The Legal News.

VOL. VIII. JANUARY 24, 1885. No. 4.

It has been proposed to place an elevator in the Montreal Court-House, and provide the accommodation so urgently needed by constructing an additional floor. When this suggestion was made at a recent meeting, it was doubted by some one present whether there was any precedent for such an arrangement. It was answered, however, that elevators are in common use in the court-houses of other large cities, and we notice in a late issue of the *Boston Law Record* that it is proposed to put one in the court-house of that city. S. J. Thomas writes to the Mayor of Boston:—"If you will somehow cause to be put into the court-house a couple of elevators I am sure that not only the judges and clerks and jurors and parties and their witnesses, including the cripples and those afflicted with heart disease or asthma or other trouble which makes it difficult for them to climb, but who are nevertheless constrained to attend court, but also the lawyers, some of whom, believe me, are neither cripples, nor yet especially infirm, and whose hearts are in the right place, will thank you and hold you in everlasting remembrance as the doer of another sensible act. Please to regard this as a very earnest petition." The Mayor replies: "I heartily approve of your suggestion that elevators be provided for the present court-house."

One would expect to learn that prohibition or enforced temperance diminishes wife murders, criminal assaults, and offences of this nature. But the actual volume of crime is apparently affected in a much less degree than the advocates of prohibition pretend. For example, according to the last report of the directors and warden of the Kansas Penitentiary, crime reached a higher mark while prohibition was most effective in that State. It shows that from counties where the sale of liquors was not interfered with "have come a less number of convicts, according to their population, than from many of the counties where the enforcement of the law (prohibition) was most rigid and complete." Thus four counties with no liquor law and a population of 117,239 supplied 95 convicts, while six counties with a rigidly enforced law and a population of 115,865 supplied 111 convicts: or, to adopt the language of the report, "from a prohibition population of 115,865 come 16 more convicts than from an anti-prohibition population of 117,239."

Mr. Justice Paxson recently gave judgment, in the Pennsylvania Supreme Court, in a suit brought before the civil war by Asa Packer against his partners for an account. The judge begins an opinion, which occupies nearly fifty pages of the Pennsylvania reports, with this explanation:—"It is now over twenty-six years since this proceeding was commenced in the court below. During that time the three principal parties and several of the eminent counsel concerned in the cause have been removed by death. The paper books, Master's report, the arguments before the Master, the testimony and exhibits occupy twelve printed volumes. It was stated in the argument at Bar that the expenses of the litigation when it reached this court had amounted to over one million dollars. It involves many millions more. I mention these circumstances merely by way of apology for consuming nearly the whole of my summer vacation with the examination and study of the case."

Women who are sensitive and coy as to their age, says the *N. Y. Herald*, will learn with interest that this common vanity of their sex has a time-honored origin. In one of the Year Books of the reign of Edward III. is reported a decision in which Judge Barnsad makes this remark: "There is no man in England who can rightly tell if a woman has reached her majority or not; for many women who are at least thirty years old want to appear as but sixteen." This was in 1377—more than five centuries ago. It shows that in one respect at least the average female mind was the same then as now.

The Court of Appeal, in the judgment rendered on the 23rd inst., stands three to two on the question of the validity of the tax im-

posed on corporations by 45 Vict. (Quebec) Cap. 22. Justices Ramsay, Tessier and Baby hold the Act to be *intra vires*, while the Chief Justice and Mr. Justice Cross dissent. The result is that the judgment of Mr. Justice Rainville in *Lamb* v. *The Ontario Bank*, 6 Legal News, p. 158, is reversed, and that of Mr. Justice Jetté in *Lamb* v. *North British & Mercantile Ins. Co.*, 7 Legal News, p. 171; M.L.R., 1 S.C. 32, is affirmed. The cases are to be taken to the Privy Council.

THE ORDER OF BUSINESS IN THE COURT OF APPEAL.

It is important that the attention of advocates practising in the Court of Appeal at Montreal should be directed to the fact that the Court, on the 16th instant, resolved to adhere strictly in future to the rule, that causes on the list for the day must be proceeded with, or lose their turn. It does not appear to be generally understood that cases should not be allowed to go upon the list for the day unless the parties are actually ready to proceed. The fact is that two or three cases are sometimes called, in which the Court is asked to suspend the hearing for twenty-four hours or longer; then the next cases are called, and the counsel, who had not anticipated such an early summons, are found to be absent. Thus, during the present term, on the 16th instant, several cases were called in which one of the counsel was detained elsewhere, being engaged in the examinations for the bar. The hearing was suspended by special request. The consequence was that the remaining cases on the list for the day were reached sooner than had been expected, and the counsel were either not in attendance, or were otherwise unprepared. This led to a conversation to the following effect:—

The Chief Justice.—In future no case on the roll for the day will be continued with my consent. If counsel are not ready their cases will be put to the foot of the list. The practice of fixing five or six cases for each day was intended to give the bar an opportunity of arranging the time of argument to suit their convenience, but it appears that they won't even take the trouble to ascertain whether their cases will come on.

Mr. Justice Cross.—The practice of having a list for the day, which was adopted for the convenience of the bar, has become rather embarrassing to the Court.

The Chief Justice.—If the bar want to do away with the rule of putting five or six cases for each day it is easy to rescind it, and the roll will then be called over until there is a case in which the parties are ready to proceed.

Mr. Kerr, Q. C.—On the part of the bar I would say that if the rule were positively fixed that cases would not be suspended, it would probably be observed.

Mr. Justice Ramsay.—I admit that there is too much good nature on the part of the bench; I quite admit that.

The Chief Justice.—The majority of the members of the bar show by their acts that they do not hold with what you say, Mr. Kerr, because nearly all the members of the bar have, at various times, made applications of this kind.

Mr. Kerr.—I do not think I have made such an application.

The Chief Justice.—Perhaps not you, but nearly all the lawyers pleading here have at one time or other asked for suspensions.

The calling of the list was then resumed, and a case in which Mr. Kerr was counsel being reached, the learned counsel stated that as it was a long way down on the roll he had not anticipated that it would be reached for a few days, and his factum was not filed.

The Chief Justice.—You see you are driven to say that your factum is not ready in time, because three or four cases which should have come on have been passed over.

An adjournment then became necessary before the hour of 12.

THE DOMINION LICENSE ACT.

The following is the text of the report of the Supreme Court to the Dominion Government in answer to the questions submitted in connection with the Dominion License Act:—

IN THE SUPREME COURT.

Monday, the 12th Jan., 1885.

Present:—

The Hon. Sir William Johnstone Ritchie, Knight, Chief Justice.

The Hon. Samuel Henry Strong, J.
" " Telesphore Fournier, J.
" " William Alexander Henry, J.
" " Henri Elzear Taschereau, J.

A special case containing the following questions having been referred by His Excellency the Governor-General in Council to the Supreme Court of Canada for hearing and determination, in pursuance of the provisions of the 26th section of 47th Victoria, chapter 32, intituled, "An Act to Amend the Liquor License Act, 1883."

I.—Question—Are the following Acts in whole or in part within the legislative authority of the Parliament of Canada, namely:—

(1) The Liquor License Act, 1883.

(2) An Act to Amend the Liquor License Act, 1883.

II.—Question—If the Court is of opinion that a part or parts only of the said Acts are within the legislative authority of the Parliament of Canada, what part or parts of said Acts are so within such legislative authority?

And the said case having come before the Court for hearing on the 23rd day of September last, whereupon, and upon application of Mr. Bethune, Q.C., one of the counsel representing the Dominion of Canada, the said case so referred was amended by stating that in pursuance of section 26, sub-section 3, of the said Act, 47th Victoria, chapter 32, "An Act to Amend the Liquor License Act, 1883," the Provinces of Ontario, Quebec, New Brunswick, and British Columbia had become parties to the said case, and the said case having been subsequently further amended by stating that the Province of Nova Scotia had also become a party thereto.

And the said case, so amended, having come on for hearing before this Court in presence of counsel for the said Dominion of Canada and the said Provinces on the 23rd, 24th, 25th, 26th, and 27th days of September last past, whereupon and upon hearing what was alleged by counsel aforesaid, this Court was pleased to reserve the said case for consideration, and the Court, having duly considered the same, do now certify to His Excellency the Governor-General in Council, in answer to the questions submitted for the determination of the said Court in the said case, that, in the opinion of the said Court, the Acts referred to in the said case, namely, "The Liquor License Act, 1883," and "An Act to Amend the Liquor License Act, 1883," are, and each of them is, *ultra vires* of the legislative authority of the Parliament of Canada, except in so far as the said Acts respectively purport to legislate respecting those licenses mentioned in section seven of the said "The Liquor License Act, 1883," which are there denominated vessel licenses and wholesale licenses, except also in so far as the said Acts respectively relate to the carrying into effect of the provisions of the Canada Temperance Act, 1878.

The Honourable Mr. Justice Henry being of opinion that the said Acts are *ultra vires* in whole.

NOTE.—The clauses of the McCarthy Act which provide for the enforcement of the Canada Temperance Act, are the 142nd, 143rd, and 144th of the Act of 1883, as follows:—

142. A Board of Commissioners may, notwithstanding that such Act (the Canada Temperance Act) affects the whole of any county, be nominated therefor; and the said Board and the Inspectors shall have, discharge, and exercise all such powers and duties respectively for preventing the sale, disposal of, or traffic in liquor contrary to the said Acts or this Act, as they respectively have, or should exercise or perform under this Act.

143. The Board and Inspectors (appointed under the Dominion License Act) shall exercise and discharge all their respective powers and duties for the enforcement of "The Canada Temperance Act, 1878," and "The Temperance Act of 1864," as well as of this Act, so far as the same apply, within the limits of any county, city, incorporated village, or township, or parish in which the first mentioned Act or any by-law under the said secondly mentioned Act is in force.

144. A wholesale license to be obtained under and subject to the provisions of this Act, shall be necessary in order to authorise or make lawful any sale of liquor in quantities allowed under the provisions of the Canada Temperance Act, 1878.

SUPERIOR COURT.

MONTREAL, Jan. 10, 1885.

Before DOHERTY, J.

LA BANQUE JACQUES CARTIER v. THIBAUDEAU et al.

Revision of rulings at enquête.

PER CURIAM. An objection raised at *enquête* was overruled. The defendant asks to have that ruling revised. The reasons given in support of the application are not sufficient in law. But there is a more important point than that. I have consulted some of my brother judges, and I will take this occasion to state the rule to which I shall adhere with regard to appeals to this Court from the Enquête Court. To my mind it is exactly like taking an interlocutory judgment from a judge sitting on one side of a wall to a judge sitting on the other side, and asking him to reverse it. It would be like appealing from Philip in one condition to Philip in another condition, but as these conditions do not arise the illustration is irrelevant. The rule, however, which I propose to follow is this: Where an objection has been made at enquête if the judge has permitted the answer to be taken down I shall not interfere with the ruling. It is then a matter which can be remedied at the final hearing. But where the question is excluded by the judge at *enquête*, it is then a proper case for appeal to the judge in the Practice Court. The other judges to whom I have spoken, have decided to follow this course. The answer in the present instance was taken down, therefore I will not, sitting here, interfere with the ruling at enquête.

Motion rejected without costs.

Lacoste, Globensky, Bisaillon & Brosseau for plaintiff.

Mercier, Beausoleil & Martineau for defendants.

SUPERIOR COURT.

MONTREAL, Jan. 12, 1885.

Before JETTE, J.

DE MAISONNEUVE v. LARUE, et LABRANCHE et al., T. S.

Saisie-arrêt before judgment—Effects removed after the seizure.

Held, that the issue of a writ of *saisie-arrêt* before judgment cannot be justified by facts subsequent to the seizure.

Saisie-arrêt quashed.

E. Lareau for the plaintiff.

J. J. Beauchamp for the defendant.

SUPREME COURT OF CANADA.

OTTAWA, Jan. 12, 1885.

SULTE v. THE CORPORATION OF THE CITY OF THREE RIVERS.

B. N. A. Act, 1867, *sections* 91, 92 — *Liquor License Act of* 1878—41 *Vict. ch.* 3 (*Quebec*) —*Powers of Local Legislature to regulate sale of intoxicating liquors—Delegation of power to Municipal Corporations*—41 *Vict. ch.* 3, *sections* 36, 37, 255—20 *Vict. ch.* 129, *and* 38 *Vict. ch.* 76, *s.* 75.

By a by-law passed by the Corporation of Three Rivers on the 3rd of April, 1877, under the authority conferred upon them by the charter of the city, 20 Vict. ch. 129, and by 38 Vict. c. 76, s. 75, a license fee of $200 was imposed on persons desirous of obtaining a license to keep a saloon and sell intoxicating liquor.

By section 36 of 41 Vict. (Que.) ch. 3, it is enacted that on each confirmation of a certificate for the purpose of obtaining a license for the cities of Quebec and Montreal, the sum of $8 is payable to the Corporation of each of these cities, and by other corporations, for the same object, within the limits of their jurisdiction, a sum not exceeding $20 may be demanded.

Section 37 enacts, "The preceding provision does not deprive cities and incorporated towns of the rights which they have by their charters or by-laws."

Section 255 provides that "the dispositions of this Act shall in no way affect the rights and powers belonging to cities and incorporated towns by virtue of their charter and by-laws and shall not have the effect of abrogating or repealing the same."

On the 31st March, 1880, S. (appellant) filed with the Council of the Corporation of Three Rivers the certificate required by sec. 2 of 41 Vict. ch. 3, (Quebec), and on their refusal to confirm the certificate, except upon payment of the sum of $200 imposed by the by-law of 7th April, 1877, he petitioned for a writ of

mandamus to declare the by-law null, and that the officials of the council be ordered to sign and deliver the certificate in question.

Held, affirming the judgment of the Court of Queen's Bench, Quebec (5 Legal News, 330), that the provisions of the Liquor License Act, 1878, (Quebec) are *intra vires* of the powers of the Legislature of the Province of Quebec.

2. That the power of sec. 37, excepts the by-law made 7th April, 1877, from the provision of sec. 36, and that the power which the Corporation of Three Rivers has to impose license fees on the sale of intoxicating liquors in virtue of 21 Vict. ch. 109, and 38 Vict. ch. 76, have not been repealed by the Liquor License Act, 1878.

Judgment confirmed.

Doutre, Q.C., for Appellant.

Denoncourt, Q.C., and *MacDougall*, for Respondent.

CONSENT GIVEN BY ERROR—WHAT CONSTITUTES RAPE.

In *Queen* v. *Dee*, Irish Ex. Div., Crown Cases Reserved, Dec. 1, 1884 (Ir. L. T. Rep.), the prosecutrix, a married woman, in the absence of her husband, lay down upon a bed when it was dark. The prisoner came into the room, and lay upon her. Thinking that he was her husband, she said to him: "You came in very soon," to which he made no reply. He then had sexual connexion with her, which she did not resist, until during the act, she discovered that he was not her husband. On a case stated, *held*, that the prisoner was guilty of rape. *R.* v. *Barrow*, L. R., 1 C. C. R. 156, overruled; *R.* v. *Flattery*, 2 Q. B. Div. 410, approved.

The judges delivered elaborate opinions, reviewing all the authorities, *i. e.*, the British authorities. The judges do not seem to have agreed as to what constitutes rape, for May, C. J., said that connexion with a woman while unconscious does not constitute rape, but O'Brien, J., said just the reverse, and that undoubtedly is the law. 2 Bish. Cr. Law, § 1121. On principle, Pales, C. B., observed:

"Consent is the act of man, in his character of a rational and intelligent being, not in that of an animal. It must therefore proceed from the will—not when such will is acting without the control of reason, as idiocy or drunkenness, but from the will sufficiently enlightened by the intellect to make such consent the act of a reasoning being. It is an instance of the application of a principle of widespread application, which in criminal law appears under the maxim *Actus non facit reum nisi mens sit rea*, which is acted on in cases of deeds and wills, to the execution of which it is of the essence that the mind accompany the act, in cases of contracts passing property where intention governs (*Merry* v. *Green*, 7 M. & W. 630), and in innumerable other cases. I feel that I owe an apology to my hearers in insisting upon so elementary a proposition, but nothing is in my opinion too elementary to encounter a doctrine so abhorrent to our best feelings, and so discreditable to any jurisprudence in which it should succeed in obtaining a place, as that which more than once was laid down in England, that a consent produced in an idiot by mere animal instinct, is sufficient to deprive an act of the character of rape. *Queen* v. *Fletcher*, 1859, Bell C. C. 33; *Queen* v. *Fletcher*, 1866, L. R., 1 C. C. R. 40. I think it follows that (excluding cases in which an outward action apparently, but not in fact, accompanied by mind, is acted upon by another), any act done by one under the *bona fide* belief that it is another act different in its essence, is not in law his act—and that is the present case. The person by whom the act was to be performed was part of its essence. The consent of the intellect, the only consent known to the law, was to the act of the husband only (and of this the prisoner was aware). As well put by Mr. Curtis, what the woman consented to was not adultery, but marital intercourse. The act was not a crime in law. It would not subject her to a divorce. Were adultery criminally punishable by our law, she would not be guilty. It is hardly necessary to point out (but to avoid any misapprehension I desire to do so) that what took place was not a consent in fact, voidable by reason of his fraud, but something which never was a consent *ad hoc*."

Lawson, J., said: "The question is, what must be the nature of the consent? In my opinion it must be consent to the prisoner having connexion with her, and if either of

these elements be wanting, it is not consent. Thus in *Flattery's* case, where she consented to the performance of surgical operation, and under pretence of performing it the prisoner had connexion with her, it was held clearly that she never consented to the sexual connexion; the case was one of rape. So if she consents to her husband having connexion with her, and the act is done, not by her husband but by another man personating the husband, there is no consent to the prisoner having connexion with her, and it is rape. The general principles of the law as to the consent apply to this case. To constitute consent there must be the free exercise of the will of a conscious agent, and therefore if the connexion be with an idiot incapable of giving consent, or with a woman in a state of unconsciousness, it is rape. In like manner, if the consent be extorted by duress or threats of violence, it is not consent. These are the true principles of law which govern the case, and which I have always heard laid down by the judges in Ireland; and the cases which contravene this principle I should not be disposed to follow, and they have never been followed in this country."

O'Brien, J., said: "The crime is the invasion of a woman's person without her consent, and I see no real difference between the act of consent and the act being against her will, which is the language of the indictment, though the distinction is taken by Lord Campbell, or between the negation of consent and positive dissent. Whether the act of consent is procured by the result of overpowering force, or of fear, or of incapacity, or of natural condition, or of deception, it is still want of consent, and the consent must be, not consent to the act, but to the act of the particular person, not in the abstract but the concrete, for otherwise the consent in principle would be just like the act of handing money in the dark to a person which was received by another, who would nevertheless in that case be guilty of a crime."

Murphy, J., said: "Where the will does not accompany the act, there is no consent. Every invasion of a man's person or property without consent or will, is against consent and will. A written document is placed before a man, which he reads and understands, and by signing which he knows that some right or privilege is passing to another—he consents to sign it. Then turning aside for a moment, another document is substituted for that which he had read—believing it to be the same, he signs it. Is he bound by the contents of that which he signed? Has he consented to it? He certainly has not. This woman consented to intercourse with her husband. The accused induces her to believe he is her husband, and so obtains possession of her person. She never consented to this violation of her virtue—counsel for the crown said she did not consent to adultery; this was the act the accused committed. If the accused was not guilty of the crime of rape, which involves an assault on a woman's chastity and virtue, he was guilty of an assault, having done violence to her person by even touching her, without or against her consent; for before he can be held guilty of an assault this must be assumed. But at the same time, it is said he is not guilty of any assault on her virtue because she consented to the act of sexual intercourse. In my opinion, this is not law. If not guilty of the crime of rape, he was not guilty of assault. The accused was guilty of the felonious assault on this woman, just as much as a man, coming behind another and stunning him with a blow, before he was aware even of his presence, would be guilty of an assault causing actual bodily harm."

Bishop lays it down that the act of the prisoner in question is not rape, citing many authorities. 2 Cr. Law, § 1122. Wharton lays down the contrary. 1 Cr. Law, § 561. A recent holding like that in *Queen* v. *Flattery*, much relied on in the principal case, is in *Pomeroy* v. *State*, 94 Ind. 96; S. C., 48 Am. Rep. 146; 7 L. N. 278. The question is very much in doubt upon the authorities, but we think the Irish court is right in principle. The woman's consent to intercourse with her husband is not consent to intercourse with another man, and it is barbarous and illogical to hold that it is.—*Albany Law Journal.*

COURT OF APPEAL REGISTER.

MONTREAL, January 15.

Peters & Canada Sugar Refining Co.—Motion for substitution granted.

Burroughs & Wells.—Heard on motion of respondent, to be permitted to use in the Court of Review portions of the record, and for transmission of the record to the Court of Review.

Bury & Samuels.—Heard on merits; C. A. V.

Thibaudeau & Mills.—Do.

Robinson & McMillan.—Do.

St. Lawrence S. R. Co. & Campbell.—Do.

Jan. 16.

Senécal & Millette.—Motion to dismiss appeal; granted as to costs.

McMillan & Hedge, & Guilmette.—Petition to take up *instance;* granted.

Dominion Abattoir Co. & Hedge & vir, & Guilmette.—Do.

Goldring & La Banque d'Hochelaga.—Heard on merits; C. A. V.

Jan. 17.

Wylie & City of Montreal.—Heard on merits; C. A. V.

McMaster & Moffatt.—Commenced.

Jan. 19.

Guest & Douglas.—Heard on motion for *non pros.*

McMaster & Moffatt.—Hearing concluded; C. A. V.

Vallières & Ryan.—Heard on merits; C. A. V.

Les Commissaires d'Ecole pour la Municipalité St. Gabriel & Les Sœurs de la Congrégation Notre Dame.—Do.

Hurteau & Lawrence.—Do.

Jan. 20.

Cheney & Brunet, & Chauveau.—Application that the case be heard by privilege; rejected.

Bondy et al. & Valois et al.—Heard on motion for leave to appeal from interlocutory judgment.

McMillan & Hedge, & Guilmette.—Heard on merits; C. A. V.

Dominion Abattoir Co. & Hedge, & Guilmette.—Do.

Montreal, Portland & Boston Ry. Co. & Hatton.—Do.

Lord & Davison; and *Davison & Lord.*—Hearing commenced.

Jan. 21.

Burroughs & Wells.—Motion of 15th instant granted; costs reserved. Record ordered to be sent to the Court below to be used in Court of Review, and to be re-transmitted here after decision in the Court of Review, or upon an order of this Court.

Guest & Douglas.—Motion of 17th instant rejected, with costs against appellant.

Bondy & Valois.—Motion of 20th instant rejected with costs.

Ross & Langlois.—Judgment confirmed, Cross, J., diss.

Virtue & Vaillancourt.—Judgment confirmed.

Stanton v. *Canada Atlantic Ry. Co.*—Judgment reversed, and injunction quashed.

Société de Construction d'Hochelaga & Société de Construction Métropolitaine, & Gauthier.—Heard on merits; C. A. V.

Lord & Davison; and *Davison & Lord.*—Commenced.

Jan. 22.

La Corporation du Comté d'Yamaska & Durocher.—Appeal from C. C., Richelieu; cause put on the roll.

Cadot & Ouimet.—Appeal from C. C., Joliette.—Respondent appears.

Lord & Davison; and *Davison & Lord.*—Hearing on merits concluded; C. A. V.

Raymond dit Lajeunesse, & Latraverse.—Heard on merits; C. A. V.

Guilbault & McConville.—Do.

Salvas & Brien dit Durocher.—Do.

Tremblay & Denault, & Denault.—Case settled; inscription struck.

Jan. 23.

Lambe & Canadian Bank of Commerce.—Reversed; Dorion, C. J., and Cross, J., diss.

Lambe & Merchants Bank of Canada.—Do. Leave to appeal to P. C. granted.

Lambe & Ontario Bank.—Do.; do.

Lambe & Molson Bank.—Do.; do.

Lambe & Bank of Toronto.—Do.; do.

North British & Mercantile Fire Ins. Co. & Lambe.—Confirmed; Dorion, C. J., and Cross, J., diss. Leave to appeal to P. C. granted.

The Williams Manufacturing Co. & Lambe.—Do.; do.

Ogdensburg Coal & Towing Co. & Lambe.—Do.; do.

Export Lumber Co. & Lambe.—Do.; do.

Jan. 24.

Hamilton Powder Co. & Lambe (two cases.)—

Application on the part of respondent that these causes be declared privileged, being a Crown case; rejected.

The Queen v. *Prevost.*—Heard on Reserved Case; C. A. V.

Les Sœurs de l'Asile de la Providence & Le Maire et al. de Terrebonne.—Heard on merits; C.A.V.

THE PRINCE'S MAJORITY.

The law is singularly bare in its recognition of the second generation of the Royal family, even in the case of its senior male representative, when the first generation includes his father. He is not even entitled in strictness to be called heir presumptive to the Crown, because there can be no heir presumptive when there is an heir apparent, and his father's titles admit of no courtesy title customarily borne by the heir apparent to them. His place in point of precedence is after his uncles, as was settled in 1760, when the Duke of York, in the lifetime of George II., took his seat in the House of Lords. Nothing remains except the comparatively modern title of Prince, to which must be added the first Christian name, as in point of law the first Christian name is the only Christian name, no one being entitled to more than one. Even the position during minority of a son of the Prince of Wales is rather vaguely defined by the law. In 1718 it was decided by a majority of ten judges to two that the education and care of the sovereign's grandchildren belong to the sovereign during the lifetime of their father; but the decision of the majority has had doubts thrown upon it. It has never been doubted that, at common law, the approval of the marriage of the sovereign's grandchildren belongs to the sovereign, and now, by statute, control is given to the Crown over the marriage of all the English descendants of George II. It is a popular error that a prince in the direct line of the throne comes of age, in the sense of capacity for reigning, before he attains twenty-one. The fact is that the heir to the throne is always capable of reigning, as the sovereign is never a minor. In the case of sovereigns of tender years, regents have been appointed; but the age at which sovereigns who were minors began to act for themselves has varied from time to time. Henry III. and Edward III. were considered of full age to act as kings at eighteen; Richard II. and Henry VI. not till twenty-three; and by a statute of Henry VIII. his successor, if a male, was to be under guardianship until eighteen, and, if a female, until sixteen. The modern practice has been to make eighteen the full age of a sovereign, as evidenced by the statute in regard to the children of Frederick, Prince of Wales, in regard to the children of George III., and in regard to the children of her present Majesty and the late Prince Consort, in the event of that Prince surviving Her Majesty, and the heir to the throne being under that age. No age, however, is now fixed by law before attaining which the sovereign cannot reign without a regent. The attainment by Prince Albert of Wales of the age of twenty-one has legally even less significance than in the case of an ordinary subject. Although he is, like others, no longer under pupilage in the general sense, he, unlike them, is still not master of himself in regard to marriage.—*Law Journal* (London).

CHANCERY DIVISION.

LONDON, Dec. 13, 1884.

Before PEARSON, J.

THE BANBURY AND CHELTENHAM DIRECT RAILWAY COMPANY v. DANIEL.

(Law J. Notes of Cases.)

Agreement to make Railway—Contractor—Property in Materials Delivered, but not Fixed—Payment by Instalments—Engineer's Certificates.

By an agreement, dated August 15, 1882, and made between the plaintiff company and the defendant, a contractor, for the construction and completion of a railway, it was provided that once in each month, during the progress and until the completion of the railway, the company's engineer should certify the amount due and payable to the contractor, in respect of the value of the works executed and materials delivered, and that such certificates should be paid seven days after presentation to the company's secretary.

In November, 1884, the plaintiffs brought this action, claiming an injunction to restrain the defendant from removing from the company's land any materials then remaining thereon, which were included in the certificates of the company's engineer.

Cookson, Q.C., and *A. Beddall* now moved for an injunction.

S. Hall for the defendant.

PEARSON, J., held that, on the giving of a certificate by the engineer, the property in the materials comprised in it passed to the company, though the materials delivered were not yet fixed, but remained loose on the company's land, and granted the injunction accordingly.