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PROPERTY OF FOREIGN SOVEREIGNS.

The English Court of Appeal, in a recent case, *Vavasseur* v. *Krupp*, has re-affirmed the doctrine that the courts of England have no jurisdiction over the public property of a foreign sovereign. The facts were these: The Japanese government, through agents in London, bought in Germany and paid for some shells manufactured by Messrs. Krupp. The shells were brought to an English port for the purpose of being transhipped to Japan in some vessels of war which were being built in England for the Japanese government. The plaintiff complained that an English patent granted to him for the manufacture of projectiles was infringed by these shells being brought to England, and he obtained from the Master of the Rolls an interlocutory injunction restraining the delivery of the shells to any one but himself. The Mikado of Japan then intervened in the case, alleging that the shells were his public property as sovereign of Japan, and applied for an order that notwithstanding the injunction the shells might be delivered to him in that capacity. The Master of the Rolls granted the order, and the Court of Appeal has affirmed the decision, remarking "that it was clearly settled that the courts of England had no jurisdiction whatever over the public property of a foreign sovereign."

STATUS OF THE CHINESE IN THE UNITED STATES.

The application of Ah Yup, a native of China, to the United States District Court, California, to be naturalized, led to an interesting argument on the status of the Chinese in the United States. The petition being a novel one, the court invited the members of the bar to make any suggestions which occurred to them on either side of the question, and the hearing was a full one.

The old naturalization law of the United States provided that "any alien, *being a free white person*, may be admitted to become a citizen." This was amended in 1870 at the time of the abolition of slavery, by adding the following clause; "That the naturalization laws are hereby extended to aliens of African nativity and to persons of African descent." After some further changes, the law as it stands at present is defined by an Act of Feb. 18, 1875, which reads as follows: "The provisions of this title shall apply to aliens, being free white persons, and to persons of African descent." The whole question, then, resolved itself into this: Are natives of China, of the Mongolian race, "white persons?" The Judge answered this question in the negative, and Ah Yup's petition was refused. We have not space for the judgment in full, but an extract from Judge Sawyer's remarks will show the reasoning by which he arrived at his conclusion. "Words in a statute," he said, "other than technical terms, should be taken in their ordinary sense. The words 'white person,' as well argued by petitioner's counsel, taken in a strict literal sense, constitute a very indefinite description of a class of persons where none can be said to be literally white, and those called white may be found of every shade, from the lightest blonde to the most swarthy brunette. But these words, in this country, at least, have undoubtedly acquired a well-settled meaning in popular speech, and they are constantly used in the sense so acquired in the literature of the country as well as in common parlance. As ordinarily used anywhere in the United States, one would scarcely fail to understand the party employing the words 'a white person' would intend a person of the Caucasian race. In speaking of the various classifications of races, Webster, in his dictionary, says: 'The common classification is that of Blumenbach, who makes five. First, the Caucasian or white race, to which belong the greater part of the European nations and those of Western Asia; second, the Mongolian, or yellow race, occupying Tartary, China, Japan, etc.; third, the Ethiopian, or negro (black) race, occupying all Africa except the north; fourth, the American, or red race, containing the Indians of North and South America; and fifth, the Malay, or brown race, and occupying the islands of the Indian Archipelago,' etc. This division was adopted from Buffon, with some changes in names, and is founded on the combined characteristics of

complexion, hair and skull. Linnæus makes four divisions, founded on the color of the skin,—First, European, whitish; second, American, coppery; third, Asiatic, tawny; and fourth, African, black. Cuvier makes three,—Caucasian, Mongol, negro. Others make many more, but none include the white or Caucasian with the Mongolian or yellow race; and none of those classifications, recognizing color as one of the distinguishing characteristics, include the Mongolian in the white or whitish race.

"Neither in popular language, in literature, nor in scientific literature do we ordinarily, if ever, find the words 'white person' used in a sense so comprehensive as to include an individual of the Mongolian race. Yet, in all, color, notwithstanding its indefiniteness as a word of description, is made an important factor in the laws adopted for the determination and classification of the races."

The opinion is evidently in accordance with the law, for the report of congressional proceedings at the time the Act was under discussion, leaves no doubt as to the intention of the legislature. The late Senator Sumner in 1870, endeavored to have the word "white" struck out of the naturalization law, but the alteration was opposed on the very ground that it would admit the Chinese to citizenship. Senator Morton expressly declared—"This amendment involves the whole Chinese problem," etc. The opponents of Chinese naturalization gained the victory. The Judge, therefore, in refusing the petition, was only obeying the will of the legislature, and until the law is changed, the judgment must stand unchallenged.

A CHAPTER OF BLUNDERINGS ON AND OFF THE BENCH, AND OF THEIR CAUSES AND REMEDIES.

[Continued from p. 366.]

I might go on with these cases—but why? If the reader wishes to see more of the doctrine and of the authorities, he can find the references, with some further views, elsewhere. *

Nor need we here enquire how far this Massachusetts doctrine has found favor in other states. I have seen no case elsewhere in which it has been adopted on any thoughtful consideration or investigation. There is a Rhode Island case in which one was indicted for selling adulterated milk, contrary to a statute prohibiting such sale in general terms; and, said the learned judge of the appellate court, the defendant asked the instruction to be given the jury "that there must be evidence of a guilty intent on the part of the defendant, and of a guilty knowledge." This request was refused, and the court very properly held the refusal to be right. The learned judge, however, added: "Our statute, in that provision of it under which this indictment was found, does not essentially differ from the statute of Massachusetts; and in Massachusetts, previous to the enactment of our statute, the Supreme Judicial Court had determined that a person might be convicted although he had no knowledge of the adulteration; the intent of the Legislature being that the seller of milk should take upon himself the risk of knowing that the article he offers for sale is not adulterated." For this observation he refers to a case,* from one of the reporter's head-notes to which he copies it; but the court simply holds that guilty knowledge need not be alleged and proved against a defendant, to convict him. This determination was right, though made in Massachusetts; and the learned judge well adds: "We think our statute should receive the same construction." † Whether this or any other court, will at a future period follow the Massachusetts doctrine, where it departs from what is generally held elsewhere, no one can tell in advance. There is a single Wisconsin case, not much considered, adopting more nearly the Massachusetts view. ‡ But, as I have said, the general doctrine is the other way. §

The capacity of the human mind to adapt itself to any sort of sinuous position is a remarkable phenomenon in man. Without it, who could be happy in our crooked world? We all admire Blackstone; and specially pleasing it is to note, in reading him, how, in his eye, everything connected with the English law is rosy

* 1 Bishop's Cr. Law, secs. 297—312, 440, 441, 874, 1074—1076; 2 *Ib.* 664, 693, 922; Bishop's Stat. Cr., secs. 132, 351, 355—359, 632, 663—665, 730, 820—825, 877; 12 Am. Law Rev. 469, the article to be mentioned in my text.

* The Commonwealth v. Farren, 9 Allen, 489.

† The State v. Smith, 10 R. I. 258.

‡ The State v. Hertfiel, 24 Wis. 60. As to which, see Bishop's Stat. Cr., sec. 1022, note.

§ See the places cited a few notes back, where the authorities will be found collected.

—not an absurdity in it, but is "the perfection of reason." And a judge, under the rule of *stare decisis*—how could he get on if he did not occasionally see from the back side of his head? How, in Massachusetts, could a prosecuting officer?

An excellent and clear-headed lawyer and upright man, who for several years served as prosecuting officer in the most populous county in Massachusetts, has just informed the public through what contortions, in this state, such an officer can so adapt himself to the adjudications on the present subject as to render himself comfortable, if not absolutely happy. He commences an article in the *American Law Review* * with the following formulated eclipse, so absolutely total that even the stars appear: "In this country, at least, it is still an open question whether a person who honestly does that which appears to him to be lawful, right, and proper, but which, in point of fact, is in violation of a law which punishes the act as a crime, can properly be convicted." The stars here revealed are two, named Peter and John, who demanded of the legal authorities, "Whether it be right, *in the sight of God*, to hearken unto you more than unto God, judge ye;" † John Rogers, who was burned at the stake, with nine small children and one at the breast;" John Brown, hung at Harper's Ferry, whose "soul is marching on;" and various others whose names are not important in this connection. They raised the question of *ethics*, as to the comparative obligation of the law of the land and the law of God. But that it is, or ever was, in this country, or any other, a question in the criminal law of the land, whether or not one who violates it, even by honestly doing "that which appears to him to be lawful, right, and proper," "can properly be convicted," is a contortion, pleasant undoubtedly to him who is compelled to it, but startling to the looker-on. Well, he proceeds to picture Massachusetts standing manfully on the side of the law! Those who disobey the criminal law in this state "can properly be convicted," however proper in their own eyes may be the thing which they do. To sustain this proposition he states or cites various cases, of the sort which I have already commented on, wherein the court ignores the most familiar rules of statutory interpretation; mingled with other cases relating to pleading and evidence, wherein the universal doctrine was followed, yet not distinguishing them from the former, and accepting them as upholding the same proposition. In this way he makes it appear that Rhode Island, in the case which I have already stated, stands side by side with Massachusetts. No one knows but she will—she has not done it yet. And something like the same thing appears as to Connecticut and Kentucky.

The contortion need not consist of any intentional unfairness, nor do I discover any in the writer I am now considering. He gives, with entire candor, what he esteems to be the authorities on the other side, namely, to the proposition which, in his language, is that, if a man "honestly does that which appears to him to be lawful, right, and proper, but which, in point of fact, is in violation of a law which punishes the act as a crime," he cannot "properly be convicted." He admits that the courts of some of our states have placed themselves squarely on this doctrine, and that it has considerable English support. But, candid as he is, he cannot bring himself fully to the conclusion that England stands on it; and, on the whole, he places her on the side of law and order! For this he cites several cases, particularly some penal actions, in which the law was permitted to prevail over the honest convictions of the party; ignoring the fact that a penal action is not a criminal proceeding, but a civil, and that by all opinions the doctrine of the criminal intent does not necessarily prevail in civil cases as in criminal. I might add that there are cases criminal in form, but civil in their nature and purposes, in which being governed by the rules of civil causes, it does not prevail. * "In fact," he concludes, "we doubt whether any court could be found to assert the doctrine of the *mens rea* in the face of the statute distinctly dispensing with it. It is for the Legislature to judge whether the injury to the public from the indulgence of any particular practice is so great as to justify the risk of possible injustice to an individual in providing for its punishment. Moreover, should such a case of injustice arise, though the courts cannot

* 12 Am. Law Rev. 469.
† Acts iv, 19.

* 1 Bishop's Cr. Law, 6th ed, secs. 1074—1076, and the places there referred to.

help it, an appeal to the prosecuting officer, or, in the last resort, to the executive clemency, could not fail to be effectual. Meanwhile, the person who persists in a prohibited practice, which he knows may be injurious or fraudulent as against the public—a fact which he may, if he will, determine—whereby he is to profit at the risk of the public, is not in a position to assert his want of wrongful intent. The peril should be his, as well as that of his poisoned or defrauded victim."

Here is a close worthy of the beginning. And no judge ever adorned a bench who could do better at throwing intellectual mud in defence of a bad *stare decisis*. Was there ever, in fact, a Legislature so demented as, by express enactment, to dispense with the criminal intent in crime? Has it been so much as proposed to punish insane men and sucking babes as criminals? Did any law-maker, any demagogue on the stump, ever recommend the passage of a law that men and women who marry shall do it at the risk of being sent to the penitentiary should a latent impediment, unsuspected and impossible to be discovered at the time, appear afterward? It takes a bench of wise judges, in a state whose ripened jurisprudence rises golden above the green of the younger states, to do that.

Let us see, a little, how this stands: A police-officer, if he arrests a man for being drunk when he is not, is excused; because, as the foregoing explanations have shown, he was required to act, and he should not be punished when his intent accorded with his duty. That, it is agreed on all sides, was right. But he was not obliged to become a police-officer. Both scripture and the law of nature command that man shall replenish the earth. Our laws encourage people in doing this, quite as much as they do in becoming police-officers. Not long would police-officers be required, not long would courts, if the places of the present inhabitants passing away were not filled. Well, a man has made up his mind to do his part toward keeping up the population. But, in Massachusetts, fornication and adultery are both indictable; the law requires him to marry and live by his marriage vows. Yet, let him be as circumspect as he may, he cannot take the first step toward population without being in peril of penitentiary. If he chooses fornication, he must be punished; if adultery, he must be; if he selects lawful marriage as the means, he is liable to bring up at the same end. Should he choose a widow, her former husband may not, after all, be dead. Should his choice be a maid, she may have indulged in the fun of a mock marriage, supposed to be of no binding force, never cohabited under, and never heard of by him, yet held afterward, by the courts, to be valid. So the door of the state prison swings open, and in he must walk! Well, if he cannot in safety become a married man, he may find refuge in the badge of a police-officer. If he will "indulge" in the evil of an honest endeavour to provide inhabitants for police-officers to look after fifty years hence—why, "the peril should be his!"

We have already been told that the creating of a crime out of an endeavour to obey the law is productive of no more hardship than sometimes proceeds from the rule of a presumed knowledge of the law. And, as a remedy for all, we have "the executive clemency." The ship glides on over the blue sea; the captain is on deck and his young bride by his side. "You look pensive, love," she says. "I was thinking of jurisprudence; I learned it a little while after the happy day when we were married." "And what is jurisprudence? Teach jurisprudence to me." "Do you not think," he replies, "it was very hard for that sailor-boy to drop from the jib-boom yesterday, and be drowned?" "Yes;" and she dashes the tear from her eye. "And would it be any harder if I should throw you overboard?" "Dying would be no harder." Then, tossing her over, he continues, as she lifts up her cry for help, "The Governor, my dear, will save you with his whale, as in the case of Jonah." Great is Jurisprudence!

III. Remedies for Judicial Blunderings.—No man ever lived without committing a blunder. Nor was there ever a wise man unwilling to review his steps and correct his mistakes.

These propositions are applicable to ordinary life; but, by some opinions, they properly admit of two exceptions—in first-class journalism, error in a newspaper being impossible; and in judicial affairs, where "the *perfection* of reason" prevails. It is within the scope of this article to consider only the latter.

If we look at this question in a spirit of candor, we shall see that, of necessity, and without

imputing to the men who occupy judicial positions any want of learning, ability, or integrity, they must commit numerous errors of judicial opinion. However eminent in learning and ability, they still are men; and to err is human. But, besides this, in our age and country, judgments, on questions improperly or imperfectly argued, are often required to be pronounced in haste by men whose brains are overworked and who have no time to supply from their own industry the deficiencies of counsel. Formerly, in the mother country, cases were argued at full length by counsel able, and amply prepared; then, if the judges were in doubt, they heard a second argument, and sometimes even a third. Now, in our country, the one only argument is limited in time by a rule of court—often the arguing counsel have neither any natural nor acquired qualification for their task, and not unfrequently the judges come to consider of their decision after the argument, whether poor or good, is forgotten, and their memories and thoughts have become burdened with other and different questions. The embarrassment arising from the latter fact is so great that, it is said, there is now and then a judge who deems it superfluous to listen to any argument; so, while the arguing is in form being had, he occupies his thoughts with something else, and, in effect, decides the case without argument.

In a recent address to the Chicago Bar Association, Judge Dillon put the difficulties of the situation in a very clear and convincing light. Some of his golden words, which ought to be printed in the largest and fairest type, and hung up in every legislative hall and every court-room, are the following: "Forty state courts of last resort, and as many Federal courts sitting in the same states with concurrent jurisdiction, cannot, without great learning and infinite care, build up a harmonious and symmetrical system of jurisprudence. The difficulty in the way of the judges is seriously increased by the burdensome and exacting pressure of their duties. They lack, in general, neither learning nor industry; their chief want is the want of time. * * * With so much work, and with so little time for deliberate and sedate consideration, mistakes must be numerous. But the fault lies not so much with the overworked judges as with the faulty system which imposes such vast labors upon them. The state judges, generally, are almost equally overburdened [with the Federal]. Hence we inevitably have a constantly-increasing mass of decisions, state and Federal, many of which must be erroneous, and which, while standing as precedents, bear pernicious fruits." *

The first duty, then, is legislative. Yet, in a country like ours, a duty of this sort is seldom done until its necessity is forced upon the attention of the unthinking, as well as the thinking, classes of the community. While men, esteemed competent, can be found to fill the judicial places who will consent to work under pressure, and pull to the crack of the whip, the argument that judges are not beasts, and that the public interests are not subserved by treating them as such, will have little avail.

What, then, can our judges do? They can refuse to decide causes under pressure; and, if the public do not like it, let the public employ other men. This will, at first, increase the evil; but the temporary acceleration of the disease will lead to the permanent cure.

The multiplication of ill-fitted and incompetent lawyers is to some degree the product of legislative folly; but, to the full extent possible with the courts, they should control and limit it. The ebb of this tide of folly already begins to appear. The courts need the assistance of competent counsel—the more in proportion to the pressure of business upon them. But, beyond this, a judge, having it in his power to admit or reject a candidate for the bar, should pause long before inflicting on an innocent and well-meaning young man the great injury of inducing him to believe himself fitted for legal practice when he is not. In the majority of instances it will lead to the wreck of all his labors and his hopes.

But that to which I wish particularly to direct attention is the correction of errors already made. Not always is it properly competent for a court to overrule a wrong decision. If it has established a rule of property, and the affairs of the community have adjusted themselves to it, and have been for a considerable time conducted as it directs, the remedy should ordinarily come from the Legislature; because then there can be no divesting of vested rights. But there are various cases in which it is both just and proper

* 6 C. L. J. 34, 35.

blunder which makes a man a felon, or even a criminal of the lower grade, in recompense for his honest and faithful endeavor to obey the law which he is accused of breaking, is of this sort. The rule of *stare decisis* does not properly apply to such a case. There is no vested right which the correction of the error will divest. The state is not injured by a refusal to punish those who merit no punishment. If a wrong was inflicted on Mr. A. yesterday, with no correlative benefit to any individual or the public, it is a perversion of the rule of *stare decisis* to hold that, therefore, a like wrong must be inflicted by the judge on Mr. B. to-day. In criminal cases this suggestion is of a wide applicability and force—much exceeding what would be permissible in civil.

Now, this distinction is not always present in the minds either of practitioners or judges. And the question is what, practically, should be done when justice in a case before the court is obstructed by another case which ought to be overruled. To the judge, this question will present no difficulty—he will overrule the case. The embarrassment is with the practitioner at the bar.

The judge may say: "That point has been decided once, and I will not hear it argued again." At the same time, the true argument may not have been presented on the former occasion—the judicial understanding may not have comprehended the real difficulty; yet the erroneous decision may be far-reaching in its consequences; and in the language just quoted from Judge Dillon, it may, "while standing as a precedent, bear pernicious fruit." The practitioner can only do his best in such circumstances. Let him not attempt to entrap the court, but, stating the adverse decision or line of decisions fairly, press the tribunal for a reconsideration of the question; and, if he is refused, he will be happy in the remembrance of having done his duty.

The greatest difficulty is to obtain a correction of the error at the best time—namely, when it is fresh—and especially by the erring judge by whom it was made. Private communications with a judge on questions before him, or likely to arise, not in response to his own application for advisory help,* are pernicious, and they should not be allowed. Yet, if an intelligent and upright bar abstains from such communications—as it will—this is a good which, like many others, may cast an evil shadow. A case is imperfectly or incompetently argued, no lawyer interposes as *amicus curiæ* (a good old practice which has become nearly obsolete), and a wrong decision follows. The mind of the judge leaps forward to other tasks, and no thought crosses it that he has blundered. The necessities of his position have isolated him from the friends who would gladly set him right.

Now and then it may happen that some lawyer, perhaps his friend, is writing a law book on the very subject, yet such a coincidence is rare. Will this person, who is properly not permitted to speak of the error in private, dare to do it in his book? Not often. Such a thing has been done, but only the sternest sense of public duty could prompt this truest of all tests of private friendship. Were the judge a Mansfield or a Kent, the proceeding would be as safe as, in the interests of jurisprudence, it is always desirable. But even Judge Dillon, who says, in the above-quoted passage, that our judges "lack in general, neither learning nor industry," would admit that we have considerable numbers who are neither Mansfields nor Kents. Good and great as the majority are, all are men.

And a mind that does not tower considerably above the ordinary standard of able and learned men will, in general, take offence if a mistake is pointed out, under any circumstances, by any person, and prompted by whatever duty. Nor will one of this sort look when told of his error. His pride is wounded; and he will wound in turn, if he can, him whose hand was stretched out to bless.

Much more, therefore, are newspaper comments, and comments even in our legal periodicals, pointing out errors in contemporary decisions, of no benefit, as a general rule, to those by whom the errors were committed. But in our country, where judges of the highest courts are numbered by the hundred, such criticisms, in every appropriate place, are helpful to those not of the class who are criticised, and to the few of this class whose opinions carry the greatest weight. The latter may even retrace their own false steps. And those not criticised will thus

* Gaylor's App. 43 Conn. 82, 84.

be assisted to correct the mistakes of the others.

On the whole, however, there is no one method by which the good sought can be accomplished. Each should do what he can; and the result which one man could not attain, or to which one method would be inadequate, may be brought about by combined methods and many hands.

If our jurisprudence makes, in the future, the advances which all trust it will, those who come after us will see a more intelligent holding of the doctrine of *stare decisis* than now. And thereby many of the absurdities which haste and the lack of due argument have introduced into our adjudged law will disappear. It has been fortunate in all periods that the judges most adverse to revising past decisions have been the least competent ones, while the willing have been largely those who could best do this most difficult of judicial duties. Had it been the reverse, change would less often have been improvement. So it will necessarily be in the future. As strong men appear, they will tear down the rubbish while the weak lament, and erect in its place the firm and enduring.—JOEL P. BISHOP, in *Southern Law Review*.

DIGEST OF ENGLISH CASES.

[Concluded from page 370.]

Guaranty.—The wife of C., a retail trader, possessed of property in her own right, gave the plaintiff, with whom C. dealt, the following guaranty: "In consideration of you having, at my request, agreed to supply and furnish goods to C, I do hereby guarantee to you the sum of £500. This guaranty is to continue in force for the period of six years, and no longer." *Held*, reversing the decision of Fry, J., that the guaranty did not cover sums due for goods supplied before its date, but was limited to goods sold after its date to the value of £500.—*Morrell* v. *Cowan*, 7 Ch. D. 151; s. c. 6 Ch. D. 166.

Husband and Wife.—See *Guaranty; Marriage.*

Infant.—Agreement between the appellants and the respondent, an infant, by which respondent was to work for appellant for five years, at certain weekly wages. There was a proviso, that if the appellants ceased to carry on their business, or found it necessary to reduce it, from their being unable to get materials, or from accident, or strikes, or combination of workmen, or from any cause out of their control, they could terminate the contract on fourteen days' notice. In an action on this agreement by appellants for loss of service, the Employers and Workmen Act, 1875 (38 & 39 Vict. c. 90), *held*, that the agreement was not in itself inequitable, but its character depended upon whether its provisions were common in such labor contracts at that time, upon the condition of trade, and upon whether the wages were a fair compensation for the infant's services,—all which circumstances were necessary to the construing of the contract.—*Leslie* v. *Fitzpatrick*, 3 Q. B. D. 229.

Injunction.—See *Covenant*, 1.

Insurance.—1. Plaintiff insured his house, worth £1,500, for £1,600. The Board of Works subsequently took the property under statutory power; the price had been agreed, and the abstract of title furnished and accepted, when a fire destroyed the house. *Held*, that the dealings between the Board and the plaintiff did not affect the contract, and the defendants must pay £1,500, the value of the house.—*Collingridge* v. *The Royal Exchange Assurance Corporation*, 3 Q. B. D. 173.

2. Two ships belonging to the same owner collided, and one of them sank and became a total loss. The owner paid into court the amount of tonnage liability in respect of the ship in fault, under the provisions of the Merchant Shipping Acts. The underwriters on the ship lost claimed to be entitled to a portion of this, as they would have been had the ships belonged to different parties. *Held*, that their right in such case existed only through the owner of the ship insured, and not independently, and as he could not sue himself, they could not recover.—*Simpson* v. *Thomson*, 3 App. Cas. 279.

Intention.—See *Domicile.*

International Copyright.—See *Copyright.*

Jurisdiction.—See *Mortgage.*

Jury.—See *Bill of Lading*; *Negligence.*

Lease.—Plaintiff became the owner of a lease of two farms, at a rent of £310 per annum. The lease contained, *inter alia*, a covenant on the part of the lessee not to mow meadow-land more than once a year, and not to underlet any part of the premises without the consent in writing of the lessor; but such consent was not

to be withheld if the proposed sub-lessee was a respectable and responsible person. It was provided, that, if the lessee should wilfully fail to perform the covenants, or if he should become bankrupt, or make a composition with his creditors, or if execution should issue against him, the lessor might re-enter. Eight years before the expiration of the lease, plaintiff entered into negotiations with the defendant, a respectable and responsible person, for an underlease of one of the farms, on the terms under which he himself held it; and he stated that he paid £220 rent for it. An arrangement was made, accordingly, by which defendant was to have possession June 24. Before that time, defendant's solicitors had objected to the above provisions in the original lease, and had noted the same on the margin of a draft lease sent them by plaintiff's solicitors, in pursuance of the arrangement between plaintiff and defendant. They suggested a modification of the original lease. They did not object that plaintiff held no separate lease for the farm at the rent which he stated he paid. While the negotiations were pending, defendant, on June 24, took possession. Subsequently, the modifications not being procured, defendant refused the lease; and, in an action for specific performance, or for damages, it was *held* that taking possession was only evidence of a waiver of objection to the title, and could be rebutted; that, by not noting objection to the plaintiff's holding no separate lease at £220 rent, defendant had waived that; that, if the sub-lessee was a respectable and responsible person, the written consent of the lessor to the sub-lease was unnecessary; that the covenant against mowing meadow-land more than once a year was not an unusual covenant; but that the provision for re-entry on bankruptcy, &c., of the lessee was unusual, and the defendant was not bound to specific performance, nor liable in damages.—*Hyde* v. *Warden*, 3 Ex. D. 72.

See *Covenant*, 2, 3; *Specific Performance*, 1, 2,

Lien.—See *Attorney and Client*, 2; *Vendor's Lien.*

Limitation of Liability.—See *Common Carrier.*

Loan.—See *Partnership.*

Marine Insurance.—See *Insurance*, 2.

Market.—See *Sale.*

Marriage.—B. and S., Portuguese subjects and first cousins, went through the form of marriage in 1864 in London, in accordance with the requirements of English law. Subsequently they both returned to Portugal, and have never lived together. By the law of Portugal, marriages between first cousins are null and void; but the Pope may grant a special dispensation which legalizes such marriage. *Held*, reversing the decision of Sir R. PHILLIMORE, that a petition for nullity of the marriage ought to be granted.—*Sottomayor* v. *De Barros*, 3 P. D. 1; s. c. 2 P. D. 81.

Married Woman.—See *Anticipation.*

Master and Servant.—See *Shipping and Admiralty.*

Misrepresentation.—See *Vendor and Purchaser.*

Mortgage.—A company with power to issue "debenture bonds" and "mortgage bonds," having an office in London and owning land in Florence, issued "obligations" binding themselves, their successors, and all their estate and property, to pay the bearer the sum stated on their face, with interest, in eight years; but reserving the right to call in a certain number of them each year by lot. The company afterwards duly mortgaged its property in Florence, in the Italian form, to a London bank, with notice of the issue of the "obligations." On breach of this mortgage, the mortgagees began proceedings at Florence, and got an order to sell. The plaintiff, holder of some of the "obligations," applied for an injunction to restrain the sale. *Held*, that it was contrary to comity for the court to interfere while proceedings were going on in Florence; also that the "obligations" were not mortgages, but only bonds, and constituted no claim on the land in Florence as against the mortgagee.—*Norton* v. *Florence Land & Public Works Co.*, 7 Ch. D. 332.

See *Attorney and Client*, 2.

Mortmain.—A testator bequeathed the sum of £3,000 to the corporation of T., directing £1,000 to be laid out "in the erection of a dispensary building, which is so urgently needed there," and the remaining £2,000 to be held "as an endowment fund for the said dispensary." The corporation already held lands in mortmain, upon which it could legally build a dispensary. *Held*, that the bequest was void under 9 Geo. II., c. 36, as not expressly prohibiting the purchase of land for the dispensary.—*In re Cox. Cox* v. *Davie*, 7 Ch. 204.

Negligence.—Respondent was a third-class passenger on appellant's underground railway, and at the G. station three persons got in and stood up, the seats in the compartment being already full. The respondent objected to their getting in; but there was no evidence that appellant's servants were aware of it, and there was evidence to show that there was no guard or porter present at the G. station. At the next station the door was opened and shut, but there was no evidence by whom. Just as the train was starting, there was a rush by persons trying to get in; the door was thrown open; the respondent partly rose to keep the people out; the train started, and he was pitched forward, and caught with his hand by the door-hinges to save himself; a porter pushed the people away just as the train was entering the tunnel, and slammed the door to, and thereby respondent's thumb was caught and injured. *Held*, reversing the decision of the Common Pleas and of the Court of Appeal, that there was no evidence that the injury was occasioned by the negligence of the appellant sufficient to go to the jury. It is a question of law for the court to say whether there is any evidence of negligence occasioning the injury to go to the jury. It is a question of fact for the jury to say what weight shall be given to the evidence submitted to them. *Brydges* v. *The North London Railway Co.* (L. R 7 H. L. 213) construed.—*The Metropolitan Railway Co.* v. *Jackson*, 3 App. Cas. 193; s. c. L. R. 10 C. P. 49; 2 C. P. D. 125.

See *Shipping and Admiralty.*

Notice.—See *Bills and Notes*, 4; *Covenant*, 3, 4.

Nullity.—See *Marriage.*

Pannage—Is a grant to the owner of pigs to go of right into the wood of the grantor, and allow his pigs to eat the acorns and beechmast which fall upon the ground. It does not entitle the owner of the right to have the grantor enjoined from cutting down the trees, or, *a fortiori*, from lopping the branches to improve the trees. This is the first pannage case to be found in the books.—*Chilton* v. *Corporation of London*, 7 Ch. D. 562.

Parol Evidence.—See *Will*, 1.

Partnership.—Partnership articles were entered into by M. and S., reciting that, under section 1 of Bovill's Act, (28 & 29 Vict. c. 86), D. had agreed to lend them £10,000, to be invested in the business, subject to the following provisions, *inter alia*, agreed to by all the parties: The capital of the firm is to consist of said £10,000, and such other sums as shall be advanced by any of the parties,—all to bear interest at 5 per cent.; said £10,000 is advanced as a loan by D. under said section of Bovill's Act, and does not, and shall not, render D. a partner; M. or S. only shall sign the firm name; D. shall receive an account current at the end of each year, and be at liberty to examine the books at any time; an inventory shall be taken yearly, and the net profit or loss divided, in the proportion of 25 per cent. to D., and 37½ per cent. each to M. and S. In case of the death of M. or S., the business may continue, and the share of profits of the deceased partner shall be divided *pro rata* between D. and the other; D. may dissolve the partnership in case his original capital of £10,000 be reduced more than one half by losses, or on the death of a partner, and D. may demand for himself a liquidation of the business. On the death of D., his representatives shall not withdraw any of his capital until the termination of the present contract; D. may substitute any other person into his rights; and M. and S. have the same option with D., "by reimbursing him his capital and interest." Under this agreement, D. advanced at different times about £6,000 more. On the bankruptcy of the firm, *held*, that D. was a partner, and could not prove as a general creditor.—*Ex parte Delhasse. In re Megevand*, 7 Ch. D. 511.

Patent.—Three referees were appointed, under an act of parliament, to inquire into the impurities of the London gas, with the right to require the gas companies to afford them facilities for their investigations. As a result of their examination, the plaintiff, one of the referees, thought he had discovered a method of securing greater purity in the gas. The requisite change in the process of manufacture was suggested to the defendant company by the referees, and the company tried it, with success. The referees made their report, incorporating these suggestions and experiments; but the report was withheld from publication for a few days, in order to enable the plaintiff to get out a patent for his discovery. *Held*, that when the knowledge acquired by the plaintiff in the course of his investigation was communicated to the other

members of the official board, it became public property at once, and the other members of the board had no power to consider the information confidential.—*Patterson* v. *The Gas Light & Coke Co.*, 3 App. Cas. 239; s. c. 2 Ch. D. 812.

Perpetuity.—Bequest of two hundred and forty shares railway stock, and four-sevenths of the residue of testatrix' property to trustees, in trust to accumulate the income until twelve months after the death of B., and then for such of B.'s four children as should be living at the expiration of said twelve months, "and the issue then living, and who shall attain the age of twenty-one years or marry, of any of the said children who shall have died," absolutely. *Held*, that the bequests were void, as contrary to the rule against perpetuities. The gift was to a class the members of which might not be ascertained within twenty-one years from the death of B.—*Bentinck* v. *Duke of Portland*, 7 Ch. D. 693.

Pleading and Practice.—See *Negligence.*

Power.—Power given to trustees under a will to appoint to the husband of testator's daughter, in case she should marry with their approbation, the income of the daughter's property after her death, during his life, or such part as the trustees should think proper. The daughter married before the testator's death, and with his consent. The trustees had, at the daughter's death, made no formal approval of the marriage, and made no appointment. *Held*, that the husband was entitled to a life-interest in the property.—*Tweedale* v. *Tweedale*, 7 Ch. 633.

Principal and Agent.—It was the custom of the defendant, through his agent S., in the usual course of business, to make certain advances on goods shipped by third parties, and to draw on the plaintiff for the amount so advanced. In the course of business, S., as agent, rendered a final account to the plaintiff, and in it charged plaintiff with certain advances, which it turned out afterwards had never been made. He then drew on the plaintiff for the amount, received the money, and appropriated the amount falsely charged to his own use. *Held*, that the plaintiff could recover the amount from the defendant.—*Swire et al.* v. *Francis*, 3 App. Cas. 106.

See *Factor.*

Profits and Losses.—See *Partnership.*

Promissory Note.—See *Bills and Notes*, 2, 4.

Protest.—See *Bills and Notes*, 5.

Publication.—See *Patent.*

Railway.—By the Railway and Canal Traffic Act (17 & 18 Vict. c. 31, § 2), railway companies are forbidden to "give any undue or unreasonable preference or advantage to or in favor of any particular person or company," in the matter of carrying and forwarding freight. Plaintiff had a brewery at B., where there were three other breweries. The latter were connected with the M. Railway; plaintiff's was not. In order to get some of the freight from the three breweries away from the M. railway, the defendant railway carried their goods from the breweries to their freight depot free of charge, and still made a profit on the whole transportation. They made a charge to the plaintiff for the same service. *Held*, that this was an "undue preference" within the act, and the plaintiff could recover an amount equal to the cost of carting his goods to defendant's depot.—*Evershed* v. *The Northwestern Railway Co.*, 3 Q. B. D., 134; s. c. 2 Q. B. D. 254.

See *Negligence.*

Ratification.—See *Company*, 3.

Sale.—A man brought into market pigs from his infected herd, out of which many had died, and had them sold, stating that they were to be taken with all faults. *Held*, that he was not liable in damages to the buyer on whose hands the pigs died.—*Ward* v. *Hobbs*, 3 Q. B. D. 150; s. c. 2 Q. B. D. 331.

See *Vendor and Purchaser.—Vendor's Lien.*

Seaworthiness.—See *Bill of Lading.*

Shipping and Admiralty.—L. duly registered as "managing owner" of a sloop, traded with her for some time, employing E. as captain, and paying him regular wages. A verbal agreement was then made between them, that E. should take the ship where he chose, engage the men, and render accounts from time to time to L.; and L. was to have one third of the net profits. While this agreement was in force, and while the sloop was discharging a cargo under a charter-party, expressed to be between the charterers and E., "master, for and on behalf of the owners" of the sloop, she, through the negligence of E., caused damage to the plaintiff's ship. *Held*, that L. was responsible as well as E., for the negligence of E.—*Steel* v. *Lester & Lilee*, 3 C. P. D. 121.

See *Bill of Lading; Demurrage.*

Solicitor.—See *Attorney and Client.*

Specific Performance.—1. Defendant agreed to purchase the lease of a house, "subject to the approval of the title by his solicitor. *Held*, that disapproval of the title, on reasonable grounds and in good faith, by the purchaser's solicitor, released the purchaser from the obligation to specific performance. The stipulation is different from that implied in a usual contract to purchase, that the vendor shall make a good title.—*Hudson* v. *Buck*, 7 Ch. D. 683.

2. Plaintiff made a tender for the lease of a farm at £500 rental, mentioning the farm by name, and two different lots, which he meant to include in it, which amounted in all to about 250 acres. Defendant's agent did not look to see what lots were specified in the plaintiff's offer, but took it for granted that they were the same as those specified in another offer from one A., which he had just before opened, that being an offer for said farm, excluding one of said lots and thus containing about 235 acres. The agent also said that he intended to let the said farm as containing 214 acres only, that being the quantity it contained, excluding the two additional lots; and he offered to grant a lease of 214 acres at £500 rent, the other two lots having been already let to other parties. *Held*, that a lease for 214 acres should be granted at a rent reduced from £500, in the proportion of 214 to 235.—*McKenzie* v. *Hesketh*, 7 Ch. D. 675.

Trust.—1. A testatrix left her property to her sister, and attached to it a precatory trust that the latter should leave it to K's "children, John, Sophia and Mary Ann." *Held*, that, in executing the trust, the sister could limit the shares of the daughters to their separate use.—*Willis* v. *Kymer*, 7 Ch. D. 181.

2. A sale and adjustment of a testator's property was made by trustees, under a decree of court, and years afterwards, some of the residuary legatees, being minors, brought a bill by their next friend to have the sale set aside, on the ground that the adjustment was improper and brought about by the fraud of one of the trustees. The bill was dismissed on its merits. *Held*, that as the minors' next friend could not respond in costs, the trustee charged with fraud, who appeared and defended, was entitled to costs out of the estate, as he had defended that, as well as his own character.—*Walters* v. *Woodbridge*, 7 Ch. D. 504.

3. Two trustees advanced money to A., a builder, on security of land purchased by A., of B., the defendant and one of the trustees, and which A. had built upon. The money was used partly to pay for the land, and partly to repay other sums which A. owed B. The plaintiff, the other trustee, knew that A. and B. had had business relations. A. went into bankruptcy; and the plaintiff filed a bill against B., his co-trustee, alleging that the security was insufficient, and asking that the property be sold, and that the defendant be held to make up the deficiency. —Refused.—*Butler* v. *Butler*, 7 Ch. D. 116; s. c. 5 Ch. 554.

Vendor and Purchaser.—The plaintiff purchased a piece of property, had the title examined by his solicitor, was advised that it was good, and completed the purchase. He subsequently discovered that certain parties were entitled to the flow of water through an underground culvert, the existence of which he was not informed of, and had not discovered in examining the title. *Held*, that, after the execution of the conveyance and completion of the purchase, he could not obtain compensation for such defect.—*Manson* v. *Thacker*, 7 Ch. D. 620.

See *Composition; Covenant*, 5; *Specific Performance*, 1.

Vendor's Lien.—The respondents purchased of the appellants at various times between Feb. 13 and June 1, 1876, parcels of tea imported by the latter, and lying in a bonded warehouse kept by them. At each transaction a warehouse warrant, indorsed in blank was given the indorsers by the appellants, stating that the tea had been warehoused by the appellants Jan. 1, 1876. Subsequently the appellants added to the blank indorsements the name of the respondents, thus making the goods deliverable to the respondents' order alone. Warehouse rent was charged by the appellants from Jan. 1, 1876, to the delivery of each lot, and paid by the respondents. The latter having become bankrupt before their notes given for the tea were paid, the appellants claimed a vendor's lien on the tea sold to the respondents and remaining in their warehouse. *Held*, that there had been no delivery, and the lien was good.—*Grice* v. *Richardson*, 3 App. Cas. 319.

Warehouseman.—See *Vendor's Lien.*

Warranty.—See *Bill of Lading.*

Will.—1. A testator left £600 to the children

of his daughter by any other husband than "Mr. Thomas Fisher, of Bridge street, Bath." At the date of the will there was a Thomas Fisher living in Bridge street, Bath, who was married and had a son, Henry Tom Fisher, who sometimes lived with his father, and who had paid his addresses to the daughter, and after the testator's death, married her. On the question whether their child was entitled to the £600, *held*, that evidence of the above facts was admissible to show who was meant by the testator.—*In re Wolverton Mortgaged Estates*, 7 Ch. D. 197.

2. C., by will, gave £12,000 in trust for his four daughters; as to £3,000 thereof to his daughter S. for life, and at her death to her children then living. If she left no child, the income was to be paid to the other daughters then living, and to the survivor or survivors; and, after the decease of the last surviving daughter, the £3,000 to the child or children of such last surviving daughter, and, if there were no such children, the same was to "be paid to such persons as will then be entitled to receive the same as my next of kin," under the statute of Distributions. A similar provision was made as to the share of each of the other daughters. S. died leaving issue. The other three daughters subsequently died without issue. On the application of the personal representative of the last survivor, *held*, reversing the decision of Bacon, V. C., that the time to ascertain the class of next of kin was the death of the testator, not the death of the last surviving daughter.—*Mortimer* v. *Slater*, 7 Ch. D. 322.

3. A testator recited that his son had become indebted to himself in various amounts, describing them, and bequeathed to the son said amounts, and released him from payment thereof, and of "all other moneys due from him to" the testator. By a codicil, he released to the son another sum, which the son had misappropriated after the date of the will. At the testator's death the son was indebted to him in other sums, incurred after the date of the codicil. *Held*, reversing the decision of MALINS, V. C., that the will must speak from the testator's death, and the release applied to all debts incurred before that time.—*Everett* v. *Everett*, 7 Ch. D. 428; s. c. 6 Ch. D. 122.

4. Testator left his property in trust for his children, the shares of the sons to be paid them at the age of twenty-five, those of the daughters to be settled to their separate use for life, remainder in trust for their issue. Then followed this clause: "And in case of the death of my said daughters or of any of my sons before they shall attain their respective ages of twenty-five years, or of such of them as shall not have received his or their share or respective shares of and in my estate, for the reasons aforesaid, without lawful issue, or having such, and they shall happen to die, being a son or sons, before he or they shall have attained the age of twenty-five years, or being a daughter or daughters, before the age of twenty-one years or marriage, then and in such case I do hereby will and direct that the share or shares of him, her or them so dying, shall go and be divided equally between my surviving children, and be paid to them or applied to their uses in such manner as his or their original shares are hereby directed to be paid and applied, * * * * according to the true intent and meaning of my will." The testator left three sons who attained the age of twenty-five, and three daughters, who all married and attained to the age of twenty-five. Two daughters died leaving issue still living. One son died unmarried, and one leaving issue still living; then the third daughter died without issue, and finally the third brother died. On a petition for the payment of the share of the third daughter to the persons entitled, *held*, reversing the decision of the Master of the Rolls, that "surviving children" meant "other children," and that the share in question was to be divided into fifths, and paid, one-fifth each, to the issue or personal representatives of the two sisters and three brothers of the deceased.—*Lucena* v. *Lucena*, 7 Ch. D. 255.

5. A testator directed his trustees to hold a fund in trust "for my child (if only one), or for all my children (if more than one), in equal shares, and so that the interest of a son or sons shall be absolutely vested at the age of twenty-one years, and of the daughter or daughters at that age or marriage." *Held*, that these interests were at the testator's death vested, though subject to be divested in certain events.—*Armytage* v. *Wilkinson*, 3 App. Cas. 355.