The Legal News.

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APPEAL BUSINESS.

The March Term in Montreal opened with 106 inscriptions. Of these 28 cases were argued. One appeal was dismissed, the appellant not filing any factum; two other appeals were struck, the cases having been settled by the parties; making a total of 31 cases removed from the list. Judgment was rendered in four cases heard during the March Term, the decision of the Court below being in each case confirmed. Judgment was also rendered in sixteen cases standing over from the January Term; in eight cases the judgment was reversed, reformed or modified, and in the other eight cases the decision of the Court below was confirmed. Two reserved cases were also decided, the conviction in each case being maintained.

CONTRACT FOR SERVICE.

In the case of *Everson* v. *Powers*, before the New York Court of Appeals, the question was as to the rule of damages for wrongful dismissal of an employee. The action was brought before the expiration of the term. The Court of Appeals held that where a person employed for a definite time, at a gross sum, is unlawfully discharged before the expiration of his term, he may recover as damages, the difference between the contract price and the amount received by him with what he was enabled to earn during the term after his discharge. Judge Tracy said: "Where the cause of action is commenced during the term, but the trial occurs after the expiration of the term of service, we can see no reason why the plaintiff may not be permitted to recover the same damages that he would have been entitled to recover had the action been commenced after the expiration of the term."

IMPROPER USE OF TELEPHONE.

In *Pugh* v. *Telephone Co.*, before the District Court of Cincinnati, the question was whether Pugh had forfeited his right to use the telephone by "damning" the company over the wire. The rule prohibited the use of "improper or vulgar language." The court said in substance that it was hardly necessary, by its understanding of the rules of society, to go into an examination as to whether the word "damn" is profane or vulgar. Judge Barr of the United States District Court of Kentucky had already held that the word "damn," while not "obscene," was to be classed as "coarse, unbecoming, and profane," and in view of all the circumstances in the present case under which the word was used, it was patent to a majority of the court that it was used with a vile, low and insulting spirit, and if not profane, was manifestly improper. The rule prohibiting the use of "improper or vulgar" language was certainly a reasonable rule. "The telephone reaches into many family circles. "It must be remembered that it is possible, "from the peculiar arrangement of the instru- "ment, to have a communication that is in- "tended for one individual reach another. All "communications, therefore, should be in pro- "per language. Moreover, in many cases the "operators in the exchanges are many of them "refined ladies, and even beyond this, all "operatives are to be protected from insult. "Besides, the inventors have a right to be protected, and have their instrument placed in a "respectable light before the world, otherwise "it might go out of use." One judge dissented on the narrow view that "damn" is not profane. The *Albany Law Journal* remarks that in considering the defendant's right to cut off the plaintiff for "damning" over the wire, the Court, as may well be supposed, could not find any case exactly in point. "The nearest approach is *Pendegrust* v. *Compton*, 8 C. & P. 462, an action of damages, by a captain in the army, for breach of contract by a ship captain to carry the plaintiff and his wife as cuddy passengers on a voyage from Madras to England. The defendant undertook to justify by showing that 'the conduct of the plaintiff was vulgar, offensive, indecorous and unbecoming,' and constituted good cause of exclusion from the cuddy. The Court said: 'There is some evidence that he was in the habit of reaching across other passengers, and of taking potatoes and broiled bones with his fingers. It would be difficult to say, if it rested here, in what degree want of polish would, in point of law, warrant a captain

in excluding a passenger from the cuddy. Conduct unbecoming a gentleman, in the strict sense of the word, might justify him; but in this case there is no imputation of the want of gentlemanly principle.' The poet says (very ungrammatically),

'To swear is neither brave, polite, nor wise;'

but leaving out of question the precise moral status of the word 'damn,' we think the court were right in justifying the shutting off of Mr. Pugh, on the ground that his language might accidentally startle some innocent 'family circle,' or shock the 'well-disposed females,' who are the 'operators at the Exchange,' especially as the offender refused to promise not to do so any more, or as he phrased it, to 'eat dirt.' The telephone is a very vexatious institution at times, but those who would use it should turn away their heads and speak in an 'aside' when they are provoked to bad language."

NOTES OF CASES.

COURT OF REVIEW.

MONTREAL, March 31, 1883.

TORRANCE, DOHERTY, RAINVILLE, JJ.

[From S.C., Ottawa.

MANSFIELD v. CHARETTE et al.

Suretyship—Extension of Contract.

The proof of the extension of a contract of suretyship, where the sum in question exceeds $50, *must be made by writing or by the oath of the adverse party.*

The judgment here was against Charette and Mackay, two defendants, jointly and severally. Mackay had employed Charette to draw out lumber on the Gatineau River in the season of 1880-81. On the 2nd December, 1880, an agreement was entered into between Mansfield and Charette by which Charette agreed to pay Mansfield $3 per mile or fraction of mile per 1000 cubic feet for hauling said timber. Mansfield asked for the security of the defendant Mackay, who accordingly addressed him a letter about which there was no difficulty. Later on a supplementary agreement was made between plaintiff and Charette, by which Charette agreed to allow an additional sum of one quarter of a cent per mile. Plaintiff contended that Mackay had notice of this, agreed to it, and became surety for the further sum. Plaintiff also said that this meant per foot, while Charette held that he intended it to mean per 1000 feet.

The Court below maintained plaintiff's pretension and condemned the defendants jointly and severally to pay a balance of $730.

Mackay appealed, and contended that there was no legal proof of his having become surety for the second agreement of the 6th January, 1881, and further that in a case of doubt the contract must be interpreted as meaning per 1000 feet and not per foot. He contended that suretyship was not presumed; C.C 1935, and could only be proved by a writing, C.C. 1235, or his oath, and there was no such proof.

The Court of Review held that there was no legal proof to bind Mackay, and therefore that the judgment against him should be reversed, and the action dismissed.

Judgment reversed.

T. P. Foran, for plaintiff.
John Aylen, for defendant Mackay.

COURT OF REVIEW.

MONTREAL, March 30, 1883.

TORRANCE, DOHERTY, RAINVILLE, JJ.

[From C.C., Beauharnois.

HEBERT v. LA CORPORATION DE LA PAROISSE DE STE. MARTINE.

Municipal Corporation—Neglect to protect a dangerous part of the highway by a railing.

This was an action of damages to recover the value of a horse alleged to have been drowned through the negligence of the municipality in not having a proper railing in a dangerous part of the highway. The action was dismissed.

TORRANCE, J. The Municipal Code, Art. 788, required the corporation to put railings or *garde-fous* in dangerous places. The evidence appeared to be strong in the case that the place was a dangerous one. Eustache Bergevin says so. He was mayor. George Brault said that it was usual to put a *garde-fou* at such a place. Primeau said it would have been better to have had a *garde-fou*. Ulric Martin said it was a dangerous place to upset in at night, and that it would be better to have a *garde-fou* there. Elie Cimon and Théophile Doré said the same

thing as to the danger of the place. Louis Maheu, who had been mayor, said it was possible to put a *garde-fou* there, though there had been none there before, and that since the accident, orders had been given to put one.

Against the claim it was proved that the plaintiff had said that if the reins had been in his hands, the accident would not have happened. He had dropped a piece of iron out of his waggon a few yards below and had got out to recover it, and doing so, had placed the reins in the hands of his nephew who sat by him in the waggon. The horse took fright for some unknown reason, reared and ran over a steep declivity on the side of the road, unprotected by a railing, into the river, where he was drowned. The Court here found no negligence in the driver who was strong and had experience. Even in a case of doubt, Sourdat said as between the individual and the municipality, the liberality should lean in favour of the proprietor. Tom. I, p. 435, n. 433.

The Court of Review was of opinion that a clear case was made out against the municipality, and that it should pay damages assessed at $150, and costs, for the loss of the horse.

J. E. Robidoux, for plaintiff.
L. A. Seers, for defendant.

SUPERIOR COURT.

SHERBROOKE, March 31, 1883.

Before BROOKS, J.

HUDON *et al.* v. RAINEAULD *et al.*

Exception à la forme—Name of defendant.

The action was to set aside a deed of sale by one of the defendants to the female defendant.

An exception *à la forme* was pleaded by the latter on the ground that her name is Henriette Renault Blanchard, and not Henriette Raineauld as described in the writ.

PER CURIAM. The deed which is sought to be set aside was signed by the defendant as Henriette Raineauld. It is an authentic deed. She cannot complain if she is sued under the name she has taken herself in the deed impugned.

Exception dismissed with costs.

L. E. Panneton, for plaintiff.
Bélanger & Vanasse, for defendants.
H. B. Brown, counsel for defendants

SUPERIQR COURT.

SHERBROOKE, March 31, 1883.

Before BROOKS, J.

HUDON *et al.* v. RAINEAULD *et al.*

Exception à la forme—Cancellation of stamps on writ—Hour of service.

To an action to set aside a deed of sale by one of the defendants to his brother, an exception *à la forme* was filed on the ground: 1. That the stamps on the writ were not properly cancelled; 2. That the hour of service was stated by the bailiff to be between two and three of the clock in the afternoon, no precise hour being given.

PER CURIAM. The cancellation of stamps is a matter that interests the Government only. An attorney who has filed his writ with the necessary stamps on it, is not responsible for the irregularity of the Prothonotary in not cancelling the stamps as required by law. The Prothonotary is merely a revenue officer. He collects his fees in stamps, and he owes an account to no one but the Government. The Act 31 Vic., cap. 2, (Quebec) confines the nullity to the want of stamps, not to the want of cancellation. The hour stated is sufficient.

Exception dismissed with costs.

L. E. Panneton, for plaintiffs.
Bélanger & Vanasse, for defendants.
H. B. Brown, counsel for defendants.

SUPERIOR COURT.

MONTREAL, Sept. 5, 1882.

Before JETTÉ, J.

NEWTON v. CRUSE.

Hypothec—Donation.

1. *Where the holder of an hypothecated immoveable is personally liable for the debt, it is no bar to a direct action against the debtor that the creditor has previously obtained a judgment en déclaration d'hypothèque, under which the debtor has abandoned the immoveable; even though the property has not been discussed.*
2. *A donation inter vivos of a sum of money for valuable consideration secured by hypothec, though payable only after the death of the donor, is not invalid as made causâ mortis.*
3. *The creditor can recover by direct action the costs incurred in the hypothecary action as well as his debt.*

The defendant was sued as the universal legatee of the late Isaac Newton, for the amount of a donation made by the latter in payment of services rendered and money advanced by his son (the plaintiff); the amount being payable only after the death of the donor and secured by hypothec upon an immoveable.

The plaintiff had previously obtained a judgment against the defendant *en déclaration d'hypothèque*, and the defendant had made an abandonment of the immoveable; which, however, had not been sold or discussed. The motives of the judgment which follow, fully explain the contentions of the parties, and the grounds taken by the court.

"Considérant que le demandeur réclame de la défenderesse, en sa qualité de légataire universelle de feu Isaac Newton, son mari, et père du demandeur, la somme de mille piastres, dont ce dernier lui a fait don par acte entre vifs, en date du onze d'avril 1868, devant Lewis, notaire, en reconnaissance de services rendus et de sommes avancées et fournies par le demandeur à son dit père, la dite somme stipulée payable au décès seulement du donateur, mais assurée par une hypothèque constituée par le dit acte sur un immeuble appartenant au dit donateur; au paiement de laquelle somme la défenderesse est obligée personnellement à raison de son acceptation du legs universel à elle fait par le dit Newton, père;

"Considérant que le demandeur allègue, de plus, que le 15 de septembre 1881, il a institué contre la défenderesse, détentrice de l'immeuble hypothéqué à sa créance par le dit acte de donation, une action hypothécaire sur laquelle jugement a été rendu; mais que la défenderesse a refusé de délaisser le dit immeuble, et que les frais encourus sur cette action s'élèvent à $48.80, qu'il est bien fondé à recouvrer aussi de la défenderesse;

"Considérant que la défenderesse a plaidé à cette action par cinq exceptions, disant en substance;

1o. "Que sur l'action hypothécaire sus-mentionnée, le demandeur a obtenu contre la défenderesse une condamnation personnelle, et qu'il ne peut obtenir un nouveau jugement pour la même créance;

2o. "Que par l'action hypothécaire intentée contre elle par le demandeur, la défenderesse avait droit d'opter entre le paiement de la somme et le délaissement de l'immeuble; que le jugement sur cette demande ne lui a pas été signifié; qu'elle a par suite encore le droit d'opter, et qu'on ne peut lui demander la somme sans alternative du délaissement;

3. "Qu'ayant, par le jugement rendu sur l'action hypothécaire, le droit d'opter entre le paiement et le délaissement, la dite défenderesse a délaissé, qu'elle a ainsi satisfait au dit jugement, et que le demandeur n'est plus en droit de lui rien demander;

4o. "Que la défenderesse ayant délaissé l'immeuble hypothéqué, le demandeur devait le faire vendre avant de rien réclamer d'elle, la dite défenderesse ne pouvant être responsable que pour la balance restant due après la vente de l'immeuble; et que cette balance n'étant pas établie la demande est mal fondée.

5o. "Enfin, qu'il est faux que le demandeur ait rendu aucun service à son père, et que la donation invoquée était purement gratuite; que de plus il résulte du caractère de la disposition contenue au dit acte que c'est une donation à cause de mort, que cette donation n'est pas valable comme testament, et qu'elle n'est pas non plus faite par contrat de mariage, et que par suite elle est radicalement nulle et de nul effet;

"Considérant qu'il résulte des pièces produites et de la preuve;

1o. Que le demandeur, sur l'action hypothécaire par lui intentée n'a pas obtenu de condamnation personnelle principale contre la défenderesse, mais une simple condamnation ordinaire au délaissement, avec faculté de payer pour l'éviter;

2o. Que la défenderesse a en effet délaissé en justice l'immeuble hypothéqué;

3o. Que le demandeur avait réellement rendu à son père des services considérables et en argent par son travail, justifiant la donation à lui consentie comme paiement de tels services;

"Considérant en droit, que l'effet de l'action hypothécaire n'est en principe, que de forcer le détenteur de l'immeuble hypothéqué à le délaisser; et que le paiement de la dette n'est de sa part que *in facultate solutionis*, mais sans que sa responsabilité personnelle soit engagée; et que le jugement allégué dans l'espèce et rendu sur la première demande du demandeur contre la défenderesse n'a pas une portée plus considérable, que lorsque le détenteur de l'immeuble

hypothéqué est en même temps personnellement obligée au paiement de la dette hypothécaire, le délaissement par lui fait ne peut avoir pour résultat de le libérer et d'empêcher tout recours personnel contre lui ;

"Que dans l'espèce la défenderesse est légataire universelle de son mari, et comme telle, débitrice personnelle de la somme réclamée par le demandeur, et qu'en conséquence la demande hypothécaire antérieurement formée contre elle et le délaissement par elle fait, ne peuvent faire obstacle à l'exercice du recours purement personnel adopté par le demandeur au moyen de sa présente demande ;

"Que le créancier qui a un droit personnel et hypothécaire tout à la fois, ne saurait être forcé de s'en tenir au recours hypothécaire et de l'épuiser avant de pouvoir exercer son recours personnel ;

"Considérant en outre que la donation invoquée dans l'espèce a tous les caractères essentiels d'une donation entre vifs, attendu qu'elle a eu pour effet de dépouiller le donateur immédiatement et irrévocablement de la somme donnée, et de faire dès lors acquérir au demandeur la propriété de cette somme, laquelle étant assurée par hypothèque a été dès ce moment, à la disposition immédiate du demandeur qui aurait pu la vendre ou transporter et, par suite, la réaliser sans délai ;

"Que le terme de paiement fixé par le dit acte, savoir l'époque du décès du donateur, n'a pas changé la nature de la disposition qui portant sur bien présent et actuel dont le demandeur se dépouillait immédiatement et irrévocablement, est resté, malgré ce terme, un acte entre vifs parfaitement légal et valable ;

"Considérant en conséquence que les moyens invoquées par la défenderesse sont mal fondés et ne sauraient être accueillis à l'encontre de la demande."

Renvoie les exceptions et défenses de la dite défenderesse et condamne cette dernière à payer au demandeur la dite somme de $1048.80.

Abbott, Tait & Abbotts, for Plaintiff.
Doherty & Doherty, for Defendant.

SUPERIOR COURT.

MONTREAL, March 9, 1883.

Before TASCHEREAU, J.

HUDON *et al.* v. PAINCHAUD *et al.*, *es qual.* and LA BANQUE JACQUES-CARTIER *et al.*, *T.S.*, TRUDEL, petitioner, and PERKINS *es qual.*, plaintiff par reprise d'instance, contestant.

Succession—Universal legatee.

A universal donee or legatee in usufruct, who has intermeddled with the property of an estate and succession, who has been sued as such jointly with the testamentary executors of such estate, and against whom judgment was rendered in such capacity, becomes personally responsible for the debts of the estate and cannot under the law as it existed before the code, liberate himself by offering to render an account.

The plaintiff *par reprise d'instance*, as representing a creditor of the estate of David Laurent, obtained judgment against the executors and the universal usufructuary donee (the petitioner) in such capacity. After judgment rendered and upon the execution, the defendant, petitioner, pretended by opposition and contestation of the seizures by garnishment, that by the law in existence previous to the code, she could not be held to satisfy upon her personal property the amount of the judgment, but only upon the property of the estate. Judgment was rendered rejecting this pretention of the defendant and maintaining her responsibility towards the creditor who had obtained the condemnation against her; such judgment being confirmed in appeal. After the judgment by the court of appeal and upon the proceedings on execution of such judgment against the defendant in her quality of usufructa ry donee, she produced an account establishing that she had absorbed all the property to her transferred in usufruct to pay the debts of the estate, which were all satisfied with the exception of plaintiff's claim, and by a petition in the form of an opposition to judgment, she prays, considering the production of the account and the offer by her made to transfer what remains in her hands of the property of the estate, that she be liberated personally from the payment of plaintiff's claim.

The plaintiff by *reprise d'instance* maintained that after having disposed of the property of the estate and assumed the quality of universal usufructuary donee, and after having allowed judgment to be rendered against her without invoking the privilege which might be granted her under the law anterior to the code, not to be responsible beyond the benefit she derived from the estate as usufructuary donee, and offering an account only after twenty years' enjoyment of the property without having claimed the benefit of such privilege, she was ill founded in her pretensions.

The judgment was as follows:—

"The Court, having heard the petitioner,

dame Anathalie Trudel, and the plaintiff *par reprise d'instance*, Arthur M. Perkins *es qualité*, by their respective attornies on the merits of the petition by which dame Anathalie Trudel prayed that, considering the account rendered and filed by her before this Court, on the 20th April, 1881, the said petitioner be relieved of all responsibility to satisfy out of her personal property the amount of the judgment rendered in this case, and that *mainlevée* of the seizure by garnishment after judgment now pending be granted to her so far as her personal property is therein concerned, and upon the merits of the contestation of said petition by the plaintiff *par reprise d'instance;* having, moreover, examined the procedure, the evidence, the admissions and consents, the exhibits filed, and generally all the papers forming part of the record in this cause, and having maturely deliberated;

"Considering that if the petitioner, by surrendering the property transferred to her or by rendering an account to the creditors, had the right either to be completely discharged of the debt for which she was sued as universal donee in usufruct of her late husband, or to have the amount of the judgment reduced in proportion to the benefi' she derived from the estate, she should have taken advantage of that right in the suit originally brought against her, which she has then failed to do;

"Considering that the petitioner has been condemned jointly with the executors of her said husband to pay the debt then claimed by the plaintiff and that such condemnation became direct, *pure et simple*, and personal against the petitioner, and can and must be executed on all her personal property;

"Considering that far from having surrendered the property or having rendered an account thereof in due time, the petitioner accepted unconditionally the universal grant in usufruct made to her; took possession of the whole of said property; gave acquittance and discharge to the executors; answered the actions taken against her in her quality of universal usufructuary donee; was condemned as such; satisfied in part such condemnation; administered to this day the whole of the said property and sold a part of it; enjoyed the revenues of the said usufruct, and paid (as she herself declares) all the debts except the one due to the plaintiff *par reprise d'instance;* and that, after having administered and enjoyed the said property during nearly twenty years without any possible interference or control on the part of the creditors, she cannot to-day offer to render an account to the plaintiff *par reprise d'instance* to establish an alleged deficiency and be discharged of a personal condemnation which is no longer revocable, and in which she acquiesced by not invoking in due time the privileges and rights to which she is no longer intitled;

"Doth maintain the answers and exceptions of the plaintiff *par reprise d'instance*, and doth dismiss and reject the petition of the said dame Anathalie Trudel with costs against her."

Taillon & Nantel, for petitioner.

Laflamme & Co., for plaintiff *par reprise* contesting.

CIRCUIT COURT.

MONTREAL, March 22, 1883.

Before TORRANCE, J.

THERIEN v. MORRICE *et al.*

Negligence—Damages.

Where a collision occurred between two vehicles, and both drivers were in fault, but it appeared that the accident nevertheless might have been averted by ordinary care on the part of one, who did not stop when requested, the latter was held liable in mitigated damages.

This was an action of damages arising out of a collision between the cart of plaintiff and the waggon of defendants, by which the horse and cart of plaintiff were thrown down an embankment at Hochelaga Railway Station. The cart and waggon were both loaded. The cart was drawn by one horse, loaded with wood and driven by a boy of 17, for plaintiff, and the waggon was drawn by two horses, driven by the servant of defendants. The cart was coming out of the railway station and the waggon was going in the opposite direction. The road where they met led from the station to St. Mary street. It was 35 to 40 feet wide, and on one side was a declivity, down which the horse and cart were precipitated.

Several witnesses were examined. Louis George Filiatrault, the first examined, was the guardian at the station, and saw the most of the accident. He was 200 yards off. Both vehicles were on the wrong side—on their left. Afterwards (he says) it was the fault of the waggon. The right wheel of the cart and the right wheel

of the waggon struck. If the waggon had stopped it would have prevented the accident. Cross-examined, the witness said that he did not see the collision at the moment of collision. It was 12 feet from the point of collision to the slope. It was easy to stop the waggon. Cantin, the lad in charge of plaintiff's cart, said that in consequence of a mound or prominence in the road, when he was at his right—the proper side—he was obliged to go to the left. The waggon was in the middle, and he crossed in front of the waggon, which turned to his left. He called to defendants' man to wait. The front wheel of the waggon, the right one, struck his cart and dragged him 12 feet. Alexandre Lamoureux gave evidence to the same effect.

For the defence, Alphonse deRepentigny, defendants' driver, was produced. He says that Cantin's cart passed in front of him, and he told him he had no business to cross. He added, "I could not move more to the right; takes 45 feet to turn my waggon; axle turns 3 feet." In cross-examination he says, "I could have stopped my waggon when he cried out."

PER CURIAM. Undoubtedly there was fault on both sides, or they would not have struck their right wheels. For the law of the road requires each man to take his right, and then the collision could not have taken place. If the plaintiff had waited till defendant passed, in place of crossing over because of the mound in front, the accident would not have happened. Is defendants' man, afterwards, so much to blame that they should pay? *Vide* 2 Sourdat, responsabilité, No. 662. "Lorsqu'il y a faute à la fois de la part de l'auteur du dommage et de la partie lésée, la question de responsabilité est abandonnée au pouvoir discrétionnaire des tribunaux. C'est à eux d'examiner si la faute imputable à la partie lésée est seulement de nature à atténuer la responsabilité de l'agent, ou si elle est assez grave pour rendre la partie lésée complètement irrecevable à se plaindre du dommage éprouvé." Campbell, in his "Law of Negligence," says, sec. 83: "To make contributory negligence a defence, it must be the proximate cause, or at least such as to constitute (conjointly with the other) a proximate cause. If, therefore, a person, by some negligence of his own, has placed himself in the way of danger by collision with another, so that he himself becomes unable to avert the danger, but yet the other by the use of ordinary care may avert the danger, the latter will be liable if damage occurs." See also 5 Legal News, 404, *Desroches et al. & Gauthier*, and 3 Q. B. R., 1. Here it appears to the Court that the defendants' man by the use of ordinary care could have averted the danger. The defendants are therefore liable for the default of their driver, but the man of the plaintiff violated the rule of the road and the plaintiff should therefore suffer too reduced damages for a portion of his loss. Judgment for $50 and costs.

CONTEMPT OF COURT.

It seems to be a law of legal history that at irregular intervals there should occur periods in which cases of contempt of court are plentiful. One such period occurred in the middle of the last century, and another at the beginning of the present; a third came ten years ago, and we are now in the middle of a fourth. If proof of the last assertion were needed, it would be found in the bill which the Lord Chancellor has deemed it advisable to introduce—a bill whose cause is to be found in the very dissimilar cases of Mr. Green and Mr. Gray, and perhaps in the proceedings which are now impending over the *Times* and the *Observer*. In introducing a sketch, necessarily scanty, of the law upon this matter, by distinguishing the different kinds of contempt, we are following the method of the Lord Chancellor. Contempts are of two kinds—ecclesiastical and civil. Ecclesiastical contempts are punishable by the writ *de contumace capiendo*, which is issued upon the presiding Judge's signification of the contempt to the Sovereign in Chancery; and acts of contempt against superior courts, other than ecclesiastical are, as is notorious, punished summarily by commitment to prison at the discretion of the court. Acts of contempt again, whether ecclesiastical or no, are susceptible of a threefold division into open contumacy in the face of the court, refusal to submit to the commands of the court, and all action tending to prejudice the course of proceedings before the court. Contempts of the last class were frequently brought into notice about ten years ago, not only in relation to the celebrated Tichborne trial, but also in the case of the Swansea and Chelten-

ham Railway Carriage and Wagon Company; and the *Times* suggests that the doctrine which holds comment upon legal proceedings which are going on before a court to be what it calls "a sort of constructive contempt of court" is of very recent origin. It even commits itself to the statement that "the Tichborne trial was the first great instance in which the rule in question was enforced." The observation is decidedly incorrect. In 1742 Lord Chancellor Hardwicke, in the case of *Roach* v. *Garvan*, 2 Atk. 469, cited the case of a certain Captain Perry, who was committed to the Fleet for contempt in printing his brief before his cause was tried, in which it was specially added that the contempt consisted "in prejudicing the world with regard to the merits of his cause before it was heard;" and, twelve years later, the same Chancellor committed one Mrs. Farley (2 Ves. sen. 520) for publishing in the *Bristol Journal* an answer put in by a defendant in chancery, and gave the same reason for his action. It is true that in *Exparte Jones*, in 1806, Lord Chancellor Erskine did not express his approval, neither on the other hand did he express his definite disapproval of that doctrine of constructive contempt which is undoubtedly still an established principle of the English law.

Turning to the present Lord Chancellor's bill, we find that it has two definite objects. In the first place it purposes to define and limit the punishment which shall be imposed for contempt of court in ordinary cases. This may not at first sight appear a necessary precaution, since there are very few persons who will venture, to assert, after reading the cases, that offenders have been, either as a general rule or in exceptional cases, punished for this offence with undue severity. In almost every case in which the person imprisoned has shown a desire to purge his contempt, and such purgation has been possible, he has immediately been released. To cases in which purgation is impossible, as, for instance, those of particular offences against wards in chancery, neither the foregoing observations nor the present bill are applied. They are applied only to ordinary acts of contempt, and our criticism upon this first part of the bill is that, except in providing for appeals under certain circumstances, it is not directed to the removal of any present grievance, but provides reasonable rules in the event of a possible miscarriage of justice. But the bill has what we might almost term a second chapter, which provides for a special class of cases. We are now familiar with the spectacle of an ecclesiastical offender who would rather be imprisoned for the term of his natural life than purge his contempt. Such cases have been deplorably common of late years. For them the Lord Chancellor suggests a most wise treatment. The third section provides that, in cases of continued and repeated contempt, the punishment shall also be continued and repeated, and the person offending shall be liable to be again imprisoned by summary order as often as he repeats the offence. But this might not be enough to deter the more obstinate class of ecclesiastical offenders; it is therefore proposed in section 16 that where the holder of any office within the meaning of the act disobeys the order of a court of competent jurisdiction as to any matter concerning the duties of such office, it shall be lawful for the court to limit a time within which he must submit. If the offender then continues in contempt, the court will be empowered to declare his office vacant, "as if he were dead." This section will be a deathblow to those ecclesiastical martyrs whose practice it is to continue in contempt and defy the court, since by its enactment they will be left without any ground to stand upon. It will also be something of a consolation to the general public to learn that, as regards persons who may be imprisoned for contempt at the time of the commencement of its operation, the Act is intended to be retrospective. On the whole, therefore, this is a measure of the most practical nature, admirably calculated to meet a class of cases which have hitherto presented the appearance of an insoluble problem.—London *Law Times*.

GENERAL NOTES.

Judge Phillips of the Macoupin (Ill.) Circuit Court, has rendered a decision which will be of decided interest to bank directors and officials. Stated briefly, the decision holds that a director of a bank is not an ornamental figurehead, but that it is his duty to keep posted as to the condition of the institution with which he is connected. In the case at bar a depositor in an insolvent bank sued the directors personally and recovered a verdict. The insolvency of the bank was caused by the fact that its cashier stole the funds, and the court held that it was the business of the directors to ascertain the true condition of the bank, and that they could not plead ignorance when due diligence would have discovered the facts.—*Chicago Legal News.*