand had been, found that the prisoner had decamped. The prosecutor met the prisoner on the same afternoon and demanded his money: but he replied that he knew nothing about it. The question reserved was, whether there was any evidence of stealing ten shillings to be left to the jury.

Keith Frith, for the prisoner, contended that, the prosecutor having voluntarily parted with his money, there was no evidence of larceny.

THE COURT (LORD COLERIDGE, C.J., POLLOCK, B., MANISTY, J., HAWKINS, J., and SMITH, J.) affirmed the conviction, holding that the prosecutor never intended to part with the property in the money, except in a certain event, which did not happen; and there was evidence of a preconcerted design on the part of the prisoner to get the prosecutor's money by a fraud and a trick. Conviction affirmed.

GENERAL NOTES.

Hier a comparu devant la 9e Chambre le gérant du *XIXe Siècle*, poursuivi pour avoir publié, avant sa lecture à l'audience, le réquisitoire du procureur de la République dans l'affaire de l'incendie de l'Opéra-Comique.

M. le substitut Ayrault a requis contre le prévenu le maximum de la peine (1,000 francs d'amende). Il insiste sur "la désinvolture avec laquelle ce journal, pour asseoir sa réputation naissante de feuille bien informée, a déclaré qu'il s'attendait à être poursuivi et condamné."

Répondant aux insinuations de certains journaux au sujet de l'indiscrétion qui a été commise, M. Ayrault ajoute que le parquet et le barreau sont au-dessus de ces attaques.

"La contravention existe, lui répond Me Laguerre, défenseur du prévenu. Mais cette contravention a-t-elle eu des conséquences si graves?

"M. Carvalho peut-il s'en trouver atteint? En tous cas, s'il l'a été, il faut avouer qu'il a bien su se défendre sous la forme si parisienne de l'interview.

"Non; ce qu'il faut dire, ce que dira le Tribunal, c'est que cette publication d'un document incontestable est inoffensive, à un moment où la passion effrénée du reportage n'a jamais été poussée aussi loin, à un moment où il n'y a plus de cabinets de juge d'instruction, à un moment où, tout récemment encore, un témoin, sortant de ce palais, pour se rendre à un autre palais, non loin des Champs-Elysées, faisait télégraphier à l'agence Havas le résultat de sa confrontation avec les prévenus dans le cabinet même de M. le juge d'instruction Atthalin.

"Où donc est le coupable? Il n'est pas dans le journal qui publie un document qu'il a pu se procurer et qui manquerait à ses devoirs envers le public si, l'ayant, il ne le donnait pas.

"Les coupables, je n'ai pas mission de les rechercher, mais ils sont, pour moi, parmi les fonctionnaires qui abusent de leurs fonctions pour céder à leur amour de la réclame en divulgant ce qui se passe dans leur cabinet; ils sont aussi, je dois le dire, dans une administration assez négligente, quelle qu'elle soit, pour conserver ces fonctionnaires, après qu'ils ont manqué aux sentiments les plus élémentaires de la probité et de l'honneur professionnels.

"Le *XIXe Siècle* n'est qu'un simple comparse et vous le frapperez, Messieurs, d'une main légère."

Le Tribunal, présidé par M. Gréhen, a condamné le prévenu à 500 fr. d'amende.

Le *Figaro* est poursuivi pour avoir publié le rapport des experts dans la même affaire.