The Legal News.

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COMMON BARRATRY.

A remarkable instance of prosecution for common barratry occurred recently in Maryland. One Wagner was charged with having brought innumerable actions against at least fifty different persons in the county, upon purely fictitious causes of action. For example, it was said that on a single day he had instituted nearly one thousand suits, of which 126 were against one person, 121 against another, and 120 against a third. The objection, however, was taken at an early stage, that all these suits were brought by Wagner in his own name, and that the offence of common barratry consists in inciting others to bring suits. The Court decided the point in Wagner's favor, and he was discharged.

THE BRADLAUGH CASE.

The election of Mr. Bradlaugh to the House of Commons raised a somewhat important question of form. The oath of allegiance required of members is in the following words: "I do solemnly swear to be faithful, and true allegiance bear to Queen Victoria and her heirs and successors according to law. So help me God." Quakers are permitted simply to affirm. Mr. Bradlaugh is not a Quaker, but a professed unbeliever in any religious creed. No doubt, others who were unable to accept the truth of the Christian faith have sat in Parliament—the late John Stuart Mill furnishes a notable illustration, and probably some atheists have also been elected. But Mr. Bradlaugh, apparently, is the first who has scrupled to take the oath. A committee having been appointed to search for precedents, the opinion of the committee was equally divided as to the propriety of dispensing with the oath, and the chairman gave his casting vote in the negative. Mr. Bradlaugh finally offered to take the oath under protest, his protest, we presume, amounting to this, that he regards the oath as an unmeaning form, but that he complies with the rule in order to save trouble. This proposal, however, was strenuously resisted, and a motion that Mr. Bradlaugh be not allowed to take the oath was, after long debate, lost only by 289 to 214. The matter was then referred to a new select committee, as suggested by Mr. Gladstone.

SUNDAY WORK.

A case of some interest, *Leslie* v. *Mackie*, has occurred in Scotland, concerning the work which a master may lawfully require his servant to do on a Sunday. The defendant, in a suit for wages, was a medical man practising in a country district, and late one Saturday night he returned home with a gig borrowed from a friend while his own was being repaired. He directed the pursuer (or plaintiff), a lad of about 17 in his service, to wash the gig on Sunday morning, as he had to go out early on professional duty. This order was given on Saturday night. The lad refused to do the work on Sunday, on the ground that it was not a work of necessity or mercy, but he offered to wash the gig immediately. His father supported him in his refusal, and the defendant declining to retain him in his service unless he obeyed orders, an action was brought in the Sheriff Court for wages. The question to be decided was whether the defendant's order to his servant to clean the gig on Sunday was justifiable. The Court admitted fully that in Scotland handiwork which is not done of necessity nor for mercy's sake, is when done on Sunday a breach of the law; but a distinction had to be drawn between the case of a workman ordered to work at his craft or to serve in a shop for the sake of making gain for his master, and the case of a domestic servant ordered to perform an ordinary menial office *intra parietes* of a private house, with which the public has no concern, and which is only for the master's convenience, and is incidental to the necessary domestic work and household arrangements. "It is further essential to bear in mind," observed the Judge, "that in determining what is work of necessity in a domestic establishment a great deal must be left to the discretion of the master. Life would be intolerable in a house in which the servants were to refuse to do a certain piece of ordinary work on a Sunday which their employer thought necessary, on the ground that they were of a different opinion. The main

difficulty I have in the case arises from the fact that the pursuer seems to have been willing to clean the gig on the Saturday night, so as to obviate the necessity for Sunday work, but with reference to this, the principle which I have above alluded to comes in. The master must be the ultimate judge in such a matter. It is inherent in the relation of master and servant that the will and opinions of the one must yield to those of the other, except when the order is plainly illegal." The judgment was given, therefore, in favor of the master.

NOTES OF CASES.

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

February 14, 1880.

Present:—Sir James W. Colvile, Sir Barnes Peacock, Sir Montague E. Smith, Sir Robert P. Collier.

Bourgoin et al., Appellants, and La Compagnie du Chemin de Fer de Montréal, Ottawa & Occidental, and Ross, Respondents.

Award under Railway Act, 1868—*Must consist in a fixed sum.*

The appeal was from the judgment of the Court of Queen's Bench. 2 Legal News, p. 131, 23 L. C. J., p. 96.

Per Curiam. The only question which has been fully argued upon the four appeals consolidated in this record is whether the judgment of the Court of Queen's Bench rendered in the first suit, No. 693, was right in annulling and setting aside the award of the 28th of July, 1876, upon either of the grounds stated in it. As to one of those grounds which proceeds upon the assumption that the lump sum of $35,013, awarded to the Appellants, included the whole value of the land, and not merely the value of their interest as lessees, it is not necessary to say anything, because that objection has not been pressed.

The question, therefore, is reduced to this: can the judgment be supported on the other ground taken? Their Lordships confined the argument, in the first instance, to that question, because they thought that if the award was found to be invalid on the face of it, that finding would go far to dispose of all or most of the questions which have been litigated between the parties. They will, therefore, for the present, confine their attention to the first of the suits and the final judgment therein, nor will they go into the facts further than is required in order to elucidate the single point to be now determined. The Appellants are four persons holding a quarry, as lessees, under a Mrs. Smith. They are sometimes described as working together in two partnerships of two each, as "Bourgoin et Fils" and "Bourgoin et Lamontagne," but for all practical purposes they may be treated as the four joint lessees of the quarry. The Respondents, who were the Plaintiffs in the suit, are a Railway Company, styled on the record "The Montreal, Ottawa and Western Rail-"way Company." This Company was incorporated originally under another title, viz., "The "Montreal Northern Colonization Railway "Company," by an Act of the Legislature of the Province of Quebec (32 Vict., c. 55), and was governed by that and a subsequent statute of the same Legislature, 34 Vict., c. 23. It was, therefore, in its inception a provincial railway. In 1873, however, the Parliament of Canada, by Act 36 Vict., c. 82, declared this railway to be a federal enterprise, and by a subsequent statute (38 Vict., c. 68) changed the name of the Company to that which it bears on this record. Hence, when the proceedings which resulted in the award in question were commenced, the railway had become a federal railway, and the Respondent Company was subject to and governed by the provisions of the Canadian statute known as "The Railway Act, 1868."

It appears that, in one or other of the above two states of existence, this Company had proceeded in the usual way to ascertain the compensation payable to the lessor, Mrs. Smith, in respect of her freehold interest in the land to be expropriated. The Appellants intervened, and sought to have the sum payable to them for compensation in respect of their interest as lessees ascertained by the same proceeding. The Company declined to accede to this, and having settled the amount of compensation payable to Mrs. Smith, took possession of the quarry. The Appellants upon that instituted certain proceedings, in order to compel the Company to ascertain the compensation due to them; those proceedings were ultimately successful, and thereupon the Company gave the

notice of the 22nd of February, 1875, which was the foundation of the proceedings that resulted in the award. Their Lordships think it right here to observe that, in their opinion, there is nothing exceptional in that notice, nothing which supports the suggestion that its terms were varied by reason of the Company having previously, and perhaps wrongfully, taken possession of the quarry. It appears to them to be the usual notice contemplated by "The Railway Act of 1868." The words which have been so much relied on as authorizing the arbitrators to settle all questions between the parties have been taken *verbatim et literatim* from the 10th sub-section of the 9th Section of that Statute. After the service of the notice, arbitrators were appointed and the award in question was made, and the only two documents besides the notice which seem to be in any way material for the decision of the question now to be determined are, the award itself, which is at page 12, and the claim of the Appellants, which is at page 20 of the record.

The material passage in the award, upon which the whole question turns, is that whereby the arbitrators, after stating that they had proceeded to assess the compensation to be paid by the Company to the Appellants for the price of land described, and for all the damages resulting from the taking possession of the same, and had visited the said piece of land, and estimated with care and established the value of it, and the amount of the said damages, proceeded to award—

"The sum of $35,013, *plus* $100 per month from this date, payable on the first of each month, until the said Company shall have set free the watercourse serving to drain the quarries adjacent to the expropriated land, and constructed a culvert to protect the said watercourse, as being the amount of compensation to be paid by the said Montreal Northern Colonisation Railway Company, now called 'the Montreal, Ottawa, and Western Railway Company,' to the said 'Bourgoin et Fils' and Bourgoin and Lamontagne for the said piece of land, and for all the damages resulting from the possession of the same."

The objection taken to the award is now confined to that portion of the passage just quoted, which includes and follows the word "plus," and relates to what the arbitrators seem to have considered as wholly or in part the compensation due to the Appellants in respect to that portion of their claim which was comprehended in the words of its 4th head, and claimed damages for the watercourse diverted by the Company, and for pumping and work to be done at the rate of $600 per annum for eight years (which they treated as the probable duration of their lease), and amounting to a gross sum of $4,800. Their Lordships, after full consideration of this case, and the learned arguments upon it, have come to the conclusion that, in respect of the passage in question, the award is bad upon the face of it. The case of the Appellants was very ingeniously put, particularly by Mr. Fullarton. His argument was to this effect: He said that the arbitrators probably conceived that, if they gave the full sum claimed on the assumption that the interruption of the drainage would last for the whole duration of the lease, fixed at eight years, they might be doing great injustice to the Company; that by virtue of the 6th sub-section of the 7th Section of "the Railway Act, 1868," which is in these words:—

"To construct, maintain, and work the railway across, along, or upon any stream of water, watercourse, canal, highway or railway which it intersects or touches; but the stream, watercourse, highway, canal, or railway so intersected or touched shall be restored by the Company to its former state, or to such a state as not to impair its usefulness;"

the Company was, to the knowledge of the arbitrators, under a statutory obligation to restore the watercourse; that they assumed that the Company would perform that statutory obligation as soon as possible; and accordingly assessed the damages in the manner complained of in case and for the supposed benefit of the Company; and further, that it was competent to them so to do.

The motives of the arbitrators, whatever they may have been, cannot validate their act if that were *ultra vires*. And the first observation which their Lordships have to make is that, as they read the statute, it was not competent to the arbitrators to impose the payment of a rent or periodical sum at all. The word "rent," no doubt, occurs in several of the subsections of section 9; but their Lordships think

that the use of the word is always to be explained by a reference to the provisions contained in the sub-sections 3, 4 and 8, and that in every case, except those in which the parties expropriated fall within the description of "corporations or persons who cannot in com- "mon course of law sell or alienate the lands "set out and ascertained," it is the duty of the arbitrators to fix as compensation, such a gross sum or sums as would be capable of being paid or tendered at once to the parties entitled to the same under the 27th sub-section, or into Court under the 34th sub-section, of the 9th section of the Act, in order to entitle the Company to possession under the 27th, or to a confirmation of title under the 34th and 35th sub-sections. It appears, moreover, to their Lordships, that even if a rentcharge could be given by way of compensation in circumstances like these to the expropriated parties, it has not been done in this case; that the monthly sum awarded is not, in any sense of the term, a rent; that it is more in the nature of an assessment of damages payable *in futuro*, and does not in any point of view fall within the provisions of the Act.

A further objection to this part of the award is, that it makes the monthly payment contingent on the completion and erection of certain works, and thus introduces an element of uncertainty which would of itself be a fatal objection to the award. That it is open to the objection of uncertainty is shown by the observations which have been quoted from the judgment of Mr. Justice Tessier, who decided in favor of the Appellants. The learned Judge, p. 403, line 20, assumes that if the culvert is not constructed the annual sum will continue to be payable, not only to the Appellants and their assigns, but to the reversioner, Mrs. Smith. The learned counsel for the Appellants repudiated that construction; but the fact that it was put by the learned Judge upon the document goes to prove that there is some degree of uncertainty in the award. Again, the duration of the Appellants' interest is uncertain, in that they held their lease with the power of renewing it so long as any stone remained to be worked. They might thus prolong the time during which the monthly sum would be payable, by omitting to work the stone, although no doubt the Company would have power to put an end to their liability by doing the works prescribed.

Lastly, there seems to their Lordships to be a fatal objection to the award in the direction to the Company to restore the watercourse in a particular manner, and that by the construction of a culvert. They conceive that it was not within the functions of the arbitrators to prescribe how the Company was to relieve itself from the statutory obligation imposed upon it by the 6th sub-section of the 7th section, or to cast upon them the construction of a culvert which possibly might not be necessary.

It is right now to notice shortly certain authorities which have been invoked in the course of the arguments at the bar. The Chief Justice referred to four cases reported in the 12th Queen's Bench Reports, Upper Canada, as supporting his judgment, whereas the learned Counsel for the Appellants has treated them as authorities in his favor. If those decisions are opposed to the decision of the Court of Queen's Bench of Quebec in this case, that would only show that there is a conflict of authority between the highest Courts of the two provinces, and that it is for their Lordships to decide between them. But their Lordships think that in truth there is no conflict at all, and that the cases in question do go to support the judgment of the Chief Justice in this case. It is to be observed that in all four cases the award was set aside. There is, therefore, no affirmative decision that a clause of this kind in an award is good. The only passage in the judgments in question which seems to their Lordships capable of being treated as in favor of the Appellants is that at page 114 of the volume, in the case of the *Great Western Company* v. *Baby*. Chief Justice Robinson there says:—

"The second and third objections seem also to have been satisfactorily answered. It is not the devisees who are moving against the award, on the ground that some things are directed in their favor which cannot be enforced against the Company; it is the Company who are complaining of the extravagance of the award. If they choose to object against the making and maintaining the tank spoken of, and to keeping open the Ferry street, and can successfully resist both or either of them, that would only show that, so far as the amount of the award

can have been influenced by assuming that those things were to be done, the devisees may have reason to complain that they have been deluded by promises of advantages which cannot be secured to them, and that the sum awarded as the value of their property should therefore have been larger, as they cannot reckon upon enjoying these benefits, which the arbitrators may have taken into account as considerations in their favor, tending to diminish the sum to be awarded."

He goes on to say,—

"Besides, these are not things which the arbitrators have taken upon themselves to direct. They seem rather to have inserted them as being things understood between the parties, and which they had therefore taken into consideration in estimating the damages."

Then, at page 121, after saying that the award must be annulled upon another ground, he says,—

"But, to avoid occasion for question upon any future award, we would suggest that it should be clearly expressed, in the first place, that the sum awarded is given for the value of the lands and tenements or private privileges proposed to be purchased, or for the amount of damages which the claimant is entitled to receive in consequence of the intended railroad in and upon his lands (as the case may be), and that the award should either be silent in regard to any other matter on which the statute gives no authority to the arbitrators to give a direction, or that, if the estimate has been influenced by anything which the Company has engaged to do in order to lessen the inconvenience, it should be plainly expressed that the Company have undertaken to do it, and the particular thing should be so defined as to leave no uncertainty, and no room for future litigation as to what is to be done or allowed by the Company, and at what particular part in their work and in what manner it is to be done."

Therefore this judgment proceeded upon the fact that the Company had agreed and offered to do certain things, not that the arbitrators had imposed upon this Company the obligation to do them, and it points out that the award would be more correctly drawn if it had taken no notice at all of the works in question, or had stated that the Company had voluntarily undertaken to perform them. It gives no countenance to the doctrine that it is competent to arbitrators to impose such an obligation as of their own authority.

Again, the case cited from Sirey's Collection seems to be distinguishable from the present in the manner in which Chief Justice Dorion has pointed out. There a gross sum was awarded, but the gross sum was made reducible if the Company should do something which, as in that Canadian case, they had undertaken to do. The case is certainly distinguishable from the present, both because the compensation awarded was one sum payable at once, and because the Company had undertaken to do the works in question. Several other French decisions have been cited by Mr. Justice Tessier in support of of his view of this award, but it appears to their Lordships impossible to reeoncile the broad principle which he seems to deduce from them, viz., that objections of this kind can only be taken by the person expropriated, and not by the body that expropriates, with the Railway Act of 1868 and its provisions. Their Lordships think that this case ought to be decided upon Canadian legislation and upon Canadian jurisprudence. For that reason they do not notice the case from the Isle of Man, which was cited by Mr. Benjamin.

The only remaining question to be considered is one which was suggested in the course of the argument, viz., whether the objectionable part of the award is severable from that which awards to the Appellant the sum of $35,013, so that the Appellants may recover that, waiving their right to the rest of the compensation awarded. The point was never taken in the Canadian Courts, no offer of waiver was made there, and it may be questionable whether that point can now, for the first time, be raised here. Assuming, however, that it is open to the Appellants, their Lordships are of opinion that the award is not severable in the manner suggested, the compensation improperly awarded being combined as it is with that which was properly awarded, and both declared to be "le montant "de la compensation à être payée, pour le dit "morceau de terre, et pour les dommages résul-"tant de la possession d'icelui." And if they were severed a question might arise, as Mr. Benjamin has argued, whether the award would not be defective in that it failed to deal fully with one of the questions submitted to the

arbitrators, viz., the amount of compensation due to the Appellants under the fourth head of their claim.

This being their Lordships' view, they think that the decision of the Court of Queen's Bench, which annulled and set aside the award as invalid on the face of it, is correct. They have come to that conclusion with considerable regret, because they feel that the Appellants were entitled to a fair compensation for the expropriation of their quarry, and that now, after a vast amount of expensive litigation, they are as far as ever from receiving that compensation. Their Lordships do not say that the fault is wholly that of the Company or wholly that of the Appellants; but the lamentable result remains, and they can only express their hope that in some way or another means will be found to give the Appellants a fair compensation for the expropriation of their quarry, and for the damages which they have sustained thereby. Their Lordships, however, can but decide this question on its legal merits, and they feel that it is of great importance that arbitrators, with the large power given to them by "the Railway Act, 1868," should be kept within the limits of their authority.

The conclusion to which their Lordships have come seems to dispose, not only of the first appeal, but of most of the other questions raised on the record.

SUPERIOR COURT.

[In Insolvency.]

MONTREAL, March 31, 1880.

In re ELMIRE GARON, insolvent, GARON, claimant, and GLOBENSKY, assignee, contesting.

Insolvent—Notes given on the verge of insolvency —Prescription.

MACKAY, J. The claim was on a note made by the insolvent in favor of her brother seven days before she was put into insolvency. The claim was contested, and it was contended that the note must be held to have been given fraudulently. However, the claimant had proved consideration for the note, namely goods sold, and his claim, therefore, could not be rejected. But as there appeared to be good reason why it should be contested, the claim being founded merely on a note given under suspicious circumstances on the eve of the issuing of the Writ of Attachment and without any statement of cause, the contestation would be dismissed without costs.

In a second case, with the same insolvent, and a sister of the insolvent, claimant, the claim was also contested by the assignee, on the ground that the note was given when the insolvent was utterly insolvent, and that it was, therefore, a nullity. It appeared that the claimant had been in the service of the insolvent as a kind of *commis* and servant from 1871, and had a right to at least $4 per month for services rendered during that time. But all this was prescribed except one year, and, therefore, the claim could not be maintained for more than $48, of which $8, for the last two months, was privileged; costs of contestation against the claimant, for her claim had to be contested and was bad for great part.

Lareau & Lebeuf for claimant.

Mousseau & Archambault for assignee contesting.

SUPERIOR COURT.

MONTREAL, Feb. 26, 1880.

GUERTIN v. NOLAN et al.

Action of damages for illegal proceedings on execution—Not supported by a mere technical irregularity where the opposition to the sale was frivolous.

MACKAY, J. The plaintiff in this case was a farmer of St. Marc, and he sued one Nolan and a bailiff named Pepin, for $399 damages for illegal proceedings on an execution. The plaintiff alleged that Nolan, having a judgment against him, caused an execution to issue, addressed to Pepin, the other defendant, a bailiff; that there was an opposition, and yet the defendant went on and sold the effects seized, including even a cow which was exempt from seizure. The plea was that the plaintiff was a maniac; that defendants had acted in good faith; that plaintiff had long been resisting the defendant's proceedings by frivolous oppositions, that he was at the sale himself, and had consented to the sale of the cow. The judge's order for the sale notwithstanding the opposition, appeared irregular, but the plaintiff's opposition was undoubtedly frivolous and uncalled for. No real injury was done to the plaintiff; his cow would not have been sold,

but for his consenting to it, and he had now the price of the cow in his pocket. When his Honor came to look at the proceedings it was apparent that the plaintiff wished to build up a case on a pure technicality. He came before the Court with allegations that were not true. The plaintiff, in fact, had not a particle of equity on his side. He had no real grievance. The Court would not under the circumstances condemn the defendant to pay any damages. The action would be dismissed with costs, on the ground that plaintiff had failed to prove his allegations; was shown to have retarded the execution by opposition, false and frivolous; that he had no right to make claim from the mere fact of filing an opposition, however false and frivolous, &c.

Action dismissed.

D'Amour & Dumas for plaintiff.

Trudel & Co. for defendants.

SUPERIOR COURT.

MONTREAL, May 21, 1880.

GINGRAS v. BRILLON et al.

Testamentary Executor—Causes for removal from office.

The action was brought by one of thirty-five legatees under the will of the late M. Senecal to deprive of their office four executors appointed by the testator for the administration of his succession. The reasons alleged were:—1. Incapacity of certain defendants; 2. Refusal to act by Mme. Senecal and M. Cadieux; 3. Negligence; 4. Bad administration.

TORRANCE, J. The action is brought under C. C. 917. The evidence would require to be very plain which would justify the destitution of the executors from their office, only a few months after they had entered upon the administration. There was certainly too much delay in beginning the inventory, and the time necessary for deliberation by Mme. Senecal does not justify it. Further, the terms attached to the sale of the property were peculiar, but the proceedings were approved of by the legatee now complaining. At any rate, the powers given to the executors under the will are large, and the grievances alleged by the plaintiff are not of a character which would justify the conclusion taken by him. The evidence rather shows capacity and a good administration as well as harmony in the prosecution of the administration by the executors. Action dismissed.

Gingras in person.

C. C. Delorimier for defendant.

COURT OF REVIEW.

MONTREAL, May 31, 1880.

JOHNSON, MACKAY, RAINVILLE, JJ.

FAIR es qual. v. CASSILS et al.

[From S. C., Montreal.

Interlocutory judgment—Judgment ordering plaintiff to make option between two incompatible causes of action.

JOHNSON, J. The defendant moves to reject the inscription by plaintiff, on the ground of the judgment being an interlocutory one, and not, therefore, susceptible of review. The judgment orders the plaintiff to make option within fifteen days between two incompatible causes of action. This is interlocutory merely. It would only become final if after the expiration of the time given to make option, the other party were to move to dismiss the action in consequence of non compliance with the order.

Motion to dismiss inscription granted with costs.

R. & L. Laflamme for plaintiff.

L. N. Benjamin for defendant.

JOHNSON, MACKAY, RAINVILLE, JJ.

DORION v. MARSIL.

[From C. C., Terrebonne.

Appeal from Circuit Court—C. C. P. 1074—Evidence where there was no demand that it be taken in writing.

JOHNSON, J. In this case we have nothing before us in the way of evidence, but the private notes of the Judge, and not in the form required by law. The inscribing party had the right to bring the case here on any point of law; but none is raised, and the judgment therefore being properly before us, and the case having been tried in the Circuit Court, we must presume the evidence was taken as the law directs in such a case, i.e., without written notes, unless there is a demand in writing that it be taken otherwise. Judgment confirmed.

C. L. Champagne for plaintiff.

Prevost & Co. for defendant.

JOHNSON, MACKAY, RAINVILLE, JJ.

JONES v. VANVLIET.

JONES v. PEARSON.

[From S. C., Iberville.

Non-resident plaintiff must give security for costs.

See *Prentice* v. *Graphic Co.*, 1 Legal News, pp. 484, 555; 22 L. C. J., 268.

JOHNSON, J. In these two cases, the Judge below has ordered security for costs to be given by the plaintiff, that is to say, he maintained an exception *dilatoire*, on the ground that the plaintiff had no residence in Lower Canada. The evidence shows that she has been absent for five years, and under Art. 128, C. P., the judgment is quite right. Art. 29 of the C. C. lays down the same rule as to residence.

In *Prentice* v. *The Graphic Co.*, the security was asked on the ground of the plaintiff having no domicile in Lower Canada, and it was refused because it was not alleged he had no residence there. The plaintiff here may have a domicile in Lower Canada for purposes of succession, &c., but she does not reside here, and not residing she must give security. The judgment is confirmed.

Macdonald & Co. for plaintiff.

E. Z. Paradis and *Lacoste & Co.* for defendants.

RECENT U. S. DECISIONS.

Carrier — Public Enemy — Riots — Insurer.—Though rioters and insurgents are not the public enemy, and their acts are no excuse to the carrier, yet, as the liability as insurer does not attach until the goods are received by the carrier for transportation, he is not liable for delay in receiving and carrying the goods, and unexpected overwhelming riot and violence will excuse delay necessarily caused thereby. The fact that the riot is caused by reduction of pay of carrier's employees will not prevent it being sufficient excuse.—*Pittsburg, Cincinnati & St. Louis R. Co.* v. *Hallowell*, (Sup. Ct., Ind., Am. L. Reg. Feb. p. 118.)

Bailee—Sleeping-car Company—Care of passenger's property.—Sleeping-car Companies are neither common carriers nor innkeepers, but they are bound, like other bailees, to use ordinary care, which must be in proportion to the danger, and consequently greater in the night, while the passenger is asleep, than in the daytime. The fact that articles or money, lost or stolen from the passenger, were carried by him about his person, or under his personal supervision, does not exonerate the sleeping-car company from the duty to use ordinary care in respect to them; but the right of recovery is limited to such articles as it is usual and proper for a traveller to carry about his person, and to such a reasonable amount of money as it may be proper for him to carry for his travelling expenses.—*Diehl* v. *Woodruff Car Co.* (Superior Ct., Marion, Ind.—Alb. L. J., Jan. 31, p. 90.)

GENERAL NOTES.

SOLICITORS AND WITNESSES.—The *Law Times* says: The British juryman is a personage of so much importance, that one hesitates to question the propriety either of what he does or what he says. At the risk of committing an impropriety, however, we refer to some remarks by a juryman, who took part in a coroner's inquiry into the cause of death of a seaman of the Royal Navy in one of our southern seaport towns:—The juryman to a witness—Are you an independent witness? Answer—Yes. Juror—By whose solicitation do you come here? Solicitor for one of the parties—I protest against such an imputation. Juror—I saw some witnesses come from your office. Solicitor—There is no reason why I should not see witnesses before they come here. Juror—I was surprised to see them march out of your office. Solicitor—I have a right to examine any witness who comes and makes a statement to me. This is a most improper imputation. Now, with all respect for this juror, it will certainly take the whole of the solicitor's profession by surprise, to learn that there is a reflection upon a professional man, who takes down the statement of a witness to an event, which afterwards results in legal proceedings, such statement being taken down during the progress of such proceedings. It will, no doubt, be something new to this scandalized juryman to learn that nine-tenths of the witnesses in courts of justice have, before giving evidence, attended at a solicitor's office, for the purpose of a full note being taken of the evidence they intend to give. And there is something to be said for the witness to whom the juryman referred, for it is an iniquitous thing to impute to a witness giving evidence upon oath, that because he has been seen to come out of a solicitor's office, such a circumstance tends to discredit his evidence. Really so much unbecoming fuss is sometimes made of jurymen, that if when exercising a little brief authority, they have an exaggerated notion of their functions as jurymen, it is not to be wondered at.