The Legal News.

Vol. VII. SEPTEMBER 20, 1884. No. 38.

COUNSEL FEES.

In connection with the discussion over the case of Mr. Doutre, which has occupied some space in our columns, we may refer to the latest judicial exposition on the subject of counsel fees. In the case of *In re Cockayne*, judgment was rendered by the English Court of Appeal, Aug. 7. It was an appeal by Mr. Yeatman, a barrister, from a refusal by Mr. Justice Stephen and Justice Mathew to strike Mr. Cockayne, a solicitor, off the rolls. It appeared that Mr. Yeatman had been employed by Mr. Cockayne in a number of different matters, and that fees to the amount of 100 guineas were due in respect of them. Mr. Yeatman alleged that in several cases Mr. Cockayne had received the fees from his clients and had failed to pay them over. This was denied by Mr. Cockayne, who, moreover, asserted that there was an agreement between him and Mr. Yeatman to the effect that the latter was to have any business that Cockayne could give him, but was only to be paid the fees when Mr. Cockayne himself obtained them. This agreement Mr. Yeatman denied.

The Master of the Rolls said that the appeal must be dismissed. The case was full of lamentable disclosures. He had always stood up for the observance of the most scrupulous honour in the profession. One of the first rules had always been that a counsel's fee was not a debt. Every barrister knew that rule, and ought not by any legal proceeding to press for his fee. The old rule was that no barrister should take a brief unless the fee was paid at the time. If, however, he did so, he had nothing but the solicitor's honour to look to. He had no right to apply to the client in any way. The duty of a solicitor was reciprocal; he should mark a proper fee, and should under any circumstances pay it. He knew that he was under an honourable engagement, and if he made excuses for not paying counsel's fees he acted unprofessionally. It followed that any agreement as to fees was wholly unprofessional and was equally dishonourable to both parties. It was not, however, necessary to decide whether or not there had been such an agreement in the present case. The question was whether Mr. Yeatman had made out a sufficient case. The Court would never interfere in respect of the mere non-payment of fees, though in cases of fraud they would do so—as, for instance, where a solicitor obtained fees from his client upon the allegation that they were due to counsel. That was to punish the fraud, not to assist the barrister to recover his fees. Mr. Yeatman had shown no case which would justify the Court in striking Mr. Cockayne off the rolls. There was no proof that he had received fees which he had corruptly refused to pay over. There was no proof of a corrupt intention, although for a time Mr. Cockayne claimed to retain certain fees in order to set them off against a claim of his own against Mr. Yeatman. There was no power to do that, but that only showed that Mr. Cockayne had taken a mistaken view. That was not dishonourable. The whole attempt to obtain these fees was a breach of the regulations between a barrister, the public, and the profession.

Lords Justices Bowen and Fry gave judgment to the same effect.

BUSINESS IN APPEAL.

At the opening of the September Term of the Court of Appeal in Montreal the number of cases inscribed was 84. In 1882 there were 107 inscriptions at the beginning of the September Term, and in September 1883 the number was 106. The two extra terms of December and February last, therefore, show as their result a gain of 22 cases.

APPOINTMENT.

The Hon. John O'Connor, who has been appointed to the vacant judgeship of the Queen's Bench Division, Ontario, was born in Boston in 1824. He was called to the bar of Upper Canada in 1854, and made a Queen's Counsel in 1873. He has filled the following positions in the Dominion government:—President of the Council from July, 1872, to March, 1873; Minister of Inland Revenue,

from March, 1873, to July, 1873; Postmaster-General, from July, 1873, to November, 1873, when the government resigned. In the present government he was President of the Council from October, 1878, to January, 1880, when he became Postmaster-General; Secretary of State from November, 1880, to May, 1881, when he again became Postmaster-General, which appointment he resigned in May, 1882, when he retired from the cabinet. Recently Mr. O'Connor has been acting as a commissioner for the consolidation of the Statutes.

DOUTRE v. *THE QUEEN.*

To the Editor of the LEGAL NEWS:

It is time to give back to this case its original title. Mr. Doutre was not a defendant in a penal case, as *The Queen* v. *Doutre** might imply, but was plaintiff, claiming from the Dominion Government proper remuneration for his services, before the Halifax Fisheries Commission, in 1877, under the Washington Treaty of 1871.

This being done, let us sum up the bearings of the judgment of the Privy Council, of the 12th July, 1884. (7 L. N. 242.) The following points seem to be now well settled:

1. The remuneration of a lawyer, wherever his services are rendered, is regulated by the law of his domicile, and the rules of his own bar.

2. The same law and rules determine his power to contract and to sue for fees and expenses.

3. The *quantum meruit* is the rate of his remuneration, where there is no express or implied contract to limit it.

In substance that decision is in conformity with the spirit of the jurisprudence of Canadian Courts, especially those of Quebec and Ontario.

Having weighed and closely examined the Canadian precedents, in order to sustain Mr. Doutre's position, I know what can be extracted from any particular case, to impeach the conclusion herein summed up; but I repeat that the substance of Canadian decisions is to be found in the judgment of the Privy Council.

The principles regulating the English and French bar had the effect of raising, in some minds, doubts which have found expression on the bench, here and there; and it is fortunate that the true doctrine has at last received a final consecration, in accordance with the law common to citizens at large.

Wherever tariffs are made, with legal sanction, they constitute an implied contract between counsel and client, in the cases provided for. To alter or supersede that implied contract, it requires another contract, which must be proved according to the common law rules of evidence. For instance, in Lower Canada, no contract, the object of which exceeds $50 in value, can be proved by oral evidence, if there exists no *commencement de preuve par écrit.*

The builder who constructs a house requires no written contract to obtain, in Courts, the value of his work and material. The *quantum meruit* will determine the amount of his claim.

The tariff does not provide for criminal or arbitration cases. Even in judicial arbitrations, lawyers are not expected to act. If they do, there is an implied contract that the value of their services shall be paid, on the same principle as in the case of the builder. In such cases, the builder or the lawyer requires no verbal or written agreement. It is the other party that requires an agreement to limit the *quantum meruit.* And this is the principle applied in the case of Mr. Doutre by the Exchequer and Supreme Courts, and by the Privy Council.

Of all the opinions expressed by the dissenting Judges of the Supreme Court, that of Justice Gwynne is the only one which was particularly noticed in England; and for those present at the argument, the weight of that opinion looked quite formidable, until the decree disposed of it. The pardonable error of date it contained did not affect its merits in the least. J. D.

* Before the Supreme Court and the Privy Council the cause took the title *Reg.* v. *Doutre*, the Crown being the Appellant.—ED.

It is stated that the cases unheard in the English Chancery Division number 700, and in the Queen's Bench Division 1200. A correspondent of the *Times* suggests that a meeting be called of suitors and witnesses to send a deputation to the Lord Chancellor and the Lord Chief Justice at the opening of the Courts, and begin a course of organized pressure for reform.

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

MONTREAL, September 17, 1884.

Before DORION, C. J., MONK, RAMSAY, TESSIER and CROSS, JJ.

BURROUGHS v. MERRIMAN.

Procedure—Appeal while case is pending in Review.

The Court will not grant leave to appeal from an interlocutory judgment while the record is before the Court of Review on an inscription from the same judgment.

The defendant moved for leave to appeal from an interlocutory judgment dismissing a declinatory exception.

The plaintiff opposed the application and produced a certificate showing that the case had been inscribed in Review by the defendant on the same judgment.

The COURT ruled that an application for leave to appeal could not be entertained while the case was before the Court of Review.

Motion withdrawn.

Robertson, Ritchie & Fleet for the defendant moving.

C. S. Burroughs for the plaintiff.

COURT OF QUEEN'S BENCH.

MONTREAL, February 21, 1884.

Before DORION, C. J., MONK, RAMSAY, CROSS & BABY, JJ.

BAKER (deft. below), Appellant, and LEBEAU (plff. below), Respondent.

Master and Apprentice—Breach of contract.

A contract of apprenticeship will be annulled if it appear that the apprentice has not a fair opportunity of acquiring proficiency in the art which the master engaged to teach him.

The action was brought by the respondent complaining that the appellant had not carried out an agreement entered into in 1879, by which the appellant undertook to instruct the respondent's minor son in the art of ornamental engraving and the manufacture of rubber stamps. The terms of the engagement were: "To teach or cause him to be taught and instructed in the manufacture of rubber and embroidery stamps and in the art of ornamental engraving as fast as he, the said apprentice, may prove himself capable of learning or taking up the same." The father complained that Baker had not fulfilled the obligation assumed; that engraving is a difficult art, requiring several years of constant practice before it can be undertaken as a business, whereas the manufacture of rubber stamps is not an art, and requires only a few days' study; that Baker had kept young Lebeau employed in making stamps, and had not taught him ornamental engraving; in fact, that very little engraving was done in his establishment. It was therefore asked that the indenture of apprenticeship be annulled.

The defence was that there had not been a breach of the contract; that appellant had taught the apprentice as rapidly as the capacity of the latter permitted.

The action was dismissed in the Superior Court on the ground that the specimens of work executed by the apprentice showed, in the opinion of experts, that he had made satisfactory progress for the time he had been apprenticed.

The case was then taken to Review, and the judgment was there reversed, the court being of opinion that the apprentice had not been afforded a sufficient opportunity to practice the art of engraving, and that five or six years' assiduous practice was necessary. The agreement was therefore annulled. The defendant appealed from this decision.

Archibald, for the appellant, submitted that the contract was widely different from contracts of apprenticeship in France or England, where the apprentice usually is not only not paid for his services, but gives a considerable premium to his master. The obligation of the appellant was to have his apprentice taught the art of making rubber and embroidery stamps, and also the art of ornamental engraving. It was not denied that the former had been sufficiently taught, nor was it pretended that young Lebeau had not made considerable progress in the art of engraving on metals; but the complaint seemed to be that he was not furnished the

opportunity of devoting himself constantly to the study of ornamental engraving. It was submitted that this was not the correct interpretation of the contract, and that the teacher must be allowed to exercise some discretion as to the order and manner of the studies. The object of the action was to break the indentures, and after the judgment in the Superior Court dismissing the action, Lebeau had actually deserted from the service of his master.

Geoffrion, for the respondent, contended that the apprentice had not a fair opportunity to acquire the art of ornamental engraving. Young Lebeau had been apprenticed more than two years when the action was brought, and his progress in the art was very small.

RAMSAY, J. By deed of indenture of the 7th August, 1879, the respondent apprenticed his minor son, Théophile, then aged 15 years, to appellant for five years and ten months, to date from the 1st day of the current month. The obligations of the appellant were to teach or cause him (the apprentice) to be taught and instructed in the manufacture of rubber and embroidery stamps, and in the art of ornamental engraving, as fast as the said apprentice may prove himself capable of learning or taking up the same. The appellant further agreed to pay the apprentice a salary gradually rising at a rate of from $3 a month in the first year to $14 in the sixth year.

On the 24th January, 1882, that is about 18 months after the beginning of the term of apprenticeship, the respondent brought an action to set the deed aside, the appellant not having fulfilled the obligations of the deed. The allegations in support of this demand succinctly stated are that appellant had kept the apprentice at work on the simpler part of his business, namely, in the making of the rubber and embroidery stamps, which is not really an art, but an operation easily learned, whereas he never taught him to engrave on metals, and gave him no reasonable opportunity of learning this art, which is really difficult to learn and the knowledge of which is a valuable acquisition.

The plea was the general issue, and a good many witnesses were examined to show on one side that appellant's business was small, and did not afford facilities for learning the appellant's trade; that the apprentice was adroit and could learn quickly, and that he had not learned as rapidly as a person of his aptitude should have done, and on the other hand, that he had made reasonable progress for the time, even in the difficult art of engraving, and that he had fair opportunities of learning the trade of appellant.

The first thing to be considered is the nature of the contract of apprenticeship, and whether the appellant had undertaken any special obligations by the terms of the deed. The respondent seemed to attach some importance to the words "to teach or cause the apprentice to be taught as fast as he, the said apprentice, may prove himself capable of learning or taking up the same." I am not of opinion that these words add anything to the obligations of the master. They express a reserve which seems to be implied by the law, that the master shall not be obliged to teach more than the apprentice can learn. (Wood's Law of Master and Servant, 69.) The duties of the master set forth in the indenture must be substantially performed. (Wood, 68.) In the absence of any obligations beyond those of the common law it seems that, both in France and in England, the master must teach or cause to be taught the principles of his profession and give the apprentice reasonable opportunity to learn it. Having done that he has fulfilled his obligation. (Sébire & Carteret vo. Apprenti, No. 20; Fraser, 468.) These questions are eminently subject to the discretion of the court, and the decision arrived at should not be readily interfered with. (Sébire & Carteret vo. Apprenti, No. 28.) It will readily be admitted that an apprentice should be held strictly to his bargain, else dishonest people might gain undue advantages by having their children taught the rudiments of a trade and then allowing them to desert their employment. On the other hand, it would be very cruel to make a youth waste five or six years of his life at low wages without prospect of any compensating advantage in the future. Here we know from the appellant's own evidence that he had no engraving business worth speaking of, and therefore that the youth

could have no opportunity of acquiring proficiency in the art. It is said in answer to this that the boy had been employed in the place before the indenture, and that he knew exactly what kind of business was done. I cannot think this is an answer to the warranty of the deed that he would give him a fair opportunity to learn engraving, taking with it the evidence that not only there was no business going on in the shop, that the master was in such health he could not execute work of the kind, and that he had no man to take his place. So far as we know appellant had nothing but apprentices. He speaks of work being done by them, but never by journeymen, or people supposed to know the business, and he was little in his shop, being either out or ill. On the other hand, it is proved that the apprentice had made some progress in engraving, and two witnesses say that it was fair progress for the time he had been at Baker's (two and a half years), while Dawson says it was not. The boy had been examined to establish that he had peculiar aptitude for work of the sort, and that he had been taught drawing, which enabled him to learn quickly. I don't think his evidence is admissible in the suit. It is his own suit, and even if it were admissible, his opinion of his own capacity might be just, but it is hardly calculated to produce much effect on the minds of others. Again, it has been said, with some reason, that the boy had been making plans, sometime before the institution of the action, to leave his employment, and to start for himself in the same sort of business. He asked another apprentice (Cantwell) to leave with him, and told him they would make more money. But it appears that he did not pretend to do the engraving work, and that he reckoned on getting a man who was an engraver to go with him. This is not very conclusive either way. It may be that the boy, finding he gained no experience, intended to take some other means to learn the trade he intended to follow, or it may be he meant to end his indentures. Again, his running away after the judgment in the Superior Court was against him, is not reassuring; but, again, it may be argued that, if the appellant was not fulfilling his contract with the boy, the latter was justifiable in refusing to throw away more of his time. It has been said the master was not put *en demeure* and that he ought to have been called upon to give more complete instruction. The action was putting *en demeure*; it was brought before the boy left, and there was no tender by the pleas to give further instructions.

Judgment confirmed, CROSS, J., dissenting.

Archibald & McCormick for Appellant.

Geoffrion, Rinfret & Dorion for Respondent.

SUPERIOR COURT.

[District of St. Francis.]

SHERBROOKE, Sept. 10, 1884.

Before BROOKS, J.

LEONARD et al. v. ROLFE et al.

Procedure—47 *Vict.*, (Q.) *cap.* 8, *s.* 2, *ss. b.*

The 47th Vic., cap. 8, has not repealed 46th Vic. cap. 26, s. 1, so as to deprive the Superior Court of the right of hearing and disposing of proceedings incidental to the hearing and trial of cases on any juridical day.

PER CURIAM. The defendants suggest, upon an inscription for hearing on a demurrer to defendants' second plea, that this Court had no jurisdiction on the day fixed for such hearing, inasmuch as said day is not a day in term; that 47th Vic., cap. 8, sec. 2, subsection *b*, conferred the right to try only those cases inscribed for *enquête*, for hearing, or *enquête* and final hearing; that 46th Vic., cap. 26, s. 1, is repealed by the Act of last Session, and said Act, which says: "Every juridical day is deemed to be a term day for the trial and hearing of cases before the Superior Court and Circuit Court, whether they are inscribed for proof or for hearing, or for proof and hearing at the same time," or as it is in the French version: "Tout jour juridique est réputé jour de terme pour *l'instruction* et *l'audition* des causes tant devant la Cour Supérieure que devant la Cour de Circuit, qu'elles soient inscrites pour enquête, ou pour audition, ou pour enquête et audition en même temps," does not confer the right to hear and determine incidental proceedings; *i. e*: defendant says the 47 Vic. has reversed the rule of proceedings which obtained under 46 Vic.; that

while before the Act of last Session you could only hear out of *term* incidental proceedings, now you can only try cases inscribed for *enquête*, for hearing, or for *enquête* and hearing at the same time; that the legislation has been retrograde, and that the great boon which was conferred by the legislation of 1883, facilitating proceedings and obviating delays, has been taken away, and that we can now have out of term only the taking of evidence and final hearing of cases upon the merits. Without commenting upon the expression in the Statute, "Every judicial day is *deemed to be, réputé*, a day in term," instead of saying "*is*" or "shall be"; we must consider the exact meaning of the words of the Act, and the intention of the legislature, as it is a question of interpretation.

The words in English are *trial and hearing*, in French *l'instruction et l'audition*. Now if you can try a cause on a certain day, can you not do what is incidental and necessary to that trial? The word *trial* is made to correspond with *instruction*. I cannot for a moment think that the legislature intended to do what the learned counsel who makes the suggestion contends it has done, to confer upon the Court the right out of term to try a case upon the merits and deprive it of the right to decide what is of less importance, the incidents of the trial.

Let us see what the practical result or application of the interpretation contended for by the defendant would be. A case is inscribed for *enquête* and final hearing. Witnesses are summoned on both sides and in attendance. When either plaintiff or defendant desiring delay or postponement makes a motion upon some incidental matter, the Court would be unable to decide the motion, and the whole case would be continued until the term, *i. e.*, supposing that under sec. 2 of 47th Vic., cap. 8, we have any *terms*. The word *instruction* is thus defined by Ferrière, Dict. de Droit et de Pratique, vo. Instruction: "Instruction se dit des procédures et formalités qu'on fait pour mettre une affaire en état d'être jugée. Mais on se sert ordinairement de ce mot pour signifier les procédures qui se font depuis l'assignation jusqu'à l'appointement. Il y a même encore des instructions jusqu'au jugement définitif du procès, comme les lettres de rescission, les inscriptions de faux, et les demandes incidentes." In the ordinary acceptation *instruction* is defined as direction, preliminary proceedings, examinations, proceedings, trial, from *instruire* to examine, to prepare for trial.

In our Code de Procédure it is true that the word *instruction* is used as it is translated in the 47th Vic., and also in the 46 Vic., cap. 26, s. 2: *Toutes causes inscrites seront instruites*, which is certainly using the word in a limited sense and not giving it its full meaning.

But even if you were bound by this interpretation another principle comes in: Shall we give the Act the construction evidently intended by the legislature, or shall we restrict it? "Qui hoeret in litera hoeret en cortice." It is not the words of the law, says the ancient Plowden, "but the internal sense of it that makes the law; the letter of the law is the body; the sense and reason of the law is the soul."

I do not mean to say that we can give to words an interpretation wholly different from their meaning, but the Court shall, if it can, by giving a fair construction to a statute, carry out the intention of the legislature that enacted it. What was the intention of the legislature as expressed by 46 Vic., cap. 26, s. 1? Every day was deemed to be a term day to hear and try all incidents to a cause, but not the cause itself upon its merits. This was repealed, and now they say you may hear and try all causes however inscribed, and in so saying the legislature evidently did not intend to restrict, but to enlarge the provisions of 46 Vic., cap. 26, and they undoubtedly, in the enactment of 47 Vic., intended that the greater should include the less, and that the power to try should include, as it must necessarily include (or our whole system would be a failure), the power to pass upon all matters incidental to trial. Holding this, I must declare that this Court has power, under 47th Vic., cap. 8, s. 2, sub-sec. *b*, to hear and determine on any juridical day all matters incidental to the trial of cases.

L. E. Panneton for Defendant.
S. A. Hurd for Plaintiff.

COUR SUPÉRIEURE.

MONTRÉAL, 30 mai 1884.

Coram LORANGER, J.

ERNEST DESROSIERS v. JOSEPH LESSARD.

Action en dommages—Art. 1053, *C. C—Identité de la personne diffamée dans un article de journal.*

PER CURIAM. "La Cour, etc.

"Attendu que le demandeur, avocat de la cité de Montréal, se plaint que le défendeur, éditeur du journal "Le Monde," aurait, le 7 novembre 1883, publié et imprimé dans ce journal et mis en circulation un article intitulé: "*Toujours le même*," et se lisant comme suit: "Un avocat qui a pourtant eu assez de "leçons pour apprendre à respecter les gens, "vient encore de s'en faire donner sur les "doigts. Il s'était permis de tenir des pro- "pos injurieux au sujet d'une dame respec- "table, pensionnaire de l'hôtel du Canada. "Un jeune homme, agent d'assurance, qui "connaissait très-bien la dame en question, "le fit taire; l'avocat persista; alors le jeune "homme, indigné, le saisit et le força d'aller "demander pardon à la victime de la calom- "nie. Après quelque résistance, notre homme "dut s'exécuter, mais malheureusement, la "dame n'était pas à l'hôtel. L'avocat descendit "alors et courut faire sa plainte à la police; "il y avait un assaut, mais le jeune homme "s'estima heureux de payer $5.00 et d'avoir "tenu l'honneur d'une femme sauf;"

"Attendu que le demandeur qui réclame par la présente action, des dommages au montant de $250, allègue que cet article était dirigé contre lui et n'était que la suite d'un système de diffamation, d'injures et de calomnie suivi à son égard par le même journal, qui aurait, quelque temps auparavant, publié un autre écrit diffamatoire contre le demandeur, lequel écrit ayant été subséquemment reconnu faux par le défendeur, aurait été rétracté par écrit;

"Attendu que le défendeur a plaidé que les faits rapportés dans l'écrit dont le demandeur se plaint, sont vrais, qu'ils se sont passés dans un endroit public, ainsi que l'allègue la déclaration; que ces faits ont été publiés de bonne foi, sans malice et nullement dans le but de causer du tort au demandeur ou à qui que ce soit; que le défendeur, comme journaliste, avait le droit de publier l'article en question dans le but de faire voir au public le sort qui attend ceux qui tiennent des propos injurieux sur le compte des femmes, en même temps que la punition réservée à ceux qui interviennent pour châtier les délinquants que les tribunaux seuls sont chargés de punir; laquelle défense est suivie d'une défense en fait;

"Considérant qu'il résulte, tant des circonstances qui ont précédé la publication de l'écrit en question que de la publicité donnée au procès qui aurait été jugé à la cour de police, dans lequel le demandeur était mentionné comme partie plaignante, que le défendeur a voulu diriger et que, de fait, il a dirigé contre le demandeur le dit écrit et l'a suffisamment désigné pour que le public comprit que l'avocat dont il est question dans le dit écrit, était le demandeur;

"Considérant que l'écrit en question est injurieux, diffamatoire et propre à nuire à la réputation du demandeur;

"Considérant que le défendeur a plaidé que les faits allégués dans le dit écrit étaient vrais et qu'il n'a fait aucune preuve de ces faits; qu'il n'est point prouvé que dans les occasions relatées dans le dit écrit, le demandeur se soit servi du langage calomnieux ou diffamatoire qui lui est reproché;

"Considérant qu'en plaidant la vérité de ces faits et en n'en faisant aucune preuve, le plaidoyer du défendeur constitue une aggravation d'injure;

"Considérant que le dit écrit a été publié sans cause ni raison, se rapporte à des faits de la vie intime que le public n'a aucun intérêt à connaître, et que la publication de semblables écrits constitue un abus de la liberté de la presse et des priviléges réclamés par la défense;

"Considérant que le demandeur a droit à une réparation, et prenant en considération toutes les circonstances de la cause;

"Condamne le défendeur à payer au demandeur la somme de $50 courant, avec intérêt de ce jour et les dépens de l'action telle qu'intentée, distraits à MM. Lareau et Allard, avocats du demandeur.

Lareau & Allard, avocats du demandeur.
Globenski & Poirier, avocats du défendeur.

LITERARY PROPERTY.

We are glad to see that lectures, even when delivered orally, are within the protection of the law, and that persons publishing them for profit without the consent of the lecturer can be restrained by injunction. Mr. Justice Kay, following the law laid down by Lord Eldon in *Abernethy* v. *Hutchinson* (3 L. J. O. S. 209, Ch.) has thus decided in the recent case of *Nicols* v. *Pitman*. The lecture in question was delivered orally at a college by the plaintiff, who before delivery had committed it to writing. The defendant attended and took the lecture down in shorthand, and subsequently published it in shorthand characters. It certainly seems only in accordance with justice that a person who has devoted time and learning to amassing the necessary material for a lecture should be protected from having it published by any person who is capable of writing shorthand. It is to be noticed that in this case the lecture, prior to delivery, had been reduced into writing, and it was therefore contended that the plaintiff had a copyright in it, which he was entitled to have protected. Lord Eldon's decision in *Abernethy* v. *Hutchinson* (*ubi sup.*) however, goes further than this, his Lordship there deciding that a person orally delivering a lecture, even though it has not been committed to writing, is entitled to an injunction to restrain other persons from publishing it. According to Lord Eldon there is an implied contract between the lecturer and his audience that, while they may make the fullest notes for their own personal use, they may not publish them for profit. Even putting aside this implied contract, a lecturer might well argue that he had such a property in his lecture, even though it be not committed to writing, as to entitle him to relief against piracy. A lecture which is not committed to writing differs from a literary composition only in the way in which its subject-matter is conveyed to the knowledge of the public. In the one case it is the voice, in the other printed characters. The language and sentiments, which are the substance of the matter, are in both cases the same. This case was somewhat anomalous from the fact that the publication complained of was in shorthand characters. This was somewhat relied upon by the defendant, but the learned judge, not unnaturally, refused to be influenced by a circumstance, the only practical effect of which is to limit the number of readers of the publication.—*Law Times.*

GENERAL NOTES.

Within the past year, no less that twenty-five railway companies, whose aggregate share capital and debt exceed $550,000,000, have gone into the hands of receivers. An application for the appointment of a receiver for a railway company, is no longer a rare proceeding in our courts; mismanagement may account for this fact in a large degree, but it is no doubt also very largely owing to the rapid multiplication of railroads in sections of the country where they are hardly able to secure the business that warrants the outlay of the capital required to construct and operate them at a profit. The coming question with regard to railway management involves the classification of passenger traffic as already adopted in Europe, which will result in cheaper travelling to the public and regular and larger dividends to railway shareholders.—*Buffalo Transcript.*

It not unnaturally surprises many persons that the coins of the realm may legally be melted down and devoted to less dignified uses; but the practice was undoubtedly legalized by 59 Geo. III. c. 49, s. 11, when melting and exporting were treated together, and both expressly permitted. That statute repealed 9 Edw. III., by which the melting of "sterling half-pennies or farthings" was forbidden; 17 Rich. II., c. 1, in virtue of which "no groat or half-groat" was to be melted; and 13 Charles II., by which the same prohibition was extended generally to current silver. There appears to have been no statute forbidding the melting of gold coin, but this was specially allowed in the Act of 1819; and although the act is repealed it cannot be said to be an offence at common law for a man to put his own gold or silver into the melting pot because it happens to be stamped with an impression of the Sovereign's head. If that consideration were sufficient, it would be a misdemeanour to light one's cigar with a sheet of postage stamps. The illegality of melting coin is as old as the *Lex Cornelia*, which forbad melting as well as debasing and "washing"; but according to modern ideas the subject is allowed to test practically whether the sovereign is worth its weight in gold by turning it into Birmingham jewellery, notwithstanding the disrespect shown to the Queen's image and superscription.—*Law Journal.*

The following case of liability for an ill-disposed cat is noted in the *Law Journal* (London):—"At the Marylebone County Court, on May 19, before Mr. H. J. Stonor, in the case of *Tedder* v. *Macleod*, the learned judge, in giving judgment, said: In this case the plaintiff claims £2 as damages for the destruction of certain chickens of a valuable kind by the defendant's cat, which, it was proved, was of a peculiarly mischievous disposition, and had on previous occasions destroyed some chickens of the plaintiff to the defendant's knowledge. The chickens in question were kept in an inclosure of wire which the plaintiff had raised to the height of seven feet in order to protect them against this very cat. Now in the case of *Read* v. *Edwards*, 34 Law J. Rep. C. P. 31, Mr. Justice Willes was evidently of opinion that damage done by dogs or by cats ought to be regarded in the same light, and he there held that the owner of a dog of a peculiarly mischievous disposition and having a propensity for the destruction of game, to the knowledge of the owner, which had destroyed young pheasants reared under domestic hens in a wood, and therefore with little or no protection, was liable for the same, and it appears to me that the present is a much stronger case against the defendant, and that the plaintiff is clearly entitled to a verdict for the damages claimed. Judgment accordingly.