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CURRENT TOPICS AND CASES.

Bar associations seem to be among the most desirable things in the world, and therefore it is not strange that attempts are made from time to time to found one in this city. To attain success in such a project it is necessary to have a definite idea of what it is hoped to accomplish by such a society, that cannot so well be effected by existing associations and organizations. An obvious preliminary to a bar society would seem to be an inquiry into similar associations which have been successful in the older communities of France and England, their objects, and to what extent they have satisfied the expectations of their founders. It cannot be overlooked that here we are as yet under one very serious disadvantage, that is to say, the limited number of those engaged in professional avocations. In London, we believe that an association was recently formed which appeared to have a very successful start; but London compares to Montreal in the proportion of twenty to one, and to give an association in the latter city any chance it would need to have the unanimous backing of the profession. An association, not local, but embracing all sections of the province and all the provinces of the Dominion, might bring about some useful reforms.

Charges against high judicial functionaries in England are so rare, that when a journal as careful and guarded in its statements as the *London Law Journal* made serious allegations against the Lord Chancellor, the article at once attracted considerable attention. The specific charge was that the Lord Chancellor intended to remove Mr. Justice Vaughan Williams permanently from the position of winding up judge, and to replace him by Mr. Justice Romer, and that the real reason for the transfer was the annoyance given in high places by the firm and independent manner in which Mr. Justice Williams discharged his duty in the case of the *New Zealand Loan and Mercantile Agency Company*, and the apprehension that in other pending matters he would act with equal courage and decision. The *London Times* and other influential journals took the matter up, and the result was to force Lord Chancellor Herschell, on the 5th February, to deny in the House of Lords that he had acted either from resentment at what Mr. Justice Williams had done, or that he desired to screen anybody. The Lord Chancellor, however, admitted that he had contemplated the removal of Mr. Justice Williams, but at the last moment he had changed his mind. The *Law Journal* claims to have rendered the threatened removal impossible, "and to have called forth such an unequivocal expression of public opinion against the interference of government departments with the judiciary, that in future conflicts between the Board of Trade and the winding up judge are not likely to recur."

The last number of the bar reports contains several points of interest. In *Chandonnet* v. *Chandonnet* the Court of Review, at Quebec, maintained an evocation from the Circuit Court where a condemnation against a garnishee for $160 was prayed for. The authorities, which are conflicting, are cited in the report. In *Masson* v. *Jeffrey* the Court of Review, at Montreal, held that interrogatories on

faits et articles may be proposed in *ex parte* cases. In *Herron* v. *Brunette* Mr. Justice Doherty held that the privilege granted by article 873 of the Code of Procedure, of withdrawing from the sale the effects mentioned in article 556, may be exercised by a third person who is the owner of any effects on the leased premises, which had they belonged to the tenant could have been withdrawn by him. In *Bedell* v. *Smart*, the Court of Review, Montreal, held that the bringing of an action by a creditor against the person delegated by the debtor to pay, is a sufficient acceptance of the delegation. Mr. Justice Archibald held in *Fullerton* v. *Berthiaume* that the publication of entries in detectives' books is not privileged; and in *Lanctot* v. *Beaulieu* that a tenant who has unconditionally promised to pay his rent to a third party to whom it has been transferred, is bound to such third party though circumstances have happened which would release him as respects the lessor. In *Laperrière* v. *Poulin*, damages were allowed for breach of promise to marry, although the defendant subsequently offered to fulfil his engagement. *Lahay* v. *Lahay* is an interesting case. The majority of the Court of Review, at Montreal, reversed Mr. Justice Tait's judgment, R. J. Q., 5 C. S. 261, and allowed the defendant to contradict the acknowledgment of paternity made by him in an *acte de baptême* signed by himself. In *Brisebois* v. *Simard*, Mr. Justice Pagnuelo held that a wife common as to property has a personal right of action for defamation of her character, and may bring such action assisted by her husband. In *Casgrain* v. *Dominion Burglary and Guarantee Co.*, Acting Chief Justice Tait decided that a petition under article 997 of the Code of Procedure, to have the charter of a company incorporated by the Dominion Parliament declared forfeited, may be brought in the name of the attorney general of this province when the company has its head office and is carrying on its business herein.

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

LONDON, 2 February, 1895.

Present:—LORDS WATSON, HOBHOUSE, MACNAGHTEN, MORRIS, and SIR RICHARD COUCH.

HAMELIN et al. (defendants in court of first instance), appellants, and BANNERMAN et al. (plaintiffs in court of first instance), respondents.

Water power—Sale of—Commercial commodity—Obligations of vendor.

HELD:—(*affirming the decision of the Court of Queen's Bench for the province of Quebec, R. J. Q., 2 B. R. 535*:—1. *The law recognizes and protects the creation of motive powers by the artificial stoppage and temporary accumulation of the water of a flowing stream, though the stream may be in some sense navigable, and the power thus generated is a commercial commodity, capable of being measured with accuracy, and sold with freedom by a riparian owner as appurtenant to a parcel of his land.*

2. *The vendor of such power, with warranty against all troubles and hindrances whatsoever, and with stipulation to maintain the dam by which the amount of power sold would be made effective, can only be relieved from the fulfilment of his obligation by force majeure. The fact that its fulfilment diminishes or extinguishes a supply of power upon which he had depended for his own use, or which, by a subsequent title, he had sold to another party, is no excuse for non-performance of the contract.*

LORD WATSON:—

The appellants Hamelin and Ayer were, in 1881, proprietors of land lying on both sides of the North River, within the town of Lachute. They were also owners of the whole water power derivable from a pool or reservoir formed by the erection of a dam across the channel of the river.

By deed dated the 15th July, 1881, the appellants sold and conveyed to the late Robert Bannerman for the sum of $1,000, a piece of ground on the south bank of the river, together with a "quantity of water power equivalent to fifty horse-power, to be "taken off from the water power and dam of said vendors on the

" North River, and now in use to run their manufacture, said " water power to be taken at a place convenient to run the wheels " and machinery to be placed by said purchaser in his rope ma- " nufacture on the hereby bargained and sold piece or parcel of " land." The sale and conveyance were made, with "promise " of warranty against all troubles and hindrances generally what- " soever;" and it was agreed that the purchaser should have the option, at any time within five years, of acquiring any additional quantity of water power, not exceeding fifty horse-power, which might be required in connection with the water-power already sold, at the price of $25 for each additional horse-power.

The following condition, which is of some importance in this case, was inserted in this deed of sale: — " It is hereby further " agreed by and between the said parties that should any accident " or leakage happen to the dam of said vendors across said North " River, or that said dam should require to be repaired from any " cause or reason, the said purchaser or legal representatives " shall have no right whatever of claiming any damages from " said vendors for any loss of time or losses caused by such acci- " dent to said dam, or that it require repairing provided that the " said dam be repaired or fixed in the course of the time reason- " able and required for such repairs, during which time the said " vendors shall have the privilege of withdrawing the supply of " water from said purchaser, if absolutely necessary."

In pursuance of the option reserved to him by the deed of 1881, the late Robert Bannerman, on the 2nd April, 1886, obtained from the appellants a deed conveying to him an additional quantity of water from the dam, equivalent to fifty horse-power, to be held and used by him and his successors, in connection with, and upon the same terms and conditions as the supply he had already purchased.

Robert Bannerman, immediately after his acquisition of the land, established a rope work upon it, which continued in operation, at least until the date of this action. Upon his death in July, 1887, his interest in the land and water-power connected with it passed to the respondents in this appeal. Before the date of the first sale to Bannerman, the appellants had erected, and they have since maintained and worked a woollen factory on the north side of the river, the machinery being driven by water-power from the dam. In the year 1883, a bobbin factory on the north bank of the river, a little way above their own works, was

let by the appellants to one Hambleton, who continued to be their tenant until 1890, and, during his occupation, derived his motive power from the same source. The water supply does not appear to have ever been used for any manufactory other than these three.

The present suit was brought by the respondents, in September, 1888, before the Superior Court. In their writ and declaration, they alleged that for years past the supply of water had generally been sufficient, at all seasons of the year, to furnish the amount of water-power to which they were entitled under their conveyances from the appellants; but that, during several seasons of drought, whilst the whole supply obtainable was about, or even less than, 100 horse-power, more than half of it had been wrongfully appropriated and used by the appellants and their tenant; and they claimed (1) a declaration that they were entitled to a supply of 100 horse-power in priority to the appellants or their tenant; (2) an injunction against interference with their preferable right; and (3) decree for $1,000 as damages in respect of their having been deprived of that right.

In answer to these claims, the appellants put forward a great variety of defences, of which it will be sufficient to state the substance. They pleaded, in bar of the action, that, the North River being navigable, its water could not be the subject of commerce; that, according to the spirit and sense of the deeds of sale, the respondents' right to 100 horse-power was not preferential, but without prejudice to the appellants' right to use the water for their factory; and that, according to law, the first use of the water belonged to the appellants as the oldest manufacturers. In answer to the respondents' pecuniary claim they pleaded that if the respondents had suffered damage, it was not due to any act or default of theirs, but was occasioned by the necessity of repairing injuries to the dam from ice or floods, or by defects in the respondents' machinery and arrangements for using the water.

The case went to trial, on these pleadings, before the Honourable Judge Taschereau, who, after a voluminous proof had been led by both parties, sustained the defence, and dismissed the suit with costs. The learned Judge held in effect, that, according to the legal construction of the deeds, the respondents had acquired nothing more than a right to take water representing 100 horse-power from the reservoir, if and when it was possible to do so, without affecting the supply of water required for the appellants'

factory, which had existed before their rope work. That finding in law was necessarily fatal to the respondents' claim for damages, which was based upon the assumption that they had a preferential right to their stipulated quantity of water-power. The learned Judge further held, in point of fact, that the short supply actually received by the respondents was due partly to *force majeure,* or in other words to the low state of the river, aggravated by the disrepair of the dam, from natural causes beyond the control of the appellants, and partly to their defective machinery.

On appeal, the Court of Queen's Bench, consisting of Sir Alexander Lacoste, C.J., with Baby, Bossé, Blanchet and Hall, JJ., unanimously reversed the decision of the Superior Court; granted a declaration and injunction to the effect craved by the respondents; and also gave them decree for $1,000, being the full amount of the damages which they claimed. The reasons for the judgment of the Appeal Court were fully rendered by Mr. Justice Hall. [1]

Their lordships have not found the questions of law, which were raised and discussed by the appellants, in the course of the argument addressed to them, to be attended with difficulty. The fact that the North River may be in some sense navigable, cannot prevent a riparian owner from acquiring an interest in its water-power, which he can sell along with and as appurtenant to a parcel of his land. Even if the appellants had been unable, as they say they were, to give the respondents a good title as against the public, the law would not have permitted them first to sell a prior right to the water-power, and pocket the price, and then to pose as members of the public, and to deprive their purchaser of the water, by using it themselves.

Again, their lordships see no reason to doubt that, in a question with the appellants, or any one who has derived an interest from them since April, 1886, the respondents have a preferable right to take water from the reservoir in question, to the extent of 100 horse-power. The deeds of sale are in terms absolute; they do not contain any reservation to the sellers to take a supply of water-power, either in priority to, or *pari passu* with, the purchaser; and they are granted with full warranty against eviction. The warranty imports that the purchaser, and his successors in title shall not be hindered by any one in the exer-

[1] See R. J. Q., 2 B. R., pp. 537-543.

cise of their right to take preferably, from the water of the reservoir, a supply for their factory equivalent to 100 horse-power. There is no warranty that the river will bring to the reservoir a sufficient quantity of water to yield that amount of motive power, at all seasons. And, there is an express exception from the warranty, in the clause, which has already been quoted, with reference to necessary repair of the dam by the appellants. During legitimate repairs, the reservoir may cease to supply water available for manufacturing purposes; or, it may supply less than the amount to which the respondents are entitled. The clause protects the appellants against liability in respect of such failure or short coming; but it gives them no right, when the actual supply of water is less than 100 horse-power, to appropriate any part of it which may be required for the use of the rope work, in prejudice of the respondents.

In these circumstances, the case presented by the appellants appears to their lordships to resolve into two questions, which are questions of fact depending on the evidence:—(1) Were the respondents, through the act or default of the appellants, hindered from obtaining the full amount of water-power required for their factory, such amount not being in excess of 100 horse-power? (2) Was any deficiency in the respondents' water-power due to their own failure to make proper arrangements for its reception, and to provide proper machinery? In the event of the first of these questions being answered in the affirmative, and the second in the negative, a further question arises, as to the amount of damage, if any, which the respondents have suffered through the illegal conduct of the appellants.

The proof led by the parties, in so far as it relates to the dam, to the storage capacity of the reservoir which it forms, the precise means which have been employed, and the best available means which could be employed, for distributing the water-power which it represents among the parties interested, cannot be regarded as satisfactory. Facts capable of precise ascertainment, by measurement and otherwise, are left to speculation and the estimates of the witnesses differ widely. But, so far as their lordships are able to judge, the evidence favours the conclusion that the relative levels of the intake sluices, for the appellants' and respondents' works, have remained unchanged since the date when the respondents' factory was started, and that no substantial alteration has been made, since that time, upon

any of the mechanical arrangements for distributing and utilizing the water-power of the reservoir. Their lordships must not be understood as indicating an opinion that the arrangements then made must remain stereotyped for ever; but they are of opinion that, until some steps were taken by the appellants, with a view to a new adjustment, the respondents were justified in leaving their original arrangements and machinery unaltered.

Their lordships have been unable to find, in the evidence, any ground for affirming, either that the pier erected by the respondents in connection with their factory had any effect in diminishing the motive force of the water which they used, or that the machinery through which that force was developed was in any respect defective.

Keeping in view the opinion already expressed by their lordships, with regard to the nature of the warranty undertaken by the appellants, it does not admit of doubt, that, for at least 18 months before this suit was brought, they acted in persistent violation of the warranty. During that period there were two exceptionally dry seasons; and the effect which the prevailing drought had, in diminishing the supply of water, was seriously aggravated by the state of disrepair into which the dam had fallen, owing to the action of floods and ice. It is neither alleged nor proved that the appellants failed to take proper measures for the restoration of the dam, or failed to execute the necessary repairs within a reasonable time. But the evidence shows that, whilst the river was low, and repairs were going on, there was generally, if not constantly, an available supply of water-power obtainable from the reservoir. The evidence does not suggest that the total amount of water-power available at these times ever exceeded 100 horse-power. On the contrary, the evidence on both sides points to the inference that it frequently was considerably short of that amount. And it is proved beyond question, that the appellants and their tenant appropriated the bulk of the horse-power available, with this result, that, when the appellants and their tenant stopped working, the respondents had ample water-power to drive their machinery, and that, whilst the factories of the appellants and their tenant were in operation, the respondents' supply of water-power was either insufficient, or wholly ineffective.

The conclusion appears to their lordships to be inevitable, that the appellants must bear the loss resulting to the respondents,

from their having, during the period already indicated, systematically deprived the respondents of the amount of water-power to which they were legally entitled. Their lordships, having examined the evidence bearing upon the pecuniary estimate of that loss, are unable to differ from the result arrived at by the Court of Queen's Bench. They will, accordingly, humbly advise Her Majesty that the judgment appealed from ought to be affirmed. The appellants must bear the costs of this appeal.

Appeal dismissed.

Sir *Richard Webster, Q.C.*, Mr. *Vernon Smith, Q.C.*, and Mr. *Mackay* (of the Canadian Bar) for the appellants.

Mr. *Fullerton, Q.C.*, and Mr. *Beauchamp, Q.C.* (of the Canadian Bar), for the respondents.

PRIVILEGE.

The Court of Appeals has handed down a decision in relation to the *Cornell College Case*, so called, and which will probably be of much interest to lawyers and students of law. The case grew out of the conduct of certain students of Cornell University on February 20, 1894. The freshmen class of the college were holding a banquet, and the sophomore class conspired to disturb the banquet by that new form of outrage or annoyance called 'hazing,' which constitutes such a great reproach to college life and is so disgraceful to all who participate in it. In any event, while the banquet was in progress, a quantity of chlorine gas of such poisonous power was injected into the dining-hall and the adjoining kitchen that it caused the death of a coloured servant in the kitchen, and many of the students attending the banquet were also seriously affected by it. The grand jury was instructed to institute inquiry with the view of ascertaining the person or persons who were responsible for the offence, and the relator in this case was subpœnaed as a witness. The district attorney appeared before the grand jury and participated in the examination of the witness, and during the examination the questions which the relator declined to answer were propounded to him. The Court convicted the relator summarily as for contempt 'committed in the immediate view and presence of the Court' upon the statement as to what occurred in the grand jury room, which was made by the district attorney, and without any further judicial inquiry as to the facts. It appeared that the wit-

ness was pressed by the district attorney to answer the questions, and having been brought before the Court during the progress of the examination, was in substance instructed that the questions were of such a character thathe was bound to answer. He testified in the broadest terms as to the questions propounded to him that he had no part in the transaction on the evening of the banquet, and which was the subject of the enquiry. One of the questions was as to who was his room-mate. He replied, 'I wish to throw myself upon my privilege, and decline to give evidence, on the ground that my answer may tend to criminate me.' After he was brought into Court, and after consultation with the presiding judge, he returned to the grand jury room and testified as to his room-mate. He was then asked further questions having relation to the transaction on the evening of the banquet, but none of them gave the information sought to be obtained by the questions which he had declined to answer. The question, of course, was simply as to whether the relator was guilty of such conduct as to subject him to the power of the Court to punish for contempt, or was simply exercising the right secured to him by law. In relation to this question Judge O'Brien, in writing the opinion, says: "After the Constitution of the United State shad been adopted it was deemed important to add to it several amendments, and one of them (Art. 5)provides, among other things, that no person 'shall be compelled, in any criminal case, to be a witness against himself.' It is also incorporated in the Constitution of the State of New York (Art. 1, s. 6), and more recently into the Codes of Civil and Criminal Procedure (Code Civ. Proc. s. 37; Code Crim. Proc. s. 10). These constitutional and statutory provisions have long been regarded as safeguards of civil liberty quite as important as the writ of *habeas corpus* or any of the other fundamental guarantees for the protection of personal rights. Under these constitutional and statutory provisions, Judge O'Brien holds that the provisions of the law should be applied in a broad and liberal spirit in order to secure to the individual that immunity from every species of self-accusation implied in the brief but comprehensive language in which they are expressed. This doctrine has been followed in the cases of *Counselman* v. *Hitchcock*, 124 U. S. 547; *Emery Case*, 106 Mass. 172; *State* v. *Newell*, 58 N. H. 314; *Minters* v. *People*, 139 Ill. 363; *People* v. *Mather*, 4 Wend. 230; *People* v. *Hackney*, 24 N. Y. 84; *People* v. *Sharp*, 107 *id.* 407; 1 Burr's Trial, 245. In the

latter case Chief Justice Marshall, on the trial of Aaron Burr, said: 'Many links frequently compose the chain of testimony which is necessary to convict an individual of crime. It appears to the Court to be the true sense of the rule that no witness is compelled to furnish any one of them against himself. It is certainly not only a possible, but a probable case, that a witness, by disclosing a single fact, may complete the testimony against himself, and to a very effectual purpose accuse himself as entirely as he would by stating every circumstance which would be required for his conviction. That fact of itself would be unavailing, but all other facts without it would be insufficient. While that remains concealed in his own bosom he is safe, but draw it thence and he is exposed to a prosecution. The rule that declares that no man is compellable to accuse himself would most obviously be infringed by compelling a witness to disclose a fact of this description.' From the decision above given the Court of Appeals determined that the relator was not guilty of contempt, but it does not determine as to whether, under the circumstances, if any contempt had been committed, whether it had taken place in the presence and view of the Court.—*Albany Law Journal.*

CAN A MURDERER ACQUIRE A TITLE BY HIS CRIME?

In 4 H. L. R. 394 the opinion was expressed that one who murdered another in order to inherit the latter's property acquired the legal title, but should be treated as a constructive trustee for those who suffered by his crime. That is in accordance with well-known equitable principles and reaches a just result. It would prevent the murderer from profiting by his crime, but would protect a purchaser for value without notice. Hitherto this view, while not adopted by the Courts, has not been distinctly rejected by them. They have reached the same practical result, but by means which seem unjustifiable. In *Riggs* v. *Palmer*, 115 N. Y. 506, where the controversy was between the criminal and the representatives of the murdered man, the Court read into the statute of wills a revocation clause. That would seem to carry judicial legislation too far. No considerations of humanity and natural justice can authorise a Court to read an exception into a statute which is plain and definite in its terms. *Shellenberger* v. *Ransom* (Nebraska, 1891), 47 N. W.

R. 700, followed the New York case and held that a purchaser from a murderer took nothing, because the murderer had nothing to give. Here an exception was read into the statute of descent, a course open to the same criticism as that just offered upon *Riggs* v. *Palmer*. In June, 1894, the Nebraska Court reviewed their decision (59 N. W. R. 935), and concluded to go to the opposite extreme. They decide, and correctly it would seem, that the purchaser from the murderer acquires a legal title. But they go on and hold that he gets not only the legal title, but the beneficial interest as well, although he took with notice of the murder. This is a result which is not only 'undesirable,' as the Court say, but in violation of the plain equitable principle that one who acquires a legal title by fraud or other unconscionable conduct shall be treated as a constructive trustee for those whom he has wronged. The Court seems to feel bound by the terms of the statute of descent. But that misconception is probably, as pointed out in 4 H. L. R. 394, one of the results of the fusion of law and equity.

It may be worth while to observe that the civil law, to which frequent reference is made in these cases, does not treat the will as revoked or the heir as disinherited by his crime, as several of the judges appear to think. On the contrary, the legal title passes to the criminal, and is thereafter taken from him. *Ereptio propter indignitatem* is a case not of revocation, but of restitution. See Windscheid, Pandekten III, s. 669 & n. 1; lex. 7, s. 4, *D. de bonis damnatorum* (48, 20); *D.* 34, 9, *de his quae ut indignis auferuntur;* Maynz. Cours, v. 3, s. 482.—*Harvard Law Review.*

ASSAULT BY RAILWAY CONDUCTOR.

In *The Texas and Pacific Railroad Company* v. *Williams*, decided in the United States Circuit Court of Appeals for the Fifth Circuit in April, 1894 (62 Fed. 440), it was held that, in an action against a railway company for an assault committed by its conductor, there is no question to be submitted to the jury as to whether such conductor was acting beyond the scope of his employment when his own testimony shows that such assault was committed in resenting an insult which he had provoked by his language and conduct while acting as conductor. It was further held that, under allegations that plaintiff was knocked and kicked from defendants' railway train by its conductor, he may recover

on proof that the conductor alarmed him to such an extent that he jumped off the train—forcing him off the train in an unlawful manner being the gravamen of the complaint.

The Court said: There is no doubt about the law contended for in this case, that, if the servant of the defendant in the court below (plaintiff in error) committed an assault while acting within the scope of his employment, the company is liable; but, if not so acting, it is not (*Railroad Company* v. *Hanning*; 15 Wall, 649; *Railroad Company* v. *Derby*, 14 How. 468). The difficulty is in making application of such principle to the facts as proven, and the only question for our examination is whether such facts raised a question as to whether or not he was so acting sufficient to submit to the jury. Where there is such a question, it is one of fact, and should be so submitted (*Reading* v. *Railroad Company*, 3 S. C. 1); but here the trial court did not consider the testimony justified such submission. The position of the conductor made it his duty to collect the fare from those he found on the train without tickets, passes, or recognized right to ride, and in doing this or attempting to do this, or in meeting any exigency or emergency naturally and necessarily growing out of this duty, his conduct, or the course he pursued in performing it, would be within the scope of his employment. The testimony here shows that he approached Williams for his fare, but was informed that he was being passed by the roadmaster, but upon being told by the party that he had not given Williams permission to ride, he went back to Williams, and again demanded his fare, and, in doing this, he admits that he may have used strong language, and may have sworn. How far this was proven by the testimony of the plaintiff, which was before the Court, the record does not disclose, and we can only determine what preceded the assault by the admission of Nicely himself. He was at that time acting within the scope of his employment, and when his abuse was answered by something which implied the same insult he had been heaping upon Williams, and which had naturally been drawn out by his own language and conduct, we do not consider that it can be properly claimed that he immediately abandoned his employment as conductor and commenced an attack solely in his personal capacity. If, as is claimed, he was resenting a fancied insult as a man, it plainly appears from his own testimony that it was one which he had provoked as conductor, and we consider that such character should reasonably be held to cover the whole transaction, and

that the entire evidence, when properly considered, cannot reasonably raise a question whether he was not acting beyond the scope of his employment, which should have been submitted to the jury. In instructing the jury that, if they found that the conductor alarmed the plaintiff to such an extent that he jumped off the car, they should find for the plaintiff, although the allegations of the petition were that he was knocked and kicked from the train, we consider that the judge charged upon the evidence before him, and that the variance between *allegata* and *probata* was immaterial. It was not such as could mislead or surprise the adverse party (*M'Clelland* v. *Smith*, 3 Tex. 210; *May* v. *Pollard*, 28 Tex. 677; and *Weibusch* v. *Taylor*, 64 Tex. 53). Forcing the plaintiff off the train in a wrongful manner was the gravamen of the complaint, and whether it were done with the hand, the foot, or threats of bodily injury, the effect was the same.—*Ohio Legal News.*

ARE DENTISTS LEGALLY QUALIFIED TO ADMINISTER ANÆSTHETICS?

This question has recently been raised, and it is not surprising that there should be some uncertainty as to the answer, inasmuch as there is no direct authority upon the subject. The Dentists Act, 1878, says nothing about it. Section 55 of the Medical Act, 1858, contains a saving clause negativing any interference with the 'lawful occupation' of dentists. But neither of these Acts deals with the question of actual practice by unqualified persons—except to bar their right to recover fees—but merely with the unlawful assumption of titles. Was, then, the administration of anæsthetics part of the lawful occupation of dentists? The only statute which appears to touch the point is the Apothecaries Act, 1815, section 20 of which imposed a penalty on persons 'acting or practising' as apothecaries without being registered as such under that Act. There have been certain decisions under this section which have some bearing on this case. The administration of anæsthetics, being for the purpose of rendering the patient insensible to the pain of a surgical operation, is, it is assumed, a medical function analogous to the administration of drugs for alleviating pain generally. The latter has been held to be a work requiring a medical qualification; and, accordingly, by virtue of section 20 of the Apothecaries Act, a person who is a surgeon only is not entitled to perform such a function,

except in the case of a surgical case (*The Apothecaries' Company* v. *Lotinga*, 2 Moo. & R. 495, and see *Leman* v. *Fletcher*, 42 Law J. Rep. Q. B. 214; L. R. 8 Q. B. 319). Now a dentist may or may not possess a general surgical qualification as well. If he is merely an unexamined 'registered' dentist, owing his title solely to the fact of having been in practice when the Dentists Act was passed, it is submitted that he is clearly not entitled in any case to administer these drugs. But if he is a qualified surgeon he has, upon the authority of the above-mentioned cases, the right to do so. If he possess only a diploma in dental surgery, the point is doubtful, though, on principle, it is difficult to see why he should not have this right. In view of the general importance of this question, it is very desirable that the legal qualification necessary for administering anæsthetics should be clearly defined in a manner consistent with the interests of the profession and the public safety.—*Law Journal* (*London*).

GENERAL NOTES.

NEGRO SHYSTERS.—One of the peculiar products of Washington, says a correspondent of the St. Louis *Republic*, is the colored lawyer who hangs around the police court. A large majority of the people who are brought to the bar of that tribunal are colored. The colored lawyer promptly offers to go to the rescue of the colored person upon whom the hand of the law has been laid. He will do so for a sum ranging in amount from ten cents to ten dollars. The rate depends upon the state of the unfortunate one's exchequer. Sometimes the colored lawyers have quarrels among themselves about the possession of clients. Then it is likely that they will make charges against each other. To-day, for instance, John Young, who has figured not infrequently as an advocate, was on trial himself. He was up for vagrancy. Two other colored lawyers were the witnesses against him. They gave him a very picturesque reputation, and said that he knew nothing of law whatever. They said he was a "voudoo" doctor. His legal lore, according to their testimony, consisted of a coon-foot and a rabbit-foot. These "authorities" he carried in his pocket. He claimed that by rubbing one or the other on a prisoner's neck, he can generally secure acquittal. If, however, the offence is a pretty serious one, he calls to his aid his whole law "library." He then rubs the neck of his client with both the rabbit foot and the coon-foot. He says that it must be murder in the first degree to withstand the potency of the argument of the combined rabbit-foot and coon-foot. He has been enjoying a very lucrative practice. He was ordered to keep away from the court.