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# The BARRISTER

A. C. MACDONELL, D.C.L., Editor.

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# The Barrister.

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## JUDGE JEFFREYS.

George Jeffreys, first Baron Jeffreys of Wem, Lord High Chancellor of Great Britain, but better known to the world as Judge Jeffreys, was born in 1648, at Acton, near Wrexham, Denbighshire, and was the sixth son of John Jeffreys by his wife Margaret, daughter of Sir Thomas Ireland, knight, of Beausay, near Warrington, Lancashire. His paternal grandfather was a Judge of North Wales (though some call him a Justice of the Peace for that principality), and claimed on his father's side a descent from Tudor Trevor, Earl of Hereford.

While still very young Jeffreys was sent to the free school at the town of Shrewsbury, which was then considered as a sort of metropolis for North Wales. There he remained some time, and on his leaving that place, it appears to have been the wish of his father that he should settle to some trade, for he had already evinced proofs of a disposition far from tractable. He was of so litigious a temper, and so fond of opposition and argument, that his father used to say to him, "Ah! George, George, I fear thou wilt die with thy shoes and stockings on." His father, however, sent him to St. Paul's School, in the city of London, where he acquired a fair proficiency in the classics, and where he imbibed that fondness for the profession of the law, which led him to fix on it as his future destiny. He afterwards went to Westminster School, then under the care of Dr. Busby, whose rod bears as high a character as his learning. Of his improvement here we have no account, but many years afterwards he showed that he had not forgotten his old schoolmaster, nor the knowledge of grammer he had acquired. Being now in the neighbourhood of Westminster Hall, his ambition to be a great lawyer was inflamed by seeing the grand processions on the first day of term, and by occasionally peeping into the Courts when an important trial was going on.

When he was fifteen years of age, a family council was called at Acton, to consider what calling in life young Jeffreys should adopt, and as he still sanguinely adhered to the law, it was settled that, the University being quite beyond his reach, he should immediately be entered at an Inn

of Court, and that to support him there his grandmother should allow him forty pounds a year, and that his father should add ten pounds a year for decent clothing. On May 19th, 1663, to his great joy, he was admitted a member of the Inner Temple; and in an obscure apartment, commenced a study of the municipal law very diligently, while at the same time his pecuniary means were such as to call upon his best wits for subsistence in a profession which bore a distinguished character for gentility. He not only had a natural boldness of eloquence, but an excellent head for law. But he could not long resist the temptations of bad company. Having laid in a very slender stock of law, he forsook the "moots and readings" for the tavern, where was his greatest delight. He seems, however, to have escaped the ruinous and irreclaimable vice of gaming, but to have fallen into all others to which reckless Templars were prone. Yet he seems to have always had a keen eye to his own interest; and in these scenes of dissipation he assiduously cultivated the acquaintance of young attorneys and their clerks, who might afterwards be useful to him. He could not afford to give them rich treats at his chambers, but when they met over a bowl of punch at the Devil's tavern, or some worse place, he charmed them with songs and jokes, and took care to bring out before them opportunely any scrap of law which he had picked up, to impress them with the notion that when he put on his gown and applied himself to business, he should be able to win all causes in which he might be retained. He was very popular, and he had many invitations to dinner, which, to make his way in the world, he thought it better to accept than to waste his time over the midnight oil, in acquiring knowledge which it would never be known that he knew, and therefore was not worth knowing.

He was often in his student days in great financial difficulties, the £10 allowed him by his father for "decent clothing" for a year being expended in a single suit of cut velvet, and his grandmother's £40 being insufficient to pay his tavern bills. But he displayed much address in obtaining prolonged and increased credit from his tradesmen. Being a handsome young fellow, and capable of making himself acceptable to modest women, in spite of the bad company which he kept, he resolved to repair his fortunes by marrying an heiress; and he fixed upon the daughter of a country gentleman of large possessions, who, on account of his agreeable qualities, had invited him to his house. The daughter, still very young, was cautiously guarded; but Jeffreys contrived to make a confidant and friend of a poor relation of hers, who was the daughter of a country clergyman, and who lived with her as a companion. But the plot being discovered, the poor girl was instantly dismissed, and coming up to town to tell of her failure, the discarded lover took pity on her and married her. Her father, notwithstanding the character and circumstances of his proposed son-in-law, sanctioned their union, and to the surprise of all parties gave her a fortune of £300. Accordingly, "on the 23rd of May, 1667, at Allhallows Church, Barking, George Jeffreys, of the Inner Temple, Esq., was married to Sarah, the daughter of the Reverend Thomas Neesham,

A.M." (Parish Register of Barking).

Young Jeffreys was not yet called to the Bar, and in the meantime he left her at her father's house, occasionally visiting her; and he continued to carry on his former pursuits, and to strengthen his connections in London, with a view to his success at the Bar, on which he resolutely calculated with unabated confidence.

After the first fervour of loyalty which burst out at the Restoration had passed away, a discontented party was formed, which gradually gained strength. With the leaders of this party Jeffreys associated himself, and in the hour of revelry would drink on his knees any toast to "the good old cause," and to "the immortal memory of old Noll." After keeping all his terms, he was, on the 22nd day of November, 1668, called to the Bar, having been on the books of the Society five years and six months. He did not go near any of the Superior Courts for some years, but confined himself to the Old Bailey, the London Sessions, and Hicks' Hall. He used every art to obtain work. "He used to sit in coffee-houses, and order his clerk to come and tell him that company attended him at his chamber. At which he would huff and say, 'Let them stay a little, I will come presently'; and thus made a show of business." Some of his pot companions were now of great use in bringing him briefs; but all this pushing would have been of no use if he had not fully equalled expectation by the forensic abilities which he displayed. He had a very sweet and powerful voice, having something in its tone which immediately fixed the attention, so that his audience were always compelled to listen to him, irrespective of what he said. "He was of bold aspect, and cared not for the countenance of any man." He was extremely voluble, but always perspicuous and forcible, and he never spared any assertion that was likely to serve his client. He could get up a point of law so as to argue it with great ability, and with the Justices as well as with the juries his influence was unbounded. When a trial was going on, he was devotedly earnest in it; but when it was over, he would recklessly get drunk, as if he was never to have another to conduct. A voluble tongue, and a stentorian voice, joined with the interest of the disaffected party in the state, to which he at first attached himself, soon introduced him into considerable practice, principally confined to criminal business and the city Courts. Coming so much in contact with the aldermen, he ingratiated himself with them, and was particularly patronized by a namesake (though no relation) of his, — Jeffreys, alderman of Bread Street Ward, who was very wealthy, a great smoker (an accomplishment in which the lawyer could rival him, as well as in drinking), and who had immense influence with the livery. Through the powerful influence of this alderman, before he had been two-and-a-half years at the Bar, and while only twenty-three years of age, Jeffreys was elected Common Sergeant of the city of London, on March 17th, 1671, on a vacancy occasioned by the resignation of Sir Richard Browne. He was not yet a servile favorite; for either presuming upon the good-will which he had secured by his address among the citizens, or impelled by that confidence which so often accom-

panies success, he was accustomed to set the authority of the mayor and aldermen at defiance, and, in fact, he never rested until he had placed the city entirely at his devotion. As he was disqualified for a considerable part of his Bar practice by accepting the office of Common Sergeant, he determined to change the field of his operations, and make a dash at Westminster Hall. He was well aware that he was unfitted to draw declarations and pleas, or to argue demurrers or special verdicts; but he hoped that his talent for examining witnesses and for speaking might avail him. This was the only road to high distinction in his profession, and he spurned the idea of spending his life in trying petty larcencies, and dining with the city companies. Hard drinking was again his great resource. He could now afford to invite the great city attorneys to his house, as well as carouse with them in taverns, and they were pleased with the attentions of a rising barrister, as well as charmed with the pleasantry of the most jovial of companions.

Jeffreys was first employed at Nisi Prius in actions for assaults and defamation; but before long the city attorneys gave him briefs in commercial causes tried at Guildhall, and though in banco he could not well stand up against regularly bred lawyers, yet in most causes he was equal to them before a jury, and he quickly trod upon their heels.

Seeing little prospect of advancement from his connection with the popular party, he gradually deserted it; and getting himself introduced to Chiffinch, the King's page, he made himself so agreeable to that worthy, both by joining in his potations, and by betraying the plans of the disaffected, that he was soon recommended to His Majesty as a man likely to do good service. "This Mr. Chiffinch," says Roger North, "was a true secretary as well as page, for he had a lodging at the back stairs, which might have been properly termed 'the Spy Office,' where the King spoke with particular persons about intrigues of all kinds, and all little informers, projectors, etc., were carried to Chiffinch's lodging. He was a most impetuous drinker, and in that capacity an admirable spy; for he let none part with him sober, if it were possible to get them drunk." (Roger North's Life of Guilford, vol. ii., p. 6). Through the same means he also procured another powerful advocate in the Duchess of Portsmouth, and easily secured to himself the post of Recorder of London, on October 22nd, 1678, having, on September 14th of the previous year, received knighthood, and been appointed solicitor to the Duke of York. He brazened out the disgrace of his desertion, and from this time forward he attached himself wholly to the court party, treating his former friends not only with contempt, but with the utmost violence of reprobation.

Just before his being appointed Recorder, Jeffreys lost his first wife, and three months after her death, in May, 1678, he contracted a second marriage with Mary, daughter of Sir Thomas Bludworth, Lord Mayor of London and M.P. for the city, and the widow of Sir John Jones, of Fonmon Castle, Glamorganshire. This lady, being supposed to be not remarkable for continence, formed the subject with her new husband of a lampoon called "A Westminster Wedding." Since

his election as Recorder he had received the degree of the coif in February, 1679, and had been made King's Sergeant on May 12th, 1680. In the preceding month he had also been constituted Chief Justice of Chester, an office which he retained till he became Chief Justice of the King's Bench. He held the Recordership for two years, during which, though he did not betray all the violence and cruelty that afterwards distinguished him, he exhibited a sufficient inkling of his overbearing disposition. In his anxiety to follow the popular cry against Papists, he forgot the religious profession of his patron the Duke of York, going out of his way to insult the prisoners of that persuasion, against whom he had to pronounce sentence as Recorder, by ridiculing and inveighing against the doctrines they professed. He said to Ireland, Grove, and Pickering, the Jesuits, "Thus I speak to you, gentlemen, not vauntingly; 'tis against my nature to insult upon persons in your sad condition; God forgive you for what you have done, and I do heartily beg it, though you do not desire I should; for, poor men, you may believe that your interest in the world to come is secured to you by your Masses, but do not well consider that vast eternity you must ere long enter into, and that great tribunal you must appear before, where Masses will not signify so many groats to you, no, not one farthing; and I must say it for the sake of those silly people whom you have imposed upon with such fallacies, that the Masses can no more save you from future damnation than they do from a present condemnation. And I hope God Almighty will please to give you pardon in another world, though you have offended beyond hopes of any in this. I once more assure you, all I have said is in perfect charity. So there remains now only for me to pronounce that sentence which by the law of the land the Court is required to do against persons convicted of that offence which you are convicted of." And then came from his lips the hurdle, the hanging, the cutting down alive, and other particulars too shocking to be repeated. (7 State Trials, 138). Jeffrey's conduct as Chief Justice of Chester was severely commented upon in the House of Commons by Henry Booth (afterward second Baron Delamere), who declared that Jeffreys "behaved himself more like a jack-pudding than with that gravity that beseems a Judge." In the struggle which arose from the delay in assembling Parliament, Jeffreys took an active part on the side of the "Abhorrers." A petition having been presented from the city, complaining that the Recorder had obstructed the citizens in their attempts to have Parliament summoned, a select committee was appointed to inquire into the charge, and on the 13th of November, 1680, it was resolved that "Sir George Jeffreys, by traducing and obstructing petitioning for the sitting of this Parliament hath betrayed the rights of the subject," and that the King should be requested to remove him "out of all public offices." (Journals of the House of Commons, vol. ix., p. 653). The King merely replied that "he would consider of it," but Jeffreys was "not Parliament proof," and having submitted to a reprimand on his knees at the bar of the House, resigned the Recordership on December 2nd, 1680. In a few days after took place one of Lord Shaftesbury's famous Protestant processions, on the

anniversay of Queen Elizabeth. In this rode a figure on horseback to represent the ex-Recorder, with his face to the tail, and a label on his back,—"I am an Abhorrer." At Temple Bar it was thrown into a bonfire, coupled with the devil.

To oblige the Court, and to assist them in their criminal work, he accepted the appointment of Chairman of the Middlesex Sessions at Hicks' Hall, although it was somewhat beneath his dignity, and it deprived him of a portion of his practice. Here the grand jury were sworn in; and as they were returned by sheriffs, whom the city of London elected, and who were still of the Liberal party, the problem was to have them remodelled, so that they might find bills of indictment against all whom the government wished to prosecute. With this view, Jeffreys declared that none should serve except true Church of England men; and he ordered the under-sheriff to return a new panel purged of all sectarians. He had a particular spite against the Presbyterians, who had mainly contributed to his being turned out of the Recordership. The under-sheriff disobeying his summons, he ordered the sheriffs to attend next day in person, but in their stead came the new Recorder, who urged that, by the privileges of the city of London, they were exempted from attending at Hicks' Hall. He overruled this claim with contempt, and fined the sheriffs £100. It was found, however, that while the city retained the power of electing the sheriffs, all these attempts to pervert justice would be fruitless.

As counsel for the Crown, Jeffreys took part in the prosecution of Edward Fitzharris, Archbishop Plunket, and Stephen Colledge, in 1681, and on the 17th of November in that year was created a baronet of the United Kingdom. He entered heartily into the scheme for destroying the popular government of the city of London, and did everything in his power to push on the quo warranto by which the city was deprived of its charter. Secretly he had urged this measure as a punishment for the perpetual rebellion which the citizens had been waging against the ministry; and he succeeded not only in overturning their privileges, but in reducing them to beg for favour at his hands. He took a prominent part in the prosecution of Lord William Russell for his share in the Rye House plot, and vehemently pressed the case against the prisoner. In this plot were implicated some of the noblest in the land. At the conclusion of the trial Jeffreys addressed the jury in reply, after the Solicitor-General had finished, and greatly outdid him in pressing the case against the prisoner, while he disclaimed with horror the endeavour to take away the life of the innocent. He thus concluded:—"You have a Prince, and a merciful one too. Consider the life of your Prince, the life of his posterity, the consequences that would have attended if this villany had taken effect. What would have become of your lives and religion? What would become of that religion we have been so fond of preserving? Gentlemen, I must put these things home upon your consciences. I know you will remember the horrid murder of the most pious Prince, the martyr, King Charles I. Let not the greatness of any man corrupt

you, but discharge your consciences both to God and the King, and to your posterity." An anonymous writer tells us, that this speech had great influence on the jury, and that it was delivered from a pique against the nobleman accused, because he had been in Parliament when Jeffreys was brought down upon his knees; and there may be some truth in this, since the address of the Judge must be considered as containing an intimation that the jury might acquit, if they dared.

J. E. R. STEPHENS,
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2 Essex Court, Temple.

(To be continued).

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## RECENT ENGLISH CASES AND NOTES OF CASES.

### COBURN AND ANOTHER v. COLLEDGE.

[Court of Appeal.—LORD ESHER, M.R., LOPES, L.J., CHITTY, L.J., April 2nd.

*Solicitor—Bill of costs—Cause of action—Statute of Limitations—Time from which Statute runs—21 Jac. I. c. 16, s. 3—Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 37.*

Appeal from the judgment of Charles, J.

The plaintiffs, who were solicitors, were retained by the defendant to do certain work for him, and on May 29, 1889, the work was completed. On June 7, 1889, the defendant left England for beyond the seas. On June 12, 1889, the plaintiffs duly delivered at the defendant's dwelling-house a signed bill of their costs, and this bill reached the defendant's hands in 1891. In 1896 the defendant returned to England, and on June 12 the plaintiffs commenced this action to recover their costs. The defendant pleaded the Statute of Limitations. The plaintiffs contended that the cause of action did not arise until the expiration of one month after the delivery of the bill of costs.

Charles, J., held that the cause of action arose when the work was completed on May 29, 1889, and as the defendant was then in England the Statute of Limitations began to run from that date. He therefore held that the action was barred, and gave judgment for the defendant.

The plaintiffs appealed.

Their Lordships dismissed the appeal, holding that the cause of action in respect of work done by a solicitor arose upon the completion of the work, and that therefore the Statute of Limitations ran from that date.

Appeal dismissed.

* * *

### PLANT v. BOURNE.

[L. J. 207; W. N. 40; S. J. 407; L. T. 554).

*Sufficient description to satisfy sec. 4 of the Statute of Frauds or not?*

In an action for specific performance, it appeared that the property was described in the written agreement for sale as "twenty-four acres of land, freehold, and all appurtenances thereto, at Totmonslow, in the parish of Dracott, in the county of Stafford, and all the mines

and minerals thereto appertaining," and the defendant pleaded the Statute of Frauds. Byrne, J., held, that the subject-matter of the contract was not sufficiently described, that parol evidence was not admissible to identify it, and that the action must be dismissed. (C. 43).

* * *

PRATT v. SOUTH-EASTERN RAILWAY CO.

[T. 326 ; L. J. 208 ; L. T. 556.

*Does the usual condition on a railway company's cloak-room ticket, that the company will not be responsible for any package exceeding the value of £10, only apply to the loss of the package?*

No, it protects from liability for damage done to the package as well as loss, said a Divisional Court (Cave and Lawrence, JJ.).

* * *

PEARCE v. GORDON.

[102 L. T. 553.

*Contract—Signed memorandum.*

Gordon owned a bed of gravel, which he agreed to sell to Pearce for £60, and Pearce was to dig up the gravel and cart it away. Pearce sued for breach of the contract. Pearce put in evidence a letter signed by Gordon, and containing the terms of the contract, but beginning "Dear Sir," and not containing the name or any description of the person to whom it was written; and Pearce deposed this letter reached him by post in an envelope duly addressed to him, and put in the envelope.

Held, that upon the evidence the letter and envelope must be considered as forming one document, and that together they constituted a sufficient memorandum to satisfy both section 4 of the Statute of Frauds, and section 4 of the Sale of Goods Act. (Court of Appeal, affirming, Grantham, J.).

* * *

*In re* RUMNEY AND SMITH.

[W. N. 43 ; L. T. 554 ; L. J. 237 ; S. J. 424.

*Can a transferee of a mortgage from trustees exercise a power of sale limited by the mortgage deed to the trustees for the time being exercising the power?*

No, said Stirling, J., remarking that a power of sale in a mortgage deed can only be exercised by the persons designated in the deed for that purpose.

* * *

DODD v. CHURTON.

[W. N. 32 ; L. T. 484 ; S. J. 383 ; L. J. 205.

*Under what circumstances is a building owner prevented from recovering from the builder a penalty agreed to be paid as liquidated damages in the event of the building not being finished by a certain time?*

In every case where the owner has himself prevented the completion of the work within the time by ordering additional work to be done. So held by the Court of Appeal.

* * *

THE MECCA. CORY & CO. v. STEAMSHIP MECCA.

[102 L. T. 532 ; 32 L. J. 219.

*Clayton's Case.*

The rule in Clayton's Case as to appropriation of payments that where there is an account current between parties and payments are made without appropriation by either debtor or credi-

tor, such payments are to be attributed to the earliest items in the account for which an action could be brought is not an invariable rule of law, but may be ousted by the circumstances. It does not apply if the debts arise from distinct transactions which are not brought into a common account, and when there has been only a temporary abandonment of a remedy in rem with respect to the items to which it is sought to appropriate the payments. If plaintiffs state all the items under their respective dates in one account, and give credit on the whole for the amounts received, payments are not to be appropriated to the earliest items in the account so as to deprive plaintiffs of their remedy in rem. (House of Lords, reversing Court of Appeal).

## THE COURT OF APPEAL.

Quite an interesting ceremony occurred in the Court of Appeal on Friday, May 14th. There was a large attendance of ladies to hear Mr. Emilius Irving, Q.C., speak of the recent changes in the composition of the Court. The presiding Judges were Burton, C.J.O., Osler, Maclennan, Moss, JJ.A.

Mr. Irving, Q.C., treasurer of the Law Society, asked leave to address the Court on behalf of the Bar, with reference to the recent changes in the composition of the Court. He proceeded, in apt and graceful words, to allude to the long services and distinguished abilities of the Hon. John Hawkins Hagarty, the retired Chief Justice, who had been on the bench for forty-two years, during nineteen of which he had been a Chief Justice, and during thirteen years Chief Justice of this Court; then to the judicial career of the present Chief Justice of 23 years upon the appellate bench, and his previous professional life of 32 years, bearing testimony to the affection and esteem in which he is held by the Bar, and their high estimate of his ability and learning, and wishing him long years of enjoyment of his new dignity. He also alluded to the strength of the Court of Appeal, and the great confidence felt in its decisions. In felicitous terms the learned treasurer also extended the congratulations of the Bar to Mr. Justice Moss upon his accession to the Court, speaking of his long services as a bencher of the Law Society, his popularity with the whole Par (as evinced by the large vote invariably accorded to him at the elections of benchers), and the affectionate regard and esteem of those who had been his associates at the Bar. He also spoke of the late Chief Justice Moss, whose memory and the fruits of whose learning are still with us.

The Chief Justice of Ontario then said:—"Mr. Irving and gentlemen of the Bar,—I need scarcely say that we heartily endorse the eulogistic remarks made by the treasurer in reference to my eminent predecessor, and I could not usefully add anything to the well-deserved tribute of respect which he has so eloquently expressed. Speaking for myself, under any circumstances I should have found it difficult

to express in words my deep appreciation of this kind reception; but the too-flattering manner in which Mr. Irving has voiced your congratulations has almost overpowered me, and I must ask you to believe that my gratitude is deeper than I can at this moment give expression to. It is now within a few days of 23 years since I was raised to the bench, and, to use the words of a very eminent American on a recent occasion, I can only say 'that I have earnestly striven to the best of my ability faithfully to fulfil my trust.' Beyond that I have no claim to the honour conferred upon me. But it is a proud satisfaction to me to find that my efforts faithfully to discharge my duties have been noticed by the members of the profession of which I have been so many years a member, and to which I am so warmly attached. I am now nearing the close of my career, and there is nothing that I prize so highly as this manifestation of their esteem and good will. This Court has been presided over by men of great ability, including the gifted jurist whose place I am called upon to fill, and I feel the more on that account the grave responsibility of my position; but I think I am justified in saying that this Court has succeeded in gaining the confidence of the profession and of the public, and I do not doubt that, with the able assistance of my colleagues, with whom I have worked so long, we shall succeed in retaining that confidence—the more so as we have been reinforced by the addition of one of the ablest members of the Bar in the person of my friend Mr. Moss, whose name is a household word, not only in this Court, but throughout the Dominion, his brother having for all too short a time presided over its deliberations with an ability known to every one. This assemblage has met for the purpose of doing honour to him, in which we cordially join, and I will not therefore detain you longer; but, thanking each and every one of you for this kind mark of your confidence, I will close by saying that I shall make every effort to retain it."

Mr. Justice Moss made a most complete, though concise, address in reply to the treasurer's words of appreciation. He referred in the warmest terms to the retiring Chief Justice, and to the new Chief Justice, and then spoke of his own experiences at the Bar, and his feeling of friendliness towards all his former associates. He thanked the Bar warmly for their manifestation of kind feeling towards him.

Among the members of the Bar present were Messrs. D. B. Read, Q.C.; Christopher Robinson, Q.C.; D'Alton McCarthy, Q.C.; J. T. Garrow, Q.C.; Walter Cassels, Q.C.; J. J. Maclaren, Q.C.; C. H. Ritchie, Q.C.; G. F. Shepley, Q.C.; the Hon. William Mulock, and many others.

## RECENT UNITED STATES CASES AND NOTES OF CASES OF INTEREST.

ZACHERY v. MOBILE & O. R. R. CO.

[21 So. Rep. 246.

*Carriers—Rejection of passengers —Blind person.*

The Supreme Court of Mississippi lately refused to extend the rule which permits a common carrier to refuse to accept for passage persons who are so infirm as to require the care of an attendant, to the case of one, who, though blind, was strong and robust; and held that the agents of the company were guilty of a wrong in refusing to sell such a person a ticket solely on the ground that he was blind, and not accompanied by any one.

* * *

TURNER v. ST. CLAIR TUNNEL CO.

[70 N. W. Rep. 146.

*Conflict of Laws.*

Where the defendant company had sent the plaintiff, who was in its employ on the American side of the St. Clair Tunnel, over to the Canadian side, to work at that entrance, the Supreme Court of Michigan decided that the right of the plaintiff to recover for the negligence of the defendant in allowing him to enter on dangerous work there was governed by the laws of Canada.

* * *

BEECHLEY v. MULVILLE.

[Supreme Court of Iowa.—70 N. W. Rep. 107.

*Conspiracy — What constitutes agreement to fix insurance rates.*

An agreement to fix uniform rates of insurance has been held to be within the meaning of a statute (McClain's Code, Iowa, s. 5454), which provides that "if any corporation organized under the laws of this state, or any other state or country, for transacting or conducting any kind of business in this state, or any partnership or individual, shall, create, enter into, become a member of or party to any pool, trust, agreement, combination or confederation with any other corporation, partnership or individual to regulate or fix the price of oil lumber, coal, grain, flour, provisions, or any other commodity or article whatever; or shall create, enter into, become a member of or a party to any pool, agreement, combination or confederation to fix or limit the amount or quantity of any commodity or article to be manufactured, mined, produced, or sold in this state, shall be deemed guilty of a conspiracy to defraud, and be subject to indictment and punishment."

* * *

SMITH v. SAN FRANCISCO & N. P. RY. CO.

[47 Pac. Rep. 582.

*Corporations—Meetings — Voting —A bona fide stockholder.*

The Supreme Court of California lately held, that a person is not entitled to vote at the meetings or elections of a corporation upon stock in which he has never had any interest, but which is registered in his name for the purpose of enabling the real owner to avoid statutory liabilities, since he is not a bona fide stockholder, within the meaning of the statute (Civil Code, Cal., s. 312.).

EMPIRE TRANSP. CO. v. PHILA. & READING COAL & IRON CO.

[Circuit Court of Appeals, Eighth Circuit.—77 Fed. Rep. 919.

*Demurrage—Excuse for delay—Strike.*

A strike of the employees of the charterer, without grievance or warning, and an organized and successful effort on their part to prevent, by threats, intimidation and violence, other labourers, who were willing to do so, from discharging a vessel, will excuse the charterer for a delay in the performance of the work.

* * *

DOCK v. DOCK.

[Supreme Court of Pennsylvania.—36 Atl. Rep. 411.

*Recovery of letters.*

A bill in equity may be maintained for the recovery of letters written by the complainant to her son, and by her son to her, when the former were wrongfully taken by defendant from the possession of the son, and the latter from the possession of the complainant.

* * *

UNION CENTRAL LIFE INS. CO. v. POLLARD.

[Supreme Court of Appeals of Virginia.—26 S. E. Rep. 421.

*Evidence—Family Bible.*

An entry in the family Bible of one whose life is insured, though made by a person who is not a member of the family, is admissible against the plaintiff in an action on the policy.

* * *

LAVER v. HOTALING.

[Supreme Court of California.—47 Pac. Rep. 593.—McFARLAND, J., dissented.

*Quantum Meruit — Customary Charges.*

In an action by an architect on a quantum meruit, the evidence offered by the plaintiff as to the customary charges of architects for similar services is not rendered incompetent by the defendant showing that those customary charges originated in and conform to a rule established by an association of architects.

* * *

BROWN v. STATE.

[Court of Criminal Appeals of Texas.—38 S. W. Rep. 1008.

*False pretences.*

The mere fact that a purchaser gives a check, in payment, on a bank in which he has neither money nor credit, is not a fraudulent representation that he has money or credit there, so as to constitute the offence of swindling.

* * *

LEWIS v. STATE.

[Supreme Court of Georgia.—26 S. E. Rep. 496.

*Forcible entry—What constitutes—Entering unoccupied house.*

In order to constitute the offence of forcible entry at common law, and under those statutes which have adopted the common law definition of that crime, the entry must be accompanied by some act of actual violence or terror directed towards the person in possession; and, therefore breaking and entering an unoccupied house in the absence of the person who had previously been in possession and control thereof, and who still claimed the right to the possession, is not an indictable offence.

* * *

CUNNINGHAM v. BUCKY.

[Supreme Court of Appeals of West Virginia.—26 S. E. Reps. 442.

*Innkeepers—Liability—Theft by servant.*

An innkeeper or hotel-keeper is a guarantor for the good con-

duct of all members of his household, including those engaged in his service, and is liable for thefts committed by them of the property of his guests while asleep in rooms assigned them; and the fact that a guest is intoxicated, or that the door of his room is unlocked, will not relieve the landlord of responsibility.

## BOOK REVIEW.

A Treatise on the Law of Evidence as Administered in England and Ireland, with Illustrations from Scotch, Indian, American and other legal systems. By His Honour the late Judge Pitt Taylor. Ninth edition (in part rewritten) by G. Pitt Lewis, Q.C., with Notes as to American Law by Charles F. Chamberlayne, in two volumes. London, Sweet & Maxwell, Limited, 3 Chancery Lane; Boston, Mass., The Boston Book Co.; Toronto, The Carswell Co., Limited, Law Publishers, etc. 1897.

This is, we believe, the only up-to-date work on the Law of Evidence, and will be of great use to the Canadian Bar. All the recent cases on Presumptions, Character and Opinion Evidence, Primary and Secondary Evidence, and the other branches of the Law of Evidence, so ably treated in the first edition, are expanded. In consequence of the great use which is made of this work in the United States and in Canada, and of the growing importance of the decisions in the Courts of those countries, which are required for citation in the Courts there, but are not expected to be cited in England, an American edition has been found a necessity; this accounts for the large citation of cases in this edition. The codification of the criminal law in 1892, in Canada, and the passing of 56 Vic. c. 31 (Can.), "The Canada Evidence Act," have made great changes in the Law of Evidence, supplanting part of the law of the last edition. Cases dealing with the changes in the law, making a wife a competent but not a compellable witness against her husband, will be found in the text.

The Table of Cases must have been a gigantic undertaking, and we marvel at the laborious task of a modern editor of a law work. To enable a reader to weigh the value of each recent decision at a glance, the editor has placed the date of such decision in the foot notes, and the substance and effect of the decision only. The last edition of this work consisted of 1600 pages, while the present consists of about 1200 pages; all extraneous and old law has been struck out, and the Law of Evidence brought down to date.

Judge Taylor's work needs no introduction to the Canadian Bar; a treatise which in England and America has so long and so admirably stood the test of time and daily use among an over-exacting profession, critical as to correctness of statement and fulness of research, speaks for itself with sufficient distinctness. This ninth edition embodies many extensive and painstaking improvements by Mr. Lewis, Q.C. This edition condenses the original work, as we noticed above, without sacrifice of essential value, and the case law is carried down to to-day. This condensa-

tion has added clearness to the text. It was the general opinion that probably the last edition followed out principles too largely, but, to use the author's words, this has been rectified, and "the true work of the editor of a law book is to strive his best to render the work which he is editing one that the author would have produced if writing at the present day," has been brought about strictly in this work.

The aim of the American editor has been to give to the profession, so far as conveniently possible, within the limitations imposed by the form of notes, such a statement of the modern Law of Evidence as will be practical and useful to the active practitioner, and yet possess value to those who seek to acquaint themselves with the fundamental principles of the subject. In this way the present work is a fit and proper text, not only for the student in the law school, but as his companion in actual practice. All the old antiquarian paths of discussion, dealt with by Evidence writers of this century, including ethics, physics, pychology, are almost neglected in this work, and the historical development of the English Law of Evidence is dealt with only so far as is necessary for a clear conception of the rules themselves. Law students who get called this term should supplant their knowledge of "Best on Evidence," by a perusal of Taylor's (latest edition). Law lectures on Evidence in America's law schools will improve from the publication of this work. The work is sure to find a high place among the profession in Canada. Law libraries will do well to sell out all their present works on Evidence for a copy of this up-to-date work.

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## RECENT ONTARIO DECISIONS.

### Important Judgments in the Superior Courts.

#### Court of Appeal.

*Re* SOLICITOR.

[BEFORE BOYD, C., AND ROBERTSON, J., THE 3RD MAY, 1897.

*Practice — Taxation of costs — Items 104, 145, 150, 153, Tariff A — Jurisdiction of local registrars to increase counsel fees in solicitor and client taxations.*

W. J. Clark, for Hiram A. Boulton, appealed from order of Meredith, C.J., in Chambers, dismissing appeal from the taxation of the local officer at Belleville of a bill of costs rendered by the solicitor to the appellant in respect of services rendered in the action of *Boulton* v. *Boulton*. The appellant contended that the local officer had no power, upon a solicitor and client taxation, to tax such counsel fees (items 104, 145, 150, 153, Tariff A), as only one of the taxing officers at Toronto could tax upon a party and party taxation. C. R. W. Biggar, Q.C., for the solicitor, contra. Held, that solicitor and client taxations are distinct from party and party taxations, both as to the scope of the enquiry and as to the powers of the Master to whom the reference is made, in regard to the allowance of items. According to the practice there is in these taxations no power of intervention on the part of the taxing officer in Toronto in order to obtain an increase in restraint,

under such terms of the tariff as 104, 145, 150, 153. But it has always been understood (see *Re Robinson*, 17 P. R. 426, and *Smith* v. *Harwood*, ib. 36), that the special referee, i.e., the Master who is charged with the solicitor and client reference, has power to exercise the discretion recognized by the tariff in increasing the amount chargeable for certain services ordinarily exercisible by the officer at Toronto in party and party taxations. Appeal dismissed with costs.

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TURNER v. DREW.

[BEFORE BOYD, C., THE 7TH MAY, 1897.

*Set-off of costs and damages—Solicitor's lien for costs not to be displaced by right of set-off between parties.*

Judgment on question of set-off of costs and damages. The action was brought by Sarah Elsie Turner, daughter of the late William Turner, against the widow of the deceased, to enforce the terms of a trust deed, and to recover $3,000 as the plaintiff's share of the rents of certain lands of her deceased father, and for an account. The action was tried before the Chancellor at Toronto, and judgment given on the 29th April last, declaring that plaintiff is entitled equally with defendant to the income of the property in question, and directing an account (if desired by plaintiff) of arrears due to her for six years prior to the action, and for payment of what may be found due by defendant, together with plaintiff's costs of action, after deducting from such arrears and costs, the costs of a former action ordered to be paid by plaintiff to defendant, and for payment by defendant to plaintiff during their lives of one-half of the future annual income of the property, as the same is received. After delivery of judgment counsel for defendant asked the Chancellor to consider whether the set-off directed should not be subject to the solicitor's lien upon the costs of the former action. Held, that there can be no set-off of damages or costs between the same parties in different actions to the prejudice of the solicitor's lien. That is the express effect of Rule 1205, the original of which dates back to Hilary Term, 2 Will. IV., *Dunn* v. *West*, 10 C. B., 420. The same practice obtains in England, though the rule there is differently phased: *Hanel* v. *Stanby*, (1896) 1 Chy. 607. Nothing has happened to displace the solicitor's lien, which is simply a right to the equitable interference of the Court not to leave the solicitor unpaid for his services. The lien in this case exists if it is made to appear that he has not been paid his costs in the first case, and if that is so, no set-off can be ordered to his prejudice. Delamere, Q.C., for defendant. Hislop for plaintiff.

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REGINA v. ROBINSON.

[BEFORE ARMOUR, C.J., FALCONBRIDGE AND STREET, JJ., THE 10TH MAY, 1897.

*Criminal Code—Admissibility of evidence—Duty of husband to supply his wife with necessaries—Evidence of agreement by which wife to support herself.*

F. C. Cooke, for the prisoner. J. R. Cartwright, Q.C., for the Crown. Case reserved by Ferguson, J., at the Sandwich Spring Assizes, 1897. The prisoner was indicted and convicted under section 210, sub-section 2, of the

Criminal Code, 1892, which is as follows:—"Every one who is under a legal duty to provide necessaries for his wife, is criminally responsible for omitting, without lawful excuse, so to do, if the death of his wife is caused, or if her life is endangered, or her health is or is likely to be permanently injured by such omission." Evidence was offered on behalf of the prisoner that at the time the marriage took place it was agreed between the prisoner and the person now his wife that they were to live at their respective houses in the city of Windsor, and be supported as before the marriage, until the prisoner obtained a situation where he could earn sufficient for their maintenance. This evidence was rejected. The question reserved was whether this evidence should have been admitted. Counsel for the prisoner contended that evidence of such an agreement was admissible, citing *Regina* v. *Nasmith*, 42 U. C. R., at p. 249. Counsel for the Crown contended, that although the evidence might be given in answer to an action by the wife for alimony, it could not be given in answer to an indictment of the prisoner for not performing his duty to the public. He cited *Regina* v. *Plummer*, 1 C. and K., 600; *Hunt* v. *De Blaquire*, 5 Bing., 550. Armour, C.J.—The evidence is not an absolute answer to the indictment, of course, but it is evidence to go to the jury of a lawful excuse; it is evidence which tends to show a lawful excuse. It may not be decisive of the case, but it should have been admitted. Falconbridge, J.—I quite agree. Street, J.—I cannot see that the evidence is admissible in any view. . Order made under section 746 of the Code, directing a new trial.

* * *

SAMPLE v. McLAUGHLIN.

[BEFORE ARMOUR, C.J., FALCONBRIDGE AND STREET, JJ., THE 19TH MAY, 1897.

*Security for costs—Application by solicitor on record against parties who repudiate his authority—Solicitor as officer of the Court—Charge of improper conduct should be freely investigated.*

Judgment on appeal by the plaintiffs' solicitor on the record from an order of the Master in Chambers, dismissing an application by the appellant for security for costs of proceedings taken by two of the plaintiffs, Thomas and Andrew Sample, to set aside the judgment in this action, and strike their names out of the action, upon the ground that the solicitor had no authority from such plaintiffs to bring the action in their names. Held, that, under the circumstances, the solicitor was not entitled to require these plaintiffs to give security for costs. He brought them into Court by the use of their names, and they were entitled to come into Court to defend themselves against such a use of their names without being required to give security for costs, upon the principle laid down in *Re Perry*, 2 Chy. D. 531. Held, also, that where a charge of improper conduct is made against a solicitor, who is an officer of the Court, by a person out of the jurisdiction, the Court ought not to order security for costs, and thus prevent such a charge being investigated. Appeal dismissed with costs. W. M. Douglas, for appellant. Aylesworth, Q.C., for respondents.