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WHAT IS A LIBEL?

On the last day of the Easter sittings judgment was given by the court of appeal in the *Capital and Counties Bank* v. *Henty & Son*, which is a case of much interest. The defendants are brewers at Chichester, where the plaintiffs have a branch of their bank. It seems formerly to have been the practice for the Chichester branch to cash all checks drawn on other branches of the bank in favor of Messrs. Henty by their tenants and others. A new manager, however, introduced a new practice, and declined to cash the checks drawn on other branches unless the drawers were in some way guaranteed by the brewers. Thereupon Messrs. Henty sent the following circular to their tenants: "Messrs. Henty & Son hereby give notice that they will not accept in payment any check drawn on any of the branches of the Capital and Counties Bank." The bank complained of this document as a libel, and brought an action against Messrs. Henty. The action was tried before Lord Coleridge and a special jury. The case was left to the jury; but they were unable to agree, and were discharged. The matter did not rest there; but Messrs. Henty courted judgment, and asked the common pleas division to enter it in their favor, on the ground that the statement was not a libel in law. Mr. Justice Grove and Mr. Justice Denman declined this application, and the defendants appealed against their decision. Lord Justice Thesiger now expresses his agreement with the common pleas, while Lords Justices Brett and Cotton are of the contrary opinion. The question whether Messrs. Henty's circular was a libel has, therefore, been before three tribunals, only one of which has agreed about it, and this one has been overruled. A special jury have been unable to come to a conclusion; four judges (including Lord Coleridge in the enumeration) think that it may be a libel, while two think that it can by no possibility be libellous.

The conduct both of Messrs. Henty and the bank throughout the transaction was natural enough. Bankers, as a rule, do not, for obvious reasons, cash checks at any other branch than that upon which they are drawn. An exception, however, had been made by the Chichester bank, and Messrs. Henty were inconvenienced by the privilege being withdrawn. They had a right to decline to take any checks they pleased from their tenants. Whether or in what language they were entitled to tell their tenants their intentions in advance is the issue in the case. That the bank should complain of the circular is explicable enough. In the first place, it had a tendency to decrease the bank's business, because the tenants would be not unlikely to withdraw their accounts, simply because they could not use them for paying their rent. On this head there could, of course, be no legal claim. But, secondly, the circular, to say the least, was not likely to have an assuring effect on the minds of those who read it. Customers are a timid race, and even less than Messrs. Henty wrote might, at a time of panic, produce a run on the bank. On the other hand, the circular complained of was in form the barest possible notice. It simply records Messrs. Henty's intentions with regard to the payment of debts due them. The inference at once drawn from it is, that the brewers were not on the best of terms with the bankers, which was true. Can it be fairly inferred, from the circular, that the bank was unable to meet its engagements, which was the innuendo laid? The document does not in terms contain the statement of this or any other existing fact, from the beginning to the end; but a libel may be conveyed by suggestion equally as by plain statement. The decision of the court of appeal amounts to this: that, if the jury thought the circular would convey to the mind of the reader that the checks of the Capital and Counties Bank were of doubtful value, and it was best to have no dealings with it, they could not find the circular to be libellous. It may be said that a check is not a security on which the bank is liable. That is no doubt true; but, practically, what was said was the same as if one merchant had given notice of his refusal to take another merchant's paper. If a man has his money in a bank, upon which he gives a check, and the bank breaks, the effect is at least as embarrassing to all concerned as if he had given the bill of another person who failed. The judges of the common pleas declined to say that the infer-

ence suggested was legally incapable of being drawn. We are inclined to think that the reader of the circular would not be a very unreasonable man if he drew it.

Lord Justice Brett appears to have taken the opportunity for recording something like an apology for his court. No such proceeding was necessary, in spite of the seeming incongruity of two judges prevailing over four. There are still great anomalies in the constitution of the court of appeal as a court of review for the high court; such, for example, as the fact that Lords Justices can overrule Chief Justices, who are superior to them in social rank and salary. But, in spite of these drawbacks, the decision of the court of appeal is accepted with the highest respect. Consisting, as it does, of the class of judges who, in former days would have formed the best of the puisne judges and Vice-Chancellors, it is as good an intermediate court as is, probably, available. The court of appeal was by no means intended simply to affirm the court below. It over and over again has reversed the high court; and the smallness of the number of cases in which its own decision has been reversed by the House of Lords is a proof of its success. The late Lord Westbury used, irreverently, to compare judges to sheep going through a gap. They would go in any direction so long as they had a lead. It is no discredit to the court of appeal that it is not affected by this evil tradition, if tradition it be. It gives cases a fair second hearing, as was intended, and it has even gone so far in refusing to follow the lead as to overrule the previous decisions of its predecessor. The case of the *Capital and Counties Bank* v. *Henty & Son*, is of a kind very likely to produce differences of opinion. It is a case of great general interest as an illustration, and of importance to bankers, although many cases in the future are not likely to be governed by this decision. It is, however, necessary for bankers to know how far the law assists them in the conduct of a business very sensitive to all kinds of influence from without.—*The Law Times* (*London*).

—The Texas Court of Appeals has decided that a statute, making it a felony for a white person to marry a negro or a person of mixed blood, is not in conflict with the Federal Constitution.

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

MONTREAL, June 22, 1880.

SIR A. A. DORION, C.J., MONK, RAMSAY, TESSIER CROSS, JJ.

MOLSON (deft., petr. below), Appellant, & CARTER (plff. below), Respondent.

Capias—Secretion—Lapse of time between alleged act of secretion and issue of capias—Examination of attorney as a witness on behalf of his client.

This was an appeal from a judgment of the Superior Court, rendered by Papineau, J., dismissing the petition of Alexander Molson, appellant, which prayed for his discharge from arrest on a capias issued at the suit of the respondent, John T. Carter. It appeared that Alexander Molson borrowed from the respondent the sum of $30,000 on a mortgage given by Molson on property which, it turned out, did not belong to him absolutely, but, apparently, was subject to a substitution in favor of his wife and children. The $30,000 was deposited by Molson in the Mechanics Bank in his own name, but subsequently the words "mortgage, in trust for Eliza A. Molson" were added, and shortly afterwards the money was all withdrawn from the Bank by Molson. The capias issued upon an affidavit made by the Hon. J. J. C. Abbott, the respondent's agent, setting out the facts of the mortgage, the deposit in the Mechanics Bank, the withdrawal of the money, Molson's insolvency, etc., and charging Molson with secretion and making away with his property and effects, with intent to defraud.

CROSS, J., (*diss.*) On the 1st June, 1877, the respondent John Thorold Carter, on the affidavit of the Hon. Mr. Abbott, sued out a writ of capias against Alex. Molson, the appellant, on which he was arrested for a debt of $32,073.71, for which judgment had already been obtained.

The affidavit asserted that the defendant Molson had secreted and made away with his property and effects with intent to defraud his creditors generally and the plaintiff in particular. The reasons for belief were stated to be:

That Molson had applied to deponent and obtained from him, as agent for Carter, a loan on the security of a property, in St. James street, standing in his own name, on which he

gave an obligation and hypothec, dated 9th Feb, 1875, under misrepresentation as to the ownership or availability of said property as security, and representing that he urgently needed the money;

That Molson was at the time Vice-President and Managing Director of the Mechanics Bank, in which he had a large amount of stock nominally paid up, but on which only a small amount had really been paid;

That the Bank was not then in good credit, and it was afterwards discovered that a teller had largely misappropriated its funds;

That notwithstanding Molson's representation of his being in urgent need of said money, he deposited it at small interest in said Bank till 7th Sept., 1875;

That on the 5th Sept., 1875, the teller's defalcation was discovered, and Molson became aware that the Bank must fail, and he himself be involved in the disaster, whereupon he caused the title and heading of the deposit account in the books of the Bank to be altered, by adding the words, "mortgage in trust for Eliza A. Molson," meaning his wife, in whose name he afterwards drew out the $30,000, with accrued interest, and secreted it; and on being called to account by one of the Directors for doing so while he was debtor to the Bank in a large sum, declared that he had taken the said money because he did not desire to be left in the street, and that he had got it and put it away;

That deponent had not become aware of these equivocal facts until within the next previous 30 days, save as to Molson's insolvency, which had come to his knowledge shortly after the failure of the Bank. Deponent had assisted in negotiating a settlement between Molson and the Bank, whereby the large amount of stock held by Molson was cancelled;

That Molson had informed deponent that he, Molson, was not paying, and could not pay, any one; that the $30,000 had been expended in various ways. The deponent in the autumn of 1875 had exhibited to him by Mr. Barnard a statement of Molson's affairs, in which the $30,000 was not inserted. Molson had frequently afterwards applied to deponent for further loans. Molson failed to pay the interest due 1st January, 1877, and told deponent that the property mortgaged to Carter came from his father's estate, and belonged to his children, and he set about placing obstacles in the way of the property being available, by (in his capacity of legatee of his father) leasing it to one Freeman for five years on and from the 24th February, 1877, and afterwards conniving with his wife, caused an intervention to be put into the cause for his wife and children, to embarrass plaintiff's recourse;

That he had secreted said sum of $30,000, which he had still in his possession, and had no other means for the payment of his debts.

Molson petitioned to quash the capias, alleging that he had not secreted the $30,000, and never had done anything with a fraudulent intent; that he had borrowed the money to give the use of it to the Mechanics Bank, which he had done; that he had drawn the money to redeem securities which came back to his creditors; that the statement in 1875 contained $9,000 Molsons Bank bills afterwards expended on debts; that a satisfactory settlement was made with the Bank 14th January, 1876, by deed;

That Mr. Abbott, as legal adviser of himself as well as Mr. Carter, approved of the security given by him, and had advised the transfer of the property from his father's estate and the manner of doing it. Only after the failure of the Bank had petitioner become aware that his own title was doubtful and his wife and children might have rights; that he, Molson, failed to arrange with his creditors from being overpressed by Carter's claim; the lease to Freeman was in good faith, and the rents are collected as *alimens* for his wife and children;

That the intervention was a perfectly justifiable proceeding on the part of his wife, who had rights under his father's will.

The parties went to proof, and on the 11th Nov., 1878, Mr. Justice Papineau rendered his judgment, dismissing Molson's petition on the ground that he had not sufficiently disproved the allegations of the affidavit, and laying particular stress on the alteration of the deposit account on the books of the Bank, which appears to have occurred.

It is to me rather a startling proposition to justify a capias issued in June, 1877, against a debtor for alleged falsity in a statement made in 1875.

There is much in the affidavit wholly outside the issue. The circumstances under which the loan was granted are alien to the question, save that they show that security was at the time given which was satisfactory to the creditor, and throw upon him the onus of showing that it is bad: otherwise he would have no right to capias for an amply secured debt. This he does not pretend to do. It seems to me, besides, that Molson has reasonably accounted for the assets he is shown to have been possessed of. I think he would have rendered himself liable to the imputation of fraud by the alteration of the account in the Mechanics Bank if the alteration had been made before the insolvency, but it had been done months before; and by having securities indicated as being held by him in trust for his wife; and had the capias issued on his drawing out the $30,000 in the name of his wife, I think it ought to have been maintained. But these securities, forming part of those he had previously pledged, and which were redeemed out of the $30,000, went with Mr. Abbott's assistance to settle his liability to the Molsons Bank. It is true that there was one amount of 160 shares said to have been put back to the substitution in his father's will, having originally come from that source. Although this might as against creditors have been held a fraudulent preference, it could not in my opinion be a good ground for capias. Indeed, it seems to me that the proper remedy in this case would have been an attachment in insolvency, when all suggested frauds could have been enquired into. If the $30,000 was improperly borrowed, perhaps Molson ought to have been prosecuted as a cheat; but no question was made of this until long after the money was received.

A capias is now taken, in effect requiring a debtor to account for the transactions of two years of his life, and if anything is left unexplained it is assumed he is to be liable to this rigorous remedy. I cannot concur in this view, and I, therefore, dissent from the judgment about to be pronounced.

MONK, J., also dissented. After recapitulating the history of the mortgage and the withdrawal of the money, his Honor said that Molson did not, in his view of the case, exhibit any intention to deceive or defraud his creditors or Carter. Molson might have had doubts whether he was entitled to borrow on the property in question, and he might have tried afterwards to make reparation to his family. It was quite natural, when Mr. Brydges spoke to him about the withdrawal of the money from the Mechanics Bank, for Molson (who was then largely indebted to the Bank) to say: "I don't wish my family to be put on the street." Further, this $30,000 had been accounted for: it had gone to pay creditors of Molson.

Sir A. A. DORION, C.J., for the majority of the Court, held that the judgment was correct, and must be confirmed. The capias was issued on the allegation that appellant was secreting his estate with intent to defraud. Therefore, to maintain the capias, proof must be made of this statement. The intent could only be judged by external acts, and the rule which would serve to judge of acts in one case must apply to all. His Honor did not attach much importance to the mode in which the loan was made. The fact was that appellant borrowed the money and deposited it in the Mechanics Bank, and kept it there for some time. About the 17th of June, 1875, a change was made by which the $30,000 was transferred from the name Alexander Molson to the account of a mortgage in trust for Eliza A. Molson, his wife. In the month of July or August following it was discovered that an officer of the Bank was a defaulter to a large amount—about $100,000—and as the whole capital was only $300,000, the business of the Bank could not go on, and the Directors were obliged to close the doors. An attempt was made first to amalgamate with the Molsons Bank, but it was unsuccessful. At this time the assets of the Mechanics Bank were totally insufficient to meet its liabilities, and it finally closed its doors. About the 5th of September the whole amount of $30,000 was withdrawn from the Bank by Alexander Molson as trustee for his wife. It was shown that a great portion of the amount went to pay Alexander Molson's debts; but it was also shown that it went to pay debts for which collaterals had been given. Out of the $30,000 it was pretty clear that Molson had not accounted for $6,000. The rest of the money went to pay creditors who held security, which he transferred to his wife and children.

It was urged that these securities, bank stock, came from his father's estate, and he had a right to put the amount back where it came from. But his Honor held that he had no right to do that. If he had committed a fraud by taking the funds of the estate, he was committing another fraud on his creditors at that time by putting them back. His Honor went upon two grounds—first, the transfer of the money from Alexander Molson to his wife; secondly, that all this money was drawn out and paid away after Molson knew that the Bank was about to close its doors; and when he was asked to account for this money, he said he took it in order to replace securities which belonged to his father's estate. If a man, being indebted to his father, or to his wife, or to his family, knowing that he is insolvent, goes and pays them, so that the money cannot be reached by the creditors, he is guilty of secretion. Secretion, in the eye of the law, is putting property beyond the reach of the creditors. Here the majority of the Court found that, by many acts, Molson had put this money out of the reach of his creditors. Mr. Brydges at this time was looking every day at the deposit book of the Bank, and when he saw that Molson had withdrawn his $30,000, he spoke to him about it. Molson replied that he had taken the money, foreseeing that the Bank would be in trouble, and because he did not wish to be left with his family on the street. He might have already done wrong in using funds which were not his, but this was doing another wrong. Therefore, the majority of the Court held that sufficient had been proved to support the charge of secretion in the eye of the law. As to the lease of the property to Freeman, that was not of much importance. The material facts were the transfer of the $30,000 and the transfer of the stocks.

Ramsay, J. The appellant was arrested on a capias. Respondent's agent made a very long deposition, setting up many matters which do not appear to have any direct bearing on the case. Leaving them aside, he deposes that the appellant was indebted to the respondent in the sum of $32,073.71; that appellant had secreted and made away with his property with intent to defraud, and that the reasons for so saying are:

1st. That appellant borrowed the money, that is, $30,000, for a special purpose, that instead of so applying it he paid it into the Mechanics Bank in his own name, that later he altered the deposit to the name of his wife, and ultimately that he withdrew the money from the Bank and concealed it, as he had admitted to Mr. Brydges and others.

2nd. That appellant became insolvent, and made a statement of his affairs, in which he made no mention of this sum of money.

And 3rd. That appellant had borrowed the money on the security of property which he, appellant, now pretends was not his, but came to him from the estate of his father, and that it is substituted and is by his father's will declared not to be subject to seizure, and that the appellant has joined in a deed of lease of said property, declaring it to be so substituted to the conditions of the said will. Appellant meets this by saying that the change of heading had no relation whatever to the insolvency either of the appellant or the Mechanics Bank; that the change of heading did not facilitate the withdrawal of the money from the Bank, and that the appellant, a borrower in good faith, could not secrete the money borrowed from the lender,—that the withdrawal of the money was to prevent its falling into the possession of the Bank, and that the Bank had justified the course he had taken. He also says that the statement really accounts for the whole of this money. And, lastly, he says that leasing the property by a deed in which he takes a quality different from that he took in the deed of hypothecation, is no concealment and no obstruction, even if obstruction could be a ground for capias under the Code.

The evidence produced by the appellant in support of his petition to be discharged is of enormous bulk; 147 pages of testimony are thought necessary to prove that he has expended this money, for this is the only issue of fact about which there is any contestation. It is not denied that appellant borrowed the money on the security of a title which he now contends is bad, that he leased the premises, taking a quality which defeats appellant's right, if well founded, and at all events obstructs him, that the money he borrowed for a special purpose he paid into the Bank first in his own name, that he changed it to his wife's name, that he withdrew it, and

that he had the conversation referred to with Mr. Brydges. This waste of our time, this confusion of the relevant and the irrelevant is manifestly attributable to the stenographic process, by which clatter goes down as evidence, to the enormous advantage of the stenographer, and to the disadvantage of everybody else. While we are winnowing the wheat from the chaff of all this so-called testimony, we are not only employed in useless labour, but we are really rendering ourselves unfit for the higher duties of the judicial office. As might be expected, this voluminous evidence is for the most part irrelevant. Beyond a few simple details which might have made the subject of admissions, the whole evidence about the affairs of the Mechanics Bank appears to me to be outside of the case. It is important to know when the Bank was in difficulties, and when it became insolvent, also when Mr. Molson paid the proceeds of the loan into the Bank, and when he changed the heading, and that by the failure of the Bank he became insolvent; but however generally edifying the information may be that numerous persons held what they were pleased to call trust stock, that Mr. Abbott and Mr. Molson had been on friendly terms, it really throws no light on the case. It would seem that the petitioner's object was to direct attention from his own acts to those of others. With these last we have nothing to do, nor are we called upon, I think, to express any opinion on the validity of the mortgage on the St. James street property. The facts we have to pass upon are, it seems to me, as follows:—

In January, 1875, Mr. Molson sought to obtain a loan of $30,000 on the security of property standing in his own name in Great St. James street. On application to the Masson estate this loan was refused, the opinion of counsel being that the title of the applicant was defective. Mr. Molson then had recourse to the agent of the respondent, to whom it does not appear he communicated the difficulty that had been raised as to his title. But perhaps this fact is less significant than it would otherwise appear, inasmuch as it was the respondent's agent under whose advice the appellant had purchased the property in question from his father's estate. Nevertheless the fact is there, that appellant, knowing there was a question as to his title, hypothecated the property as his own. This was on the 9th February, 1875, and the money received from the respondent he at once paid into his own account "in trust" in the Mechanics Bank. This money remained so deposited for some time, and then the heading was changed so that the money should appear to be the property of Mrs. Molson. The petitioner has explained by one of his witnesses that the object of this change was to put the money in the name of the parties to whom it belonged, and that it was pretended that by old Mr. Molson's will it belonged to Mrs. Molson. It has not been very clearly established when this change took place, but it was before the 9th of July, 1875 (p. 21). Very early in Sept., 1875, the whole of this money was chequed out by a single cheque (p. 3.) The Bank, which had been in serious difficulties in Feb., 1875, was much pressed in the month of June, and finally closed its doors on the 20th Sept., 1875 (p. 37). It was just before this suspension that Mr. Molson drew out the money (p. 19), probably between the 3rd of September and the suspension (p. 1). About the time of the suspension of the Bank, at all events in Sept. (pp. 19 and 23), Mr. George Varey, the confidential clerk of Mr. Molson, tells us he made the statement of his affairs (C) "for the purpose of aiding in the settlement between him (Molson) and the Mechanics Bank." Some days later he is re-examined by petitioner in order to establish that it was after the 25th of November. After the money had been chequed out by Mr. Molson, and before the stoppage of the Bank, the President, Mr. Brydges, questioned Mr. Molson as to this transaction, and it was then Mr. Molson, in explanation, told Mr. Brydges that "he had taken it (the money) out, and had put it away, and intended to keep it for his own purposes to keep him off the street" (p. 41). It is evidently necessary for the petitioner to show how this considerable sum of money, transferred from the Bank to his own pocket, has been made available for his creditors, if he would escape from the imputation of secreting. He has attempted to do this by the statement C, the date of the making of which has been so unsatisfactorily proved, if it be of any importance whether it was made in the end of September or in the end of November, 1875. But after giving this statement the

closest attention, I have been unable to see that it establishes anything. At the argument I asked for some explanation of the principle on which it was framed, but I could obtain no satisfactory answer. Mr. George Varey, who made it, says it is not a balance sheet, but merely a statement of assets and liabilities (p. 20), and on his third examination he is totally unable to say on what it was founded. He tells us "that we did not keep books like merchants keep their books," "that it was made from Mr. Molson's books, and memoranda which we kept," but how much was from books, if there were any, and how much from memoranda, he is totally unable to say. We therefore find ourselves in face of the fact that this particular sum of money had been transferred on a transparently absurd pretext from the petitioner's credit to that of his wife, that he then drew it, avowedly to put it aside for his own purposes, and no coherent explanation of what these purposes were. I must say that this appears to me to be the crudest form of secreting.

I have already said we have nothing to do with the merits of the title to the St. James street property; but the petitioner's mode of dealing with that security may serve as an indication of the intent to defraud. In the first place, he borrowed the money knowing the objection to his title, and when he changed the heading, on the 9th July, 1875, he must have known of his own impending insolvency, and then it is clear he had made up his mind to take advantage of the pretended defect in his title. Notwithstanding this, he withdraws the money, and, according to his own statement now, he spent all of it but $6,000 in releasing stocks, and paying other debts. Not satisfied with this, he leased the property, taking a quality which on the face of it defeats the plaintiff's recourse for rent. It is said that there is no harm in this, that plaintiff may test whether in deciding that the title set up in his loan is bad the petitioner is right or not, and that obstructing a creditor is not, under the code, a ground of fraud. It seems to me that the putting of one's estate by legal forms out of the reach of one's creditors, if the design be manifest to defraud, is obstruction, and it seems to me that the most obvious form of secreting, that is, placing in concealment, is only an obstruction. If an insolvent, to defraud his creditors, dig a hole in the ground, and hide his money and valuables in it, would it be ground for his release from capias to say, "If you had looked in the right place you would have found them?" I think, therefore, that the judgment rejecting the petition should be maintained, taking all petitioner's pretensions to be true.

In reply to a question as to the exclusion of the evidence of Mr. E. Barnard, counsel for petitioner in the Court below,

RAMSAY, J., said the Court did not think the point of sufficient importance to make it necessary to send the case back. He did not think it was a good rule to admit the counsel to give evidence, and that what Judge Papineau thought the law was, should be the law. But if Mr. Barnard's evidence were admitted here, it could make no difference in the judgment, and, therefore, there was no occasion to send the record back.

Sir A. A. DORION, C. J., remarked that it was a great abuse for advocates engaged in a case to appear as witnesses if it could be avoided. In any event, the lawyer should first set out in an affidavit what his evidence would be.

CROSS, J., said that Mr. Barnard had acted here rather as a negotiator. But the facts necessary to the decision of the case were all patent.

Judgment confirmed, Monk and Cross, JJ., dissenting.

Barnard & Monk, for Appellant.
Bethune & Bethune, for Respondent.

SUPERIOR COURT.

MONTREAL, July 31, 1880.

CROSSLEY et al. v. MCKEAND, and BAYLIS, intervening.

Conservatory proceeding for appointment of sequestrator—Intervention by third party.

On the 28th July, Torrance, J., in Chambers, granted the plaintiffs' petition for the appointment of a sequestrator pending a hypothecary action, and ordered the parties to appear in Chambers on the 30th of July for the nomination of a sequestrator.

On the 29th July Baylis asked for the allowance of a petition in intervention and stay of proceedings, upon the ground that he, Baylis, was proprietor of the property in question by virtue of a deed passed prior to the institution

of this hypothecary action. The petition was presented before Jetté, J., in Chambers, and allowed.

It appeared, however, that the deed to Baylis was not registered until after the institution of the hypothecary action, viz., on the 29th July, 1880.

TORRANCE, J., held that it could have no effect, citing Art. 2074 of the Civil Code and 3 Legal News, p. 135, *La Societé de Construction Métropolitaine* v. *Beauchamp & David et vir*, oppts. His Honor observed that an intervention stayed proceedings upon the principal demand, but could not stay proceedings for the appointment of a sequestrator already commenced or conservatory proceedings.

JETTÉ, J., who was present, concurred upon both grounds, remarking that he had given his order under the impression that the deed of sale to Baylis had been registered prior to the institution of this hypothecary action, so that there was no conflict between his order and that of the Hon. Mr. Justice Torrance.

J. L. Morris for plaintiffs, petitioners for sequestrator.

A. & W. Robertson for defendant.

Robertson & Fleet for petitioner in intervention.

Jos. Doutre, Q. C., counsel for defendant and intervenant.

RECENT ENGLISH DECISIONS.

Joint-Stock Company—Fraudulent Misrepresentations of Directors—Action of Shareholder.—A person buying a chattel, as to which the vendor makes a fraudulent misrepresentation, may, on finding out the fraud, retain the chattel, and have his action to recover any damages caused by the fraud. But the same principle does not apply to shares in a joint-stock company; for a person induced by the fraud of the agents of such a company to become a partner, can bring no action for damages against the company while he remains in it: his only remedy is *restitutio in integrum;* and if that becomes impossible,—by the winding up of the company or by any other means,—his action for damages cannot be maintained.—*Houldsworth* v. *City of Glasgow Bank*, L. R. 5 App. Cas. 317.

Wagering Contract—Right to recover deposit from Stakeholder.—The plaintiff deposited with the defendant £200 to abide the event of a match between a horse of the plaintiff and another horse belonging to G.: but, before the day fixed for the race, he gave notice to the defendant that he revoked the authority to pay over the money, and demanded the return of it. *Held*, that the plaintiff was entitled to recover such deposit. The contract under which the money was deposited was one by way of wagering, and therefore null and void, under the Colonial Act, 14 Vict., No. 9, § 8. It was not an agreement to contribute a sum of money, within the meaning of the proviso contained in the said section, which proviso applies to contributions other than wagers. *Trimble* v. *Hill*, L. R. 5 App. Cas. 342.

Common Carrier—Notice limiting liability—Reasonable conditions.—A condition that a railway company will not be liable "in any case" for loss or damage to a horse or dog above certain specified values delivered to them for carriage, unless the value is declared, is not just and reasonable, within section 7 of the Railway and Canal Traffic Act, 1854, as it is in its terms unconditional, and would, if valid, protect the company even in case of the negligence or wilful misconduct of their servants.—*Harrison* v. *London & Brighton Ry. Co.*, 2 B. & S. 122, that such a condition is reasonable, is overruled by *Peck* v. *North Staffordshire Ry. Co.*, 10 H. L. C. 473.—*Ashendew* v. *London & Brighton Ry. Co.*, L. R. 5 Exch. D. 190.

INTERRUPTIONS OF COUNSEL BY JUDGES.—The London *Law Times*, in a recent number, says:—"Judicial thinking aloud is one of the vices of our modern judicial system. The vigorous reporter who presents almost *verbatim* in the columns of the *Times* the doings of the Court of Appeal at Westminster, shows very clearly to what arguments in courts of law have been reduced. A running fire of questions from three astute judges is not an ordeal through which any counsel ought to be expected to pass in advocating a client's cause, and we think that the judges of half a century ago would open their eyes with amazement if they could peruse a faithful report of proceedings in any of our courts of law. The minority of judges in the present day have the faculty of listening. The majority utter their thoughts and their criticisms freely as they go along. The consequence must be, that arguments become much inflated without any compensating advantage. The only consolation is that the evil cannot increase in magnitude."