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SUPREME COURT OF CANADA.

OTTAWA, 7 June, 1897.

GAUTHIER v. MASSON.

Quebec.]

Action on disturbance—Possessory action—"Possession annale"—Arts. 946 *and* 948, *C.C.P.—Nature of possession of unenclosed vacant lands—Boundary marks—Delivery of possession.*

In 1890, G. purchased a lot of land 25 feet wide, and the vendor pointed it out to him, on the ground, and showed him the pickets marking its width and depth. The lot remained vacant and unenclosed up to the time of the disturbance, and was assessed as a 25 foot lot to G., who paid all municipal taxes and rates thereon. In 1895, the adjoining lot, which was also vacant and unenclosed, was sold to another person, who commenced laying foundations for a building, and in doing so, encroached by two feet on the width of the lot so purchased by G., who brought a possessory action within a couple of months from the date of the disturbance.

Held, that the *possession annale*, required by article 946 of the Code of Civil Procedure, was sufficiently established to entitle the plaintiff to maintain his action.

Appeal allowed with costs.

Belcourt, for the appellant.

Madore and *Merrill*, for the respondents.

7 June, 1897.

ROBERTSON v. DAVIS.

Quebec.]

Action—Suretyship—Promissory note—Qualified indorsement.

D. indorsed two promissory notes, *pour aval*, at the same time marking them with the words "not negotiable and given as security." The notes were intended as security to the firm of A. & R. for advances to a third person on the publication of certain guide books which were to be left in the hands of the firm as further security, the proceeds of sales to be applied towards reimbursement of the advances. It was also agreed that payment of the notes was not to be required while the books remained in the possession of the firm. The notes were protested for non-payment, and A. having died, R., as surviving partner of the firm and vested with all the rights in the notes, sued the maker and indorser jointly and severally for the full amount. At the time of the action, some of the books were still in the possession of R., and it appeared that he had not rendered the indorser any statement of the financial situation between the principal debtor and the firm.

Held, that the action was not based upon the real contract between the parties, and that the plaintiff was not, under the circumstances, entitled to recover in an action upon the notes.

Held, further, *per* Girouard, J., that neither the payee of a promissory note nor the drawer of a bill of exchange can maintain an action against an indorser, where the action is founded upon the instrument itself.

Appeal dismissed with costs.

Greenshields, Q. C., and *Lafleur*, for the appellant.

Macmaster, Q. C., for the respondent.

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7 June, 1897.

MCGOEY v. LEAMY.

Quebec.]

Agreement respecting lands—Boundaries—Referee's decision—Bornage—Arbitration—Arts. 941-945 *and* 1341 *et seq. C.C.P.*

The owners of contiguous farms executed a deed for the purpose of settling a boundary line between their lands, thereby naming a third person to ascertain and fix the true division line

upon the ground, and agreeing further to abide by his decision and accept the line which he might establish as correct. On the conclusion of the referee's operations one of the parties refused to accept or act upon his decision, and action was brought by the other party to have the line so established declared to be the true boundary and to revendicate the strip of land lying upon his side of it.

Held, reversing the judgment of the Court of Queen's Bench, that the agreement thus entered into was a contract binding upon the parties to be executed between them according to the terms therein expressed, and was not subject to the formalities prescribed by the Code of Civil Procedure relating to *bornage* or arbitration.

Appeal allowed with costs.

Foran, Q. C., for the appellant.

Geoffrion, Q. C., (*Champagne* with him) for the respondent.

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7 June, 1897.

TURCOTTE v. DANSEREAU.

Quebec.]

Action—Service of—Judgment by default—Opposition to judgment—Reasons of—"Rescissoire" joined with "Rescindant"—Arts. 16, 89, *et seq.* 483, 489, *C.C.P.—False return of service.*

No entry of default for non-appearance can be made, nor *ex parte* judgment rendered, against a defendant who has not been duly served with the writ of summons, although the papers in the action may have actually reached him through a person with whom they were left by the bailiff.

The provisions of articles 483 and following of the Code of Civil Procedure of Lower Canada relate only to cases where a defendant is legally in default to appear or to plead, and have no application to an *ex parte* judgment rendered, for default of appearance, in an action which has not been duly served upon the defendant, and the defendant may at any time seek relief against any such judgment and have it set aside notwithstanding that more than a year and a day may have elapsed from the rendering of the same, and without alleging or establishing that he has a good defence to the action on the merits.

An opposition asking to have a judgment set aside, on the ground that the defendant has not been duly served with the action, which also alleges the defendant's grounds of defence upon the merits, should not be dismissed merely for the reason that the *rescissoire* has thus been improperly joined with the *rescindant*.

Appeal allowed with costs.

Languedoc, Q. C., for the appellant.
Lajoie, for the respondent.

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7 June, 1897.

VALADE v. LALONDE.

Quebec.]

Sale—Donation in form of gift in contemplation of death—Mortal illness of donor—Presumption of nullity—Validating circumstances—Dation en paiement— Arts. 762, 989, *C. C.*

During her last illness and a short time before her death, B. granted certain lands to V., by an instrument purporting to be a deed of sale, for a price therein stated, but in reality the transaction was intended as a settlement of arrears of salary due by B. to the grantee, and the consideration acknowledged by the deed was never paid.

Held, reversing the decision of the Court of Queen's Bench, that the deed could not be set aside and annulled as void, under the provisions of article 762 of the Civil Code, because the circumstances tended to show that the transaction was actually for good consideration (*dation en paiement*), and consequently legal and valid.

Appeal allowed with costs.

Geoffrion, Q. C., and *Beaudin, Q. C.*, for appellant.
Madore, for the respondents.

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7 June, 1897.

CHARLEBOIS v. SURVEYER.

Quebec.]

Malicious prosecution—Probable cause.

S., being a holder of a promissory note endorsed to him by the payees, sued to recover the amount, but his action was dismissed

upon evidence that it had never been signed by the person whose name appeared as maker, nor with his knowledge or consent, but had been signed by his son without his authority. The son's evidence on the trial of the suit was to the effect that he never intended to sign the note, and if he had actually signed it with his father's name, it was because he believed that it was merely a receipt for goods delivered by express. Immediately after the dismissal of the suit, S. wrote to the payees asking them if they would give him any information which would help him in laying a criminal charge in order to force payment of the note and costs. He also applied to the express company's agent, by whom the goods were delivered and the note procured, and was informed that there was a receipt for the goods, but that the signature was denied, and could not be proved. However, without further inquiry, and notwithstanding the warning of a mutual friend against taking criminal proceedings, S. laid an information against the son for forgery. The police magistrate at Montreal, upon the investigation of the charge, declared it to be unfounded and discharged the prisoner.

Held, reversing the judgments of both courts below, that under the circumstances, the prosecution was without reasonable or probable cause, and the plaintiff was entitled to substantial damages.

Appeal allowed with costs.

Saint-Pierre, Q. C., for the appellant.
Geoffrion, Q. C., and *Beaudin, Q. C.*, for the respondent.

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7 June, 1897.

GUERTIN v. GOSSELIN.

Quebec.]

Collocation and distribution—Appeal against—Art. 761, *C.C.P.—Hypothecary claims — Assignment — Notice — Registration — Prête nom—Arts.* 20 *and* 144 *C.C.P.—Action to annul deed—Parties in interest—Incidental proceedings.*

The appeal from judgments of distribution under article 761 of the Code of Civil Procedure is not restricted to the parties to the suit, but extends to every person having an interest in the distribution of the moneys levied under the execution.

The provision of article 144 of the Code of Civil Procedure, that every fact of which the existence or truth is not expressly denied or declared to be unknown by the pleadings filed shall be held to be admitted, applies to incidental proceedings upon an appeal in the Court of Queen's Bench.

The nullity of a deed of assignment can only be invoked by proceedings to which all persons interested in the deed have been made parties.

Appeal allowed with costs and case remitted for hearing on the merits.

Béique, Q. C., and *Lafontaine, Q. C.*, for the appellant.

Geoffrion, Q. C., (*Paradis* with him) for the respondent.

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7 June, 1897.

DAVIS v. CITY OF MONTREAL.

Quebec.]

Master and servant—Hiring of personal services—Municipal corporations—Appointment of officers—Summary dismissal—Libellous resolution—Statute, Interpretation of—Difference in text of English and French versions—52 Vic. c. 79, s. 79 (Q.)—"A discrétion"—"At pleasure."

The charter of the City of Montreal, 1889, (52 Vict. ch. 79), section 79, gives power to the city council to appoint and remove such officers as it may deem necessary to carry into execution the powers vested in it by the charter, the French version of the act stating that such powers may be exercised "à sa discrétion," while the English version has the words "at its pleasure."

Held, that notwithstanding the apparent difference between the two versions of the statute, it must be interpreted as one and the same enactment, and that the city council was thereby given full and unlimited power in cases where the engagement has been made indefinitely as to duration, to remove officers summarily and without previous notice, upon payment of only the amount of salary accrued to such officer up to the date of such dismissal.

Appeal dismissed with costs.

Madore, for the appellant.

Ethier, Q. C., for the respondent.

7 June, 1897.

DEMERS v. MONTREAL STEAM LAUNDRY CO.

Quebec.]

Appeal—Questions of fact—Second appellate court.

Where a judgment upon questions of fact rendered in a court of first instance has been reversed upon a first appeal, a second court of appeal should not interfere to restore the original judgment, unless it clearly appears that the reversal was erroneous.

Appeal dismissed with costs.

Geoffrion, Q. C., and *Goyette*, for the appellant.

McGibbon, Q. C., for the respondent.

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7 June, 1897.

GUERTIN v. SANSTERRE.

Quebec.]

Building societies—Participating borrowers—Shareholders—C.S. L.C., c. 69—42 and 43 V. c. 32—Liquidation—Expiration of classes—Assessments on loans—Notice of—Interest and bonus—Usury laws—C.S.C., c. 58—Art. 1785, C.C—Administrators and trustees—Sales to—Prête nom—Art. 1484 C.C.

S. applied to a building society for a loan of $3,500, which was subsequently advanced to him upon signing a deed of obligation and hypothec submitting to the conditions and rules applicable to the society's method of carrying on their loaning business, and declaring that he had become a subscriber for shares in the company's stock for an amount corresponding to the amount of the loan, namely 70 shares of the nominal value of $50 each in a class to expire after 72 monthly payments, or in six years from the date of its commencement (July, 1878), this term corresponding with the term fixed for the repayment of the loan. He thereby also agreed to make monthly payments of one per cent. each upon the stock and that the loan should be repaid at the expiration of the class, when, upon the liquidation of the business of that class, members would be entitled to the allotment of their shares subscribed as paid up, partly by the monthly instalments and partly by accumulated profits to be derived from whatever moneys had been paid in and invested for the benefit of that

class, at which time, whatever he might be so entitled to receive in shares of stock should be credited towards the reimbursement of the loan. He further obliged himself to pay, as interest and bonus, the additional sum of one per cent. upon the loan by similar monthly instalments during the time it remained unpaid. S. paid all the instalments by semi-annual payments of $420 each, until 1st May, 1884, making a total of seventy monthly instalments of $70 each, leaving two more instalments of each kind still to become due before the date originally fixed for the termination of his class. The society went into liquidation under the provisions of 42 and 43 Vic. (Quebec,) ch. 32 in January, 1884, prior to A's last payment and about six months before the date fixed for the expiration of his loan. In October, 1884, the liquidators of the society, in the exercise of the powers vested in the directors under the deed and the society's regulations, passed a resolution declaring a deficit in business of the class to which A. belonged, and, in order to provide the necessary funds to meet the proportion of deficit attributed as his share, they thereby exacted from him a further series of twenty-eight monthly payments in addition to the seventy-two instalments contemplated at the time of the execution of the deed. Subsequently, (in 1892), the plaintiff as transferee of the society, brought action for the two original instalments remaining unpaid, and also for the amount of the twenty-eight additional monthly payments upon the loan and the subscription of shares.

Held, that the subscription for shares and the obligation undertaken in the deed constituted, upon the part of the borrower, merely one transaction involving a loan and an agreement to repay the amount advanced with interest and bonuses thereon, amounting together to a rate equivalent to interest at twelve per centum per annum on the amount of his loan; that the fact of the building society going into liquidation had the effect of causing all classes of loans then current to expire at the date when the society was placed in liquidation, notwithstanding that the various terms for which such classes may have been established had not been fully completed; that under the provisions of the statute, 42 and 43 Vic. (Quebec,) ch. 32, liquidators have the same powers in regard to the determination of the affairs of expired classes and to declare deficits therein and to call for further payments to meet the same, as the directors of the society had while it continued in operation; that the notice re-

quired by the twenty-first section of the Act, 42 and 43 Vic. (Quebec,) ch. 32, does not apply to cases where liquidators have determined a loss upon the expiration of a class and required the full amount exigible upon loans to be paid by borrowers; that, notwithstanding that the liquidation proceedings deprived the directors of the exercise of their powers as to the determination of the condition of the affairs of a class and of the exaction of a further payment when exigible in such cases on the expiration of a class, the resolution of the liquidators determining a deficit in the borrower's class, and requiring full payment of all sums exigible under his deed of obligation, was sufficient to constitute a valid right of action against the borrower for the amount of the balance of principal money loaned together with the interest and bonus instalments remaining due thereon according to the terms and conditions of his deed of obligation. (Judgment of the Court of Queen's Bench reversed.)

Held, further, affirming the decisions of both Courts below, that in an action where no special demand to that effect has been made, the Court cannot declare the nullity of a deed of transfer alleged to have been made in contravention of the provisions of article 1484 of the Civil Code.

Appeal allowed with costs.

Trenholme, Q. C., and *Béique, Q. C.*, for the appellant.
Geoffrion, Q. C., and *P. H. Roy*, for the respondents.

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1 May, 1897.

Ontario.]

BROUGHTON v. TOWNSHIP OF GREY ET AL.

Municipal law—Drainage—Assessment—Inter-municipal obligations—By-law—Ontario Drainage Act of 1873—36 *Vict., c.* 38 (*O*); 36 *V., c.* 39 (*O*); *R.S.O.* (1887) *c.* 184—*Ontario Consolidated Municipal Act of* 1892—55 *V., c.* 42 (*O*).

Where the council of a municipality assumed to pass a by-law under section 585 of the Consolidated Municipal Act of Ontario (55 Vic., ch. 42) for the construction, maintenance and repair of drainage works, and thereby to charge and assess lands in an adjoining municipality for benefit as for outlet, in order to raise the funds necessary to meet the cost of such works,

Held, reversing the judgment of the Court of Appeal for Ontario, (23 Ont. App. Rep. 601) and of the Division Court (26

O. R. 694) that as the drain only emptied into a natural stream extending into the adjoining municipality, the lands in said adjoining municipality purported to be affected by such by-law were not assessable for a liability thereunder to contribute towards the cost of the works, and so far as they were concerned the by-law was *ultra vires* of the initiating municipal corporation; and that a person whose lands might appear to be affected thereby or by any by-law of the adjoining municipality proposing to levy contributions toward the cost of such works, would be entitled to have the adjoining municipality restrained from passing a contributory by-law or taking any steps towards that end by an action brought before the passing of such contributory by-law.

Appeal allowed with costs.

Mabee, for the appellant.
Garrow, Q. C., for respondent Grey.
McPherson, for respondent Elma.

OTTAWA, 1 May, 1897.

Privy Council Reference]

IN RE CRIMINAL CODE, 1892, BIGAMY SECTIONS, 275-276.

Constitutional law—Criminal Code, ss. 275-276—Bigamy—Canadian subject marrying abroad—Jurisdiction of Parliament.

Sections 275 and 276 of the Criminal Code of 1892, respecting the offence of bigamy, are *intra vires* of the Parliament of Canada. *Macleod* v. *Atty. Genl. of New South Wales* (1891, C.C. 445) distinguished. Strong, C.J., *contra*.

Newcombe, Q. C., Deputy Minister of Justice, for Government of Canada.

RECENT U.S. DECISIONS.

Strikes.—A patrol of strikers in front of a factory is held, in *Vegelahn* v. *Guntner* (Mass.) 35 L.R.A. 722, to be a private nuisance when instituted for the purpose of interfering with the business, and it is no justification that the motive or purpose of the strikers is to secure better wages.

Contracts.—The law as to contracts against public policy is held, in *Doane* v. *Chicago City R. Co.* (Ill.) 35 L.R.A. 588, to be applicable to a contract by which a street railway company purchases the consent of a majority of the owners of the frontage

on a street in order to secure from the common council permission to lay railway tracks therein.

A contract extending the monopoly of a patent to an unpatented and unpatentable article necessary to the operation of a patented machine by a provision that this article shall be bought exclusively from the patentee is sustained, in *Heaton Peninsular Button Fastener Co.* v. *Eureka Specialty Co.* (C. C. App. 6th C.) 35 L.R.A. 728.

Corporation.—The legal capacity of a corporation to take property by will in excess of the amount prescribed by its charter is held, in *Congregational Church Building Society* v. *Everitt* (Md.) 35 L.R.A. 693, to be a matter which cannot be questioned by heirs at law or next of kin but only by the state.

Libel.—A libellous publication concerning a family in its collective capacity is held actionable in favor of any member of the family in *Fenstermaker* v. *Tribune Pub. Co.* (Utah) 35 L.R.A. 611. The case holds that a newspaper article which relates wholly to the private acts of a family with respect to cruel treatment of a child is not privileged.

The general or managing editor of a newspaper which publishes a libel is held, in *Smith* v. *Utley* (Wis.) 35 L.R.A. 620, to be responsible for the libel, whether he knows of the publication or not.

Prescription.—An adverse use which is not continuous, but which consists in the use of a dam during certain months of every year for the purpose of sluicing logs, is held, in *Swan* v. *Munch* (Minn.) 35 L.R.A. 743, to be sufficient to create an easement by prescription.

Nolle prosequi.—The power of a district attorney to enter a *nolle prosequi* after the conviction of the accused is completed is denied, in *State, ex rel. Butler* v. *Moise* (La.) 35 L.R.A. 701. The annotation analyzes the authorities as to the power of a public prosecutor to dismiss a prosecution.

Photographs as evidence.—A photograph of the scene of an accident is held, in *Dederichs* v. *Salt Lake City R. Co.* (Utah) 35 L.R.A. 802, to be admissible in evidence to aid the understanding of the facts.

But in *Hampton* v. *Norfolk & W. R. Co.* (N.C.) 35 L.R.A. 808, a photograph of a place is held inadmissible on the question of the existence or non-existence of a path at a certain time if

the picture was taken two years later, after the situation had changed, and a map made near the time was already in evidence. With these cases are reviewed the other authorities on the use of photographs in evidence.

Innkeeper.—For thefts by hotel employees from guests while asleep in rooms assigned them at a hotel, even if they are intoxicated, it is held, in *Cunningham* v. *Buckey* (W. Va.) 35 L.R.A. 850, that the innkeeper is liable.

Mutual Benefit Society.—The right to reinstatement after forfeiture of membership in a mutual benefit society for default of payments is held, in *Carlson* v. *Supreme Council American Legion of Honor* (Cal.) 35 L.R.A. 643, to be terminated by the death of the member without payment during the time allowed for reinstatement, and a subsequent tender by the beneficiary within that period is unavailing.

Insurance.—So long as the remnant of a building which is left standing is reasonably adapted for use as a basis upon which to restore the building to the condition in which it was before injury, it is held, in *Royal Ins. Co.* v. *McIntyre* (Tex.) 35 L.R.A. 672, that there is no total loss.

An insurable interest in the life of a son-in-law is held, in *Adams* v. *Reed* (Ky.) 35 L.R.A. 692, to exist in favor of a woman who with him as one family keeps a boarding house, dividing the profits between them.

Total blindness resulting from accident is held, in *Moge* v. *Société de Bienfaisance* (Mass.) 35 L.R.A. 736, to be within the provisions of a policy providing for weekly benefits when one is "incapable of working" by reason of accident.

Exemptions from seizure.—The exemption of the books of a lawyer from execution is held, in *Equitable Life Assur. Soc.* v. *Goode* (Iowa) 35 L.R.A. 690, to exist in favor of a lawyer who gives some time to the work of his profession which contributes to his support, even if he does not appear in court, advertise as a lawyer, or earn his living by services as a lawyer.

Promissory note.—A corporate seal on a note which is negotiable in form is held, in *Chase Nat. Bank* v. *Faurot* (N.Y.) 35 L.R.A. 605, not to destroy the negotiability of the instrument. A note to the case reviews the previous authorities on the effect of a seal on negotiability.

The addition of the word "trustee" to the name of the payee of a note is held, in *Fox* v. *Citizens Bank & T. Co.* (Tenn.) 35 L.R.A. 678, not to destroy its negotiability. The other authorities on this question are reviewed in the annotation to the case.

The holder of a note who takes it entirely on the security of a policy of life insurance, although it is technically delivered prior to maturity, is held, in *Hays* v. *Lapeyre* (La.) 35 L.R.A. 647, to be entitled to hold the note only for the amount advanced upon it, with interest. The annotation to this case considers the negotiability of a note payable out of a particular fund.

The indorsement by the maker of a note which is payable to his own order is held, in *Ewan* v. *Brooks-Waterfield Co.* (Ohio) 35 L.R.A. 786, not to be an indorser in the legal sense of the term, but only a maker, and the note is held to be in legal effect payable to the holder or bearer. In such a case an indorsement in blank by another party before the note is delivered is held to make the latter a *prima facie* surety of the maker.

Railway.—A railroad company selling coupon tickets over connecting roads is held, in *Chicago & A. R. Co.* v. *Mulford* (Ill.) 35 L.R.A. 599, to be presumably a mere agent for the connecting companies, and not liable for the failure of the latter to honor the tickets.

A person at a flag station at which there is no ticket office, who has signified an intent to get upon a passenger train that has actually stopped there, is held, in *Western & A. R. Co.* v. *Voils* (Ga.) 35 L.R.A. 655, to be entitled to the rights of a passenger.

The negligence of a passenger in stepping on a train when it is going two or three miles an hour is held, in *Distler* v. *Long Island R. Co.* (N.Y.) 35 L.R.A. 762, to be a question for the jury.

The duty of furnishing a separate passenger train for passengers only, and not for freight and passengers together, is held, in *People ex rel. Cantrell* v. *St. Louis, A. & T. H. R. Co.* (Ill.) 35 L.R.A. 656, to be implied in the duty of a railroad company to furnish necessary rolling stock and equipment for the suitable operation of the road. The sufficiency of earnings to justify the expense of such a train is held to depend on the earnings of the entire system, and not of the mere branch over which the train is to run.

An ordinance to compel a railroad company at its own expense to keep a watchman and maintain gates where the tracks cross a street under penalty for failure to do so is held, in *Pittsburg, C.C. & St. L. R. Co.* v. *Crown Point* (Ind.) 35 L.R.A. 684, to be invalid under a general grant of power to regulate travel on the streets, and enact ordinances for the protection of life, health and property.

Carrier.—The effect of a strike on the liability of a charterer for delay in unloading is considered in *Empire Transportation Co.* v. *Philadelphia & R. C. & I. Co.* (C.C. App. 8th C.) 35 L.R.A. 623, where it is held that he is not negligent in chartering a vessel after its employees have struck if there are plenty of other workmen ready to work if not prevented by intimidation and violence, and that he is not required to pay 25 per cent above the market price to strikers who have abandoned the employment without warning at a critical time, and use intimidation and violence to prevent others from working, or to agree not to prefer faithful and willing laborers. The effect of strikes upon the rights and liabilities of a carrier is considered in a note to this case.

Insurance.—A temporary breach of an insurance policy by increasing the hazard is held, in *Traders' Ins. Co.* v. *Catlin* (Ill.) 35 L.R.A. 595, to leave the policy in force after the extra risk ceased, if this did not contribute to a subsequent loss.

CAN A WIFE SUE HER HUSBAND FOR LIBEL?

Mr. Justice Kennedy gave judgment at Liverpool recently in a case of *Robinson* v. *Robinson*, an action for damages for libel brought by a wife against her husband, in which Mr. Langdon was for the plaintiff and Mr. Jordan for the defendant. The case was tried at Manchester. The learned judge's written judgment contained the following: "This is an action by a wife against her husband for libel. The facts of the case are not in dispute, and by consent the case was taken before myself without a jury. The plaintiff in September last obtained a separation order under the provisions of the Summary Jurisdiction (Married Women) Act, 1895 (58 & 59 Vict., c. 39). After that time she lived apart, receiving from him under the order a weekly payment of 18*s*. Some time after the order had been made she accepted the invitation of a cousin, Mrs. Partington, who was the licensee of

the Castle Hotel, Clitheroe, to come to reside with her there, paying nothing for her board and lodging, but giving at her will some help in the management of Mrs. Partington's business in the hotel. Whilst the plaintiff was living under the said circumstances at the Castle Hotel the defendant sent her by telegraph the three messages which are the libels complained of in this action. Of the defamatory import of these messages, which in disgusting terms imputed to her sexual immorality, there is no question, nor, inasmuch as they were telegraphic messages, is there any question as to publication. The plaintiff showed them after their arrival to Mrs. Partington, and that lady, although she was much attached to the plaintiff, felt obliged, after reading the third telegram, to ask the plaintiff to leave her house. The plaintiff thereupon commenced the present action against the defendant. She does not ask for substantial damages. Her aim is by obtaining an injunction to prevent the repetition of this injurious and insulting conduct on the part of the defendant. The facts are not disputed by the defendant. There is no justification for the libels. His defence to the action is that, in point of law, it is not maintainable. He contends that, as these libels are libels upon the plaintiff's personal character, and not in regard to her business or property, and she is therefore not suing him, "for the protection and security of her own separate property" within the meaning of the Married Women's Property Act, 1882, s. 12, the action is one of tort, which, as a married woman, although separated from him by the magistrate's order, she cannot bring against her husband. I agree with the defendant's counsel that the plaintiff is not helped by the last-mentioned enactment. The question is this. Can the plaintiff, not being enabled to do so by the Married Women's Property Act, 1882, sue the husband for a libel? The inability in general of the wife to sue her husband for a tort is founded not merely upon a rule of legal procedure necessitating the joinder of the husband as a co-plaintiff, but upon the principle that husband and wife form in the eye of the law one person. This was expressly decided in *Phillips* v. *Barnett*, 45 Law J. Rep. Q.B. 277; L.R. 1 Q.B. Div. 436. Unless, therefore, this is affected by the peculiar position of the plaintiff as a wife who has obtained a separation order, the defendant is apparently entitled to succeed in the present action. Is it so affected? This depends upon the effect to be given to certain provisions of the Summary Juris-

diction (Married Women) Act, 1895, under which the separation order was made, and the Divorce and Matrimonial Causes Act, 1857.....A libel by a husband upon a separated wife must in most cases be especially injurious to her. In the absence of any authority, it appears to me, looking at the plain intention of the statute, to give the judicially separated wife full power, as a *feme sole*, to protect herself by action against all wrongs and injuries .....I give judgment for the plaintiff, with costs, for 20*s.* as nominal damages, as she does not ask for substantial damages, and an injunction against the repetition of the libels complained of."

GENERAL NOTES.

THE LORD'S DAY.—The Sunday Observance Act of 1781 must be drawing near its end when the *Times* is prosecuted for advertising a Sunday concert, to which admission is free, but reserved seats are charged for. The plaintiff, who sued as a common informer in the interests of the due observance of the Lord's Day, elected to affirm instead of taking the oath, on the ground that he had no religious belief whatever. We presume that he had left a last surviving superstition—viz. belief in the sanctity of the Sabbath coupled with the usual confusion of it with Sunday. The case had a good result, however, in that Mr. Justice Collins held that as admission to the entertainment was free, charging for reserved seats did not bring the entertainment within the Act, unless the informer could prove that there were no free seats.—*Law Journal* (*London*).

UNKNOWN OFFENDERS.—In a case before him at Bow Street on August 2, Mr. Lushington made a quite unnecessary difficulty about granting a summons against a person whose name was unknown to the informant. There has never been any difficulty even from the earliest time in indicting a person "whose name is to the jurors unknown," for killing, or stealing from, a person to them unknown; and there is no reason why the same rule should not apply in cases tried summarily by justices, provided that sufficient care is taken to give in the information an adequate description of the incriminated person, and that he should not be arrested or served with a summons except in the presence of a person able to identify him as the alleged offender. *Ib.*