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CURRENT TOPICS AND CASES.

In filling the position of Clerk of Appeals at Montreal, the principle of promotion, which it was generally conceded should be followed on this occasion, was disregarded. We regret that Mr. Ouimet's twenty-eight years' service should not have received its due reward, but, apart from this, there can be no objection to the appointment of Mr. J. O. Joseph, Q.C., who we have no doubt will discharge the duties of the office with diligence and zeal. It was supposed that the present opportunity would have been taken to relieve the Clerk of Appeals of the duty of drawing judgments of distribution for the Superior Court. This is a detail of work which has been attached to the office of Clerk of Appeals since the late Mr. Justice Beaudry held the position, but it does not properly belong to the appeal department. We understand, however, that it will continue to be included in Mr. Joseph's duties, with the accompanying emoluments, as in the times of his predecessors.

The case of *Stewart* v. *McLean* has reached the last stage of forensic debate, and has been adjudicated by the Judicial Committee of the Privy Council, with the result

that the judgment of the Supreme Court of Canada is set aside, and the judgment of the Superior Court, affirmed by the Queen's Bench, is restored. The Privy Council has affirmed the principle that the members of an insolvent firm after the winding up and the disposal of the estate, preserve their rights *inter se*, under the partnership articles, as to overdrafts by one or more of their number. The fact that one of the partners bought the insolvent estate from the curator, does not affect the question, and such partner is liable to account to his co-partners for an overdraft. This decision is in accord with the opinion of the majority in number of the Canadian judges who passed upon the question, for it may be remarked that the Queen's Bench unanimously affirmed the decision of Mr. Justice Jetté in the Superior Court, and the judgment of the Supreme Court reversing that of the Quebec Courts was delivered by a bare majority of one—Justices Fournier, Sedgewick and King being of opinion to reverse, while the Chief Justice (Sir Henry Strong) and Mr. Justice Taschereau were for confirming. Had the Privy Council not granted special leave to appeal, the case would have been in the peculiar position that the concurring judgments of the provincial courts would have been overruled by a majority of one in the Supreme Court.

The new Canadian ministry is certainly strong in legal talent. The premier, Mr. Laurier, is 54 years of age, and was appointed a Q.C. in 1880. For 20 years he has been actively engaged in politics, but he has also followed the practice of his profession. Sir Oliver Mowat, the Minister of Justice, is 76 years of age, and was appointed to the bench as Vice-Chancellor of Upper Canada as long ago as 1864. In 1872 he resigned his judicial office to become premier of Ontario. After 24 years' successful administration of provincial affairs, without a defeat in the legislature, he becomes, when close on four score, Min-

ister of Justice for the Dominion—a brilliant close to a distinguished career. Mr. Fitzpatrick, the new solicitor-general, is a member of the Quebec Bar, and has sat in the legislative assembly of this province since 1894. The Minister of Marine and Fisheries, Mr. Davies, is a prominent member of the bar of Prince Edward Island and was premier in 1876. He was appointed Q.C. in 1880. Sir H. G. Joly de Lotbinière, the controller of Inland revenue, was called to the bar in 1855 and has been premier of Quebec. Mr. Blair, Minister of Railways, is a member of the New Brunswick bar, and has been premier of that province. Mr. Mulock, postmaster-general, is a member of the Ontario bar, as is also Mr. Scott, the Secretary of State. Mr. Tarte, Minister of Public Works, is a notary by profession, but has been chiefly eminent as a journalist and politician. Mr. Geoffrion, Q.C., who joins the Government without portfolio, is well known throughout Canada as a very eminent member of the bar of this province. Altogether, after the members of the legal profession have been served, there does not seem to be very much left for outsiders, but it may be observed that the medical profession is represented by Dr. Borden, the Minister of Militia.

In some notes which the late Abraham Lincoln prepared for a lecture to law students, and which were found among his papers after his death, he makes reference, among other matters, to fees. His ideas may seem somewhat crudely expressed, but it must be remembered that his experience was gained chiefly in the rugged field of pioneer Western civilization. He wrote as follows:—"The matter of fees is important, far beyond the question of mere bread and butter involved. Properly attended to, fuller justice is done to both lawyer and client. An exorbitant fee should never be claimed. As a general rule never take your whole fee in advance, nor any more than a small retainer. When fully paid before-

hand, you are more than a common mortal if you can feel the same interest in the case as if something was still in prospect for you as well as for your client. And when you lack interest in the case, the job will very likely lack skill and diligence in the performance. Settle the amount of the fee and take a note in advance. Then you will feel that you are working for something, and you are sure to do your work faithfully and well. Never sell a fee note—at least not before the consideration service is performed. It leads to negligence and dishonesty—negligence, by losing interest in the case, and dishonesty, in refusing to refund when you have allowed the consideration to fail."

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

LONDON, 20 July, 1896.

Present: THE LORD CHANCELLOR, LORD HERSCHELL, LORD WATSON, LORD MACNAGHTEN, LORD MORRIS, LORD DAVEY, and SIR RICHARD COUCH.

FIELDING et al. v. THOMAS.

Constitutional law—Power of provincial legislatures to punish for contempt of the House—Responsibility of members—Power of local legislature to pass an act relieving members from liability to civil action.

HELD:—1. *The local legislatures existing at the time had authority prior to confederation to make laws respecting their constitution, powers and procedure, and to punish for contempt and disobedience of their orders.*

2. *Even if this power did not then exist the B. N. A. Act, by Section* 92, *conferred power on the local legislatures to pass acts for defining their powers and privileges.*

3. *A local legislature has power to pass an act relieving its members from liability to civil actions in regard to any vote or proceeding.*

This was an appeal from a judgment of the Supreme Court of Nova Scotia of December 2, 1893, dismissing the application of

the appellants for an order that the verdict and judgment entered for the respondent at the trial before Mr. Justice Townshend should be set aside and the judgment entered for the appellants.

The arguments were heard in July, 1895, when judgment was reserved.

The LORD CHANCELLOR, in now delivering their Lordships' judgment, said:—

By the verdict and judgment in question the appellants were found to have unlawfully assaulted and imprisoned the respondent. The Supreme Court were equally divided, and the judgment of Mr. Justice Townshend stood confirmed.

The respondent, Mr. David J. Thomas, was summoned to attend at the Bar of the House of Assembly of Nova Scotia to answer a breach of the privileges of the House in having published a libel reflecting on a member or members of the House (in connection with their conduct as members of the House). He attended on two occasions and on the second occasion was ordered to withdraw and remain in attendance during the debate which took place. On being called in by the Sergeant-at-Arms by order of the Speaker he refused to obey the order and left the precincts of the House. It is not denied that the respondent intentionally disobeyed the order of the House. He was thereupon arrested by order of the House and on being brought to the Bar was adjudged to have been guilty of a contempt of the House committed in the face of the House, and was committed to the common jail of Halifax for 48 hours. Upon that he brought an action for assault and imprisonment, and it is from the judgment in that action that the present appeal is brought.

The appellants are sought to be made liable by reason of their having voted as members of the House of Assembly for the imprisonment of the respondent. The acts complained of are justified under sections 20, 29, 30, 31, of ch. 3 of the Revised Statutes of Nova Scotia, 5th series. The appellants also rely on the indemnity given to members of the House of Assembly by section 26 of the same statute. Those sections are as follows:—

"20—In all matters and cases not specially provided for by this chapter, or by any other Statute of this Province, the Legislative Council of this Province, and the committee and members thereof respectively, shall at any time hold, enjoy and

exercise such and the like privileges, immunities and powers as shall be for the time being held, enjoyed and exercised by the Senate of the Dominion of Canada, and by the respective committees and members thereof, and the House of Assembly, and the committees and members thereof respectively, shall, at any time, hold, enjoy and exercise such and the like privileges, immunities and powers as shall for the time being be held, enjoyed and exercised by the House of Commons of Canada and by the respective committees and members thereof, and such privileges, immunities, and powers of both Houses shall be deemed to be and shall be part of the general and public law of Nova Scotia, and it shall not be necessary to plead the same, but the same shall in all courts of justice in this Province, and by and before all justices and others, be taken notice of judicially.

"26.—No member of either House shall be liable to any civil action or prosecution, arrest, imprisonment, or damages by reason of any matter or thing brought by him by petition, bill, resolution, motion, or otherwise, or said by him before such House, and the bringing of any such action or prosecution, the causing or effecting any such arrest or imprisonment, and the awarding of any such damages shall be deemed violations of this chapter.

"29.—The following acts, matters and things are prohibited and shall be deemed infringements of this chapter:—(1) Insults to or assaults or libels upon members of either House during the Session of the Legislature." (The other provisions are immaterial to the present purpose.)

"30.—Each House shall be a Court of Record, and shall have all the rights and privileges of a Court of Record for the purpose of summarily enquiring into and (after the lapse of 24 hours) punishing the acts, matters and things herein declared to be violations or infringements of this chapter, and for the purposes of this chapter each House is hereby declared to possess all such powers and jurisdictions as may be necessary for enquiring into, judging and pronouncing upon the commission or doing any such acts, matters, or things, and awarding and carrying into execution the punishment thereof provided for by this chapter, and, amongst other things, each House shall have power to make such rules as may be deemed necessary or proper for its procedure as such Court as aforesaid.

"31.—Every person who shall be guilty of an infringement or violation of this chapter shall be liable therefor (in addition to any other penalty or punishment to which he may by law be subject) to an imprisonment for such time during the session of the Legislature then being held as may be determined by the House before whom such infringement or violation shall be enquired into. The nature of the offence shall be succinctly and clearly stated and set forth on the face of any warrant issued for a commitment under this section."

It should be mentioned that by an act (Revised Statutes of Canada, 49 Vict., c. 11) the Dominion Parliament had already conferred on themselves the privileges, immunities and powers of the House of Commons of the United Kingdom.

If it was within the powers of the Nova Scotia Legislature to enact the provisions contained in section 20, and the privileges of the Nova Scotia Legislature were the same as those of the House of Commons of the United Kingdom as they existed at the date of the passing of the British North America Act, 1867, there could be no doubt that the House of Assembly had complete power to adjudicate that the respondent had been guilty of a breach of privilege and contempt, and to punish that breach by imprisonment. The contempt complained of was a wilful disobedience to a lawful order of the House to attend. The authorities summed up in *Burdett* v. *Abbot* (14 East, 1), and followed in the case of *The Sheriff of Middlesex* (11 Adol. and Ellis, 273), establish beyond all possibility of controversy the right of the House of Commons of the United Kingdom to protect itself against insult and violence by its own process without appealing to the ordinary Courts of law and without having its process interfered with by those Courts.

The respondent, however, argues that the Act of the Provincial Legislature, which undoubtedly created the jurisdiction and further indemnified members of it against any proceedings for their conduct or votes in the House by the ordinary courts of law, is *ultra vires*. According to the decisions which have been given by this Board, there is now no doubt that the Provincial Legislature could not confer on itself the privileges of the House of Commons of the United Kingdom, or the power to punish the breach of those privileges by imprisonment or committal for contempt, without express authority from the Imperial Legis-

lature. By Section 1 of 38-39 Vic., c. 38, which was substituted for Section 18 of the British North America Act, 1867, it was enacted that the privileges, immunities and powers to be held, enjoyed and exercised by the Dominion House of Commons should be such as should be from time to time defined by the Act of the Parliament of Canada, but so that any Act of the Parliament of Canada, defining such privileges, immunities, or powers should not confer any special privileges, immunities or powers exceeding those at the passing of such Act held, enjoyed, and exercised by the Commons House of Parliament of the United Kingdom, and the members thereof. There is no similar enactment in the British North America Act, 1867, relating to the House of Assembly of Nova Scotia, and it was argued, therefore, that it was not the intention of the Imperial Parliament to confer such a power on the Legislature. But it is to be observed that the House of Commons of Canada is a legislative body created for the first time by the British North America Act, and it may have been thought expedient to make express provision for the privileges, immunities, and powers of the body so created which was not necessary in the case of the existing Legislature of Nova Scotia. By section 88 the Constitution of the Legislature of the Province of Nova Scotia was, subject to the provisions of the Act, to continue as it existed at the union until altered by authority of the Act. It was, therefore, an existing Legislature subject only to the provisions of the Act. By section 5 of the Colonial Laws Validity Act (28 and 29 Vict., c. 63) it had at that time full power to make laws respecting its constitution, powers, and procedure. It is difficult to see how that power was taken away from it, and the power seems sufficient for the purpose.

Their Lordships are, however, of opinion that the British North America Act itself confers the power (if it did not already exist) to pass acts for defining the powers and privileges of the Provincial Legislature. By section 92 of that Act the Provincial Legislatures may exclusively make laws in relation to matters coming within the classes of subjects enumerated, *inter alia*, the amendment from time to time of the constitution of the province with but one exception—namely, as regards the office of Lieutenant-Governor. It surely cannot be contended that the independence of the Provincial Legislature from outside interference, its protection and the protection of its members from

insult while in the discharge of their duties, are not matters which may be classed as part of the constitution of the Province or that legislation on such matters would not be aptly and properly described as part of the constitutional law of the Province.

It is further argued that the order which the respondent disobeyed was not a lawful order or one which he was under any obligation to obey. The argument seems to be that the original cause of complaint was a libel ; that though the particular breach of the act complained of was the disobedience to the orders of the House, yet as those orders were issued in reference to a certain petition presented to the House, the contents of which were alleged to be libellous, and during the investigation of the question who was responsible for its presentation, and as it must be assumed that a libel was a matter beyond the jurisdiction of the House to be enquired into, inasmuch as libel is a criminal offence, and the criminal law is one of the matters reserved for the exclusive jurisdiction of the Dominion Parliament, the whole matter was *ultra vires*, and both the members who voted and the officer who carried out the orders of the House are responsible to any ordinary action at law. Their Lordships are unable to acquiesce in any such contention. It is true that the criminal law is one of the subjects reserved by the British North America Act for the Dominion Parliament, but that does not prevent an enquiry into, and the punishment of an interference with the powers conferred upon the Provincial Legislatures by insult or violence. The Legislature had none the less a right to prevent and punish obstruction to the business of legislation, because the interference or obstruction was of a character which involved the commission of a criminal offence or brought the offender within reach of the criminal law. Neither in the House of Commons of the United Kingdom nor the Nova Scotia Assembly could a breach of the privileges of either body be regarded as subjects ordinarily included within that department of State government which is known as the criminal law. The efforts to drag such questions before the ordinary Courts when assaults or libels have been in question in the British Houses of Legislature have been invariably unsuccessful, and it may be observed that 1 Will. & Mary, Sess. II., c. 2, section 1, sub-section 9, "That the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned

in any Court or place out of Parliament," is declaratory, and not enacting.

Their Lordships are therefore of opinion that the 20th section of the Provincial Act was not *ultra vires*, and afforded a defence to the action. It may be that sections 30 and 31 of the Provincial Act if construed literally and apart from their context would be *ultra vires*. Their Lordships are disposed to think that the House of Assembly could not constitute itself a Court of Record for the trial of criminal offences. But read in the light of the other sections of the Act and having regard to the subject matter with which the Legislature was dealing, their Lordships think that those sections were merely intended to give to the House the powers of a Court of Record for the purpose of dealing with breaches of privilege and contempt by way of committal. If they meant more than that, or if it be taken as a power to try or punish criminal offences otherwise than as incident to the protection of members in their proceedings, section 30 could not be supported.

It is to be observed that the case of *Barton* v. *Taylor*, (11 L.R., App. Ca., Privy Council, 197), referred to by one of the learned judges below, is no authority in favor of the contention here. No statute was there relied upon, but the Legislative Assembly itself in that case had, in pursuance of statutory powers, adopted certain standing rules or orders for the orderly conduct of the business of the Assembly. The trespasses complained of were adjudged by this Board not to be justifiable under the standing orders. It was then sought to justify the acts in question as being within a power incident to or inherent in a colonial Legislative Assembly. The Board refused to adopt that contention, but their Lordships expressly added :—"They think it proper to add that they cannot agree with the opinion which seems to have been expressed by the Court below, that the powers conferred upon the Legislative Assembly by the Constitution Act do not enable the Assembly 'to adopt from the Imperial Parliament, or to pass by its own authority, any standing order giving itself the power to punish an obstructing member, or remove him from the Chamber, for any longer period than the sitting during which the obstruction occurred.' This, of course, could not be done by the Assembly alone without the assent of the Governor. But their Lordships are of opinion that it might be done with the

Governor's assent; and that the express powers given by the Constitution Act are not limited by the principles of common law applicable to those inherent powers, which must be implied (without express grant) from mere necessity, according to the maxim, 'Quando lex aliquid concedit, concedere videtur et illud, sine quo res ipsa esse non potest.' Their Lordships' affirmance of the judgment appealed from is founded on the view, not that this could not have been done, but that it was not done, and that nothing appears on the record which can give the resolution suspending the respondent a larger operation than that which the court below has ascribed to it."

But independently of those considerations the provisions of section 26 of the Act of the Provincial Legislature would, in their Lordships' opinion, form a complete answer to the action even if the Act complained of had been in itself actionable. Their Lordships are here dealing with a civil action, and they think it sufficient to say that the Legislature could relieve members of the House from civil liability for acts done and words spoken in the House, whether they could or could not do so from liability to a criminal prosecution. No such question as that which arose in *Barton* v. *Taylor*, arises here. All those matters—the express enactment of the privileges of the House of Commons of the United Kingdom, the express power to deal with such Acts by the Provincial Assembly, the express indemnity against any action at law for things done in the Provincial Parliament—were all explicitly given, and the only arguable question is that which their Lordships have dealt with—namely, whether it was within the power of the Provincial Legislature to make such laws.

For these reasons their Lordships will humbly recommend to Her Majesty that the judgment in this case should be reversed and judgment entered for the appellants with costs. The respondents must pay the costs of the appeal.

Arthur Cohen, Q.C., Hon. J. W. Longley, Q.C. (Attorney-General of Nova Scotia), and *Lewis Coward* for the appellants.

Hon. Edward Blake, Q.C. (of the Canadian Bar), and *Tyrrell T. Paine* for the respondent.

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

LONDON, 31 July, 1896.

Present :—LORD HOBHOUSE, LORD MACNAGHTEN, LORD DAVEY, and SIR RICHARD COUCH.

THE TORONTO RAILWAY CO. (plaintiff), appellant, and THE QUEEN (defendant), respondent.

Customs duties—50 & 51 Vic. c. 39, items 88 and 173—Exemption from duty—Steel rails for use on railways.

HELD (*reversing the judgment of the Supreme Court of Canada, 25 Can. S. C. R. 24), the exemption from duty in 50 & 51 Vic. (D.) chap. 39, item 173, of "steel rails weighing not less than twenty-five pounds per lineal yard, for use on railway tracks," includes rails to be used for street railways.*

This was an appeal from a judgment of the Supreme Court of Canada of June 26, 1895, affirming a decision of Mr. Justice Burbidge. The Chief Justice and Mr. Justice King dissented from the decision of the Supreme Court.

Mr. C. Robinson, Q.C., (of the Canadian Bar), and Mr. Osler, Q.C. (of the Canadian Bar), were counsel for the appellants; Mr. Newcombe, Q.C. (of the Canadian Bar), Mr. Lochnis, and Mr. Hodgins (of the Canadian Bar) for the respondent.

SIR RICHARD COUCH, in delivering their Lordships' judgment, said the question was whether the appellants were bound to pay duty on steel rails imported by them for the purposes of their business. They had paid under protest the sum demanded by the Crown, and they sought to recover it in the present action. The Act governing the case was that of 1887 (50 and 51 Vic., c. 39). The Crown contended that duty was payable under item 88 of section 1, which affected "iron or steel railway bars and rails for railways and tramways." The appellants contended that their rails were exempted by item 173 of section 2, which applied to "steel rails for use in railway tracks." Mr. Justice Burbidge, who tried the case in the Exchequer Court, decided in favour of the Crown. After subjecting the words to criticism, he concluded that, if there were no legitimate aids to discovering the intention of the legislature other than the language used in the Act of 1887 and previous Acts on the same subject, the ques-

tion would be, to say the least, so involved in doubt that the appellants ought to succeed. But then he inquired into the policy of the Legislature, and finding that its policy was to protect Canadian manufactures, he decided that the doubtful words must be construed in accordance with that intention, and that duty must be paid. On appeal to the Supreme Court the decision of the Exchequer Court was upheld; but there were differences among the learned Judges both in their conclusions and in the reasoning on which identical conclusions were based. The Chief Justice, with whom Mr. Justice King concurred, examined the expressions "railway," "street railway," and "tramway," and he was of opinion that the appellants' road fell under the head of "railway" and not of "tramway" in item 88, and was a "railway" track within item 173. Mr. Justice Gwynne thought that item 173 was not to be construed as exempting from duty some part of the particular things which by item 88 had been subjected to duty, but as providing for a different article altogether—viz., steel rails for use in great arterial commercial lines. He also thought the that word "railways" in item 88 meant railways *ejusdem generis* with tramways, and not the "railway tracks" mentioned in item 173. Mr. Justice Taschereau, with whom Mr. Justice Fournier concurred, referred to various instances of expressions both in common parlance and in enactments, to show that "railways" on the one hand had been distinguished from "tramways" and "street railways" on the other. And holding that the appellants' road was a "street railway" or "tramway," he decided that it fell within item 88 and not within 173. In that conflict of judicial opinion the case came before their Lordships. On two points they expressed themselves as clear during the argument. First, they could not concur in the view that the policy of the Canadian Parliament led to the construction contended for by the Crown. Supposing it to be made out by legitimate evidence that protection for Canadian manufacturers was intended in 1887, protection was given, however the Act be construed, and the only question was how much. Secondly, they could not see any reason for holding that the railways spoken of in item 88 were only those which were *ejusdem generis* with tramways or that item 187 referred only to rails for great arterial lines. The question was what was meant by the "railway tracks" for which rails were

to be admitted free. The appellants were incorporated by an Ontario statute passed in 1892. They received authority to construct and work a double or single track railway in Toronto. By the Ontario Street Railway Act, 1887, companies chartered for that purpose might construct and work a double or single iron railway with necessary side tracks. Section 5 provided that the railway track should conform to the grades of the streets, and section 6 that all other vehicles might use and travel on the tracks, but giving place to the company's cars by leaving the tracks. The same expressions were found in an Ontario statute on the same subject passed in 1883. The appellants then were then the owners of what the Legislature of their own province called a single or double track street railway, and the line on which they worked was called "a railway track." Those expressions were not conclusive as to the meaning of the term as used by the Dominion Legislature in the Act under discussion. But they showed that the term was known to draftsmen of statutes in Canada and was there applied to such a line as that of the appellants. It seemed to their Lordships to be good evidence as to the meaning of the term in the mouth of a Canadian Legislature, and to afford *prima facie* ground for holding that "railway track" included a line of street railway. Then did the Act of 1887 contain any intrinsic evidence that the expression had some other meaning? Their Lordships looked at the course of legislation on the subject. The first Act which imposed a duty on rails was passed in 1879, when one rate of duty was placed on "iron rails or railway bars for railways or tramways" and another rate on "steel railway bars or rails." According to the grammatical construction of the first of those sentences iron railway bars were applicable both to railways and to tramways, and steel railway bars or rails appeared to have the same application There was no distinction taken between railways and tramways for that purpose. In 1883 "steel railway bars or rails" were exempted from duty, and they remained free till 1885, when a new Act was passed which exempted "steel railway bars or rails, not including tram or street rails." That was the first mention of street rails, and it seemed that the expression "railway bars or rails" was calculated to include tram rails and street rails (if, indeed, there was any difference between them) and that express words were

thought necessary to exclude the latter from the exemption accorded generally to "steel railway bars or rails." That, then, was the state of the enactments in 1887. Steel railway bars or rails were exempt from duty provided they were not tram or street rails. Then the Legislature appeared to have taken a wholly new dividing line between free and dutiable articles. For the first time the distinction of weight was introduced. Item 88, which imposed duty on "iron or steel railway bars or rails for railways or tramways," followed the language of 1879 in treating railway bars and rails as applicable to both railways and tramways. Item 173 exempted "steel rails weighing not less than 25 pounds per lineal yard for use in railway tracks." It was true that the expression of "street rails," which were disallowed the benefit of exemption in 1885, had now disappeared, and an elaborate argument was submitted for the purpose of showing on behalf of the Crown that the appellants' line was nothing but a tramway, taxed under item 88, and not exempted by 173. Their Lordships did not enter into that verbal discussion. It might be that in other Acts and for other purposes there were substantial distinctions between railways or railway tracks and street railways and tramways. But for this purpose and in this Act and in its three predecessors there was not traceable any idea of making such a distinction, but rather the idea of putting all kinds of railways on the same footing, except in the one passage in the Act of 1885, in which the generality of the words "railway bars or rails" was limited by express words excluding "tram or street rails." They held that the only distinction in the Act between taxed and free steel rails for railways was that of weight; and that, as the rails of the appellants were above the specified weight and were for use on their railway track, they were exempted from duty. Their Lordships would humbly advise Her Majesty to discharge both the orders below, and to enter judgment for the appellants with costs in both Courts. The respondent must also pay the costs of this appeal.

GENERAL NOTES.

THE CODIFICATION OF MERCANTILE LAW.—A conference of representatives of the leading legal and mercantile bodies in Scotland was held recently in Edinburgh under the presidency of

Mr. W. W. Robertson, Master of the Merchant Company, for the purpose of considering the subject of the codification of mercantile law. Lord Watson wrote as follows: "There are some branches of the law (equitable jurisdiction) which it would be almost impossible, and others which, in my opinion, it would not be useful, to codify. Mercantile law is an exception, and I trust and expect that in due time its codification will be accomplished. The question is how. My judicial experience leads me to believe that, whilst good codification is most advantageous, bad or hurried codification is worse than none. I have met with examples of both. I have no faith in the results of an executive commission. Our Bills of Exchange and Sale of Goods Acts, which have so far stood the test of experience, were first prepared by one good lawyer, revised by other lawyers competent, and then underwent the scrutiny of a committee of each House before becoming law. There are some branches—such as maritime insurance—which cannot be usefully codified without submitting the bill before it is brought into Parliament to the revision and observations of mercantile and legal bodies throughout the country. That appears to me to be the most practicable mode of procedure, and far preferable to a commission, however representative. I entirely approve of the suggestion to move the powers that be to more lively action, but with this caution—that in such matters haste is undesirable."—Resolutions were passed affirming that the completion of a mercantile code would at the present time be a most suitable instalment of codification, and that, under proper safeguards, the assimilation of the law of England and Scotland effected in the codifying statutes already passed should be continued in completing a mercantile code. The whole subject was remitted to a committee to arrange for a deputation to the Secretary for Scotland and Lord Advocate.

Implied Contracts.—Some years age Miss R. brought Mr. E. before the Court for breach of promise. She admitted that the gentleman had never promised marriage by his hand or tongue, but he had kissed her in company. Judge Neilson told the jury that no interchange of words was necessary, "the gleam of the eye and the conjunction of the lips being overtures when frequent and protracted," and thus directed they made the defendant pay fifteen thousand dollars for heedlessly indulging in eye-gleams and lip-conjunctions.—*Green Bag.*