E. L. NEWCOMBE, Q.C.,
DEPUTY MINISTER OF JUSTICE FOR CANADA.

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Edmund Leslie Newcombe, Q.C., M.A., LL.B., Deputy Minister of Justice, was born at Cornwallis, King's County, N.S., 17th February, 1859; graduated in arts at Dalhousie College in 1878, from which University he also received the degree of M.A. three years later. He studied law at Kentville, in the office of John P. Chipman, Q.C. (now Judge of the County Court for District No. 4), reading at the same time for the law course of the University of Halifax, where he graduated with distinction in 1882.

Called to the Bar of Nova Scotia in 1883, Mr. Newcombe entered into partnership with Mr. Chipman, and during the three years which he practised in Kentville, held briefs in all the important litigation of the county, and also in some cases at the adjoining circuits. He thus earned a reputation which made his services sought at the capital, and so in 1886 he removed to Halifax, and entered into partnership with Nicholas H. Meagher, Q.C., now the Hon. Mr. Justice Meagher, of the Supreme Court of Nova Scotia. Mr. Newcombe practised at Halifax for upwards of seven years, during which he held a leading place at the Bar, and in that capacity appeared in many of the most important cases of the period. An examination of the reports shows that he met with a high measure of success, the result of great industry and skill in the management of his cases and the ability which he exhibits in eliminating the immaterial circumstances and grasping the turning-point of a case, and presenting his side of it in a clear and convincing manner. His clients had the utmost confidence in him.

When in 1893 Mr. Sedgewick was appointed Judge of the Supreme Court, Sir John Thompson at once recognized in Mr. Newcombe qualifications which he considered would prove of great service in the administration of the Department of Justice, and he, preferring the broader field of professional work which was offered, though at some pecuniary sacrifice, arising out of the

inadequacy of salary as compared with the more generous income which he had been receiving from his practice, relinquished the latter and accepted the appointment of Deputy Minister of Justice for Canada, which position he still occupies. In that capacity he has been engaged not only, as his predecessors were, in the administration of the affairs of his department, which include the advising of other departments of the Government upon legal matters, reporting upon the constitutionality of the statutes of the various Provinces, and many other matters of public importance, but he has in addition, to a considerable extent and with much success, conducted in the courts the litigation in which the Government has been concerned. Mr. Newcombe is eminently fair and judicial in his methods, and his administration of the department has met with general satisfaction.

Mr. Newcombe was appointed Queen's Counsel 18th November, 1893, and called to the Bar of Ontario, 8th December, 1893. He has been a member of the Council of the Nova Scotia Barristers' Society 1892-3; Governor of Dalhousie College, 1887-93; President of Alumni Association of Dalhousie College, 1887; Lecturer on Insurance in the Law Faculty of that University, 1892 and 1893. In 1895 he was appointed by His Excellency in Council representative of the Government of Canada to confer with Her Majesty's Government on the subject of Canadian copyright, and in that capacity visited London and conferred with the Secretary of State for the Colonies, both as to the constitutional aspects of the question, and for the purpose of removing the causes of complaint then existing on the part of the Canadian publishers. Mr. Newcombe's report as to the result of this conference has not been published. His work was mentioned in the Governor General's speech at the opening of the following session of Parliament, and it is believed, although no new copyright legislation has been enacted, that the more satisfactory relations that have since prevailed between Canada and the Mother Country, with regard to this difficult problem, have been very largely due to the capable and prudent manner in which he executed the important mission with which he was entrusted.

Mr. Newcombe is very fond of sport, his special hobby being big game shooting, in which he has a very considerable record for the opportunities afforded by a busy professional life.

So far, no appointment has been made to fill the vacancy caused by the retirement of Chief Justice Burton and the promotion of Chief Justice Armour and Mr. Justice Falconbridge. One rumour has it that a learned Judge is to go from the Court of Appeal to the Queen's Bench Division, his place being taken by a gentleman better known in political than in legal circles. We understand that the present Government claims to be a strong one, and, if so, an evidence of its strength would be to appoint the very best obtainable man at the Bar apart from politics. It has been remarked that in all countries where there is a free Government such as ours, when one of the political parties has been in opposition for many years, and then comes into power, there is always a large army of political adherents seeking office, and the pressure for some position becomes a serious menace to the public service. There is nothing new in this, and it applies to all political parties; but it is sincerely to be hoped that the appointment now to be made will be one which will reflect credit on the Government of the day, and not one which would be the result of political exigency. If any Government makes the Bench a haven of refuge for worn-out politicians, the hitherto usual high character of judicial appointments will sink through the level of mediocrity to that of incompetence. Judges ought to be looked for amongst the vigorous leaders of the profession. With one or two exceptions, Sir John Macdonald acted on this principle, so far as the Bench was concerned, though his appointments to the position of Queen's Counsel were, as a whole, anything but creditable. Again, whilst we do not believe in the fad of placing young men, as such, on the Bench, to appoint those who are subject to any infirmity or who are too far advanced in life, and especially if they are politicians rather than lawyers, is a grave mistake, and we are confident that we voice the thought of the profession when we protest against the Bench being made a dumping ground for useless political timber by any political party. There may be no danger of this at the present juncture, but as there is an ever-present dread in that direction owing to the fact that in this country party politics run high, and because we live beside a people of the same race as ourselves where the judiciary is elective, and therefore directly subject to political influence, we feel justified in calling attention to this most important matter at a time when we can

speak with greater freedom, no appointment having as yet been announced.

Concurrently with the hot wave that passed over Ontario last month, and which was said to have produced the hottest days that have been known for half a century, was the arrival of one of our English exchanges which speaks of the tropical weather in London in the middle of July which resulted in the appearance of two Judges on the Bench without their wigs, an event which was chronicled as both novel and noteworthy. In connection with this it was noted that the judicial headgear was dispensed with by Sir J. P. Wilde on July 24, 1868, when it was remarked in the *Times* that during two days the learned Judge and the Bar sat without their wigs. On the same occasion Sir Richard Collier in opening a case referred to the innovation, and himself apologized for not appearing in full forensic costume, expressing the wish that the precedent set by his lordship might be generally followed, and hoping that " the obsolete institution of the wig was coming to an end." The insular mind, however, revolves slowly, so, with the above exception, both Bench and Bar still swelter under "horse hair." We are glad to notice, however, that the "beaver" as a "tile" is now occasionally varied by a straw hat even by London swells at afternoon teas. But anything is possible when British soldiers are allowed to go into battle, not shoulder to shoulder as of yore, and as a great red target for the enemy, but as individual sharp-shooters clothed in dust-coloured khaki, with the privilege of exercising such common sense as has not been drilled out of them. We have, therefore, every reason to hope, if the hot weather and the war last long enough, that it may dawn upon the average Englishman that he does not know everything, and that it is possible and desirable for him to learn something from other people.

A case on the subject of bicycle law recently came before the Supreme Judicial Court of Massachusetts in *Reg.* v. *Inhabitants of Danvers.* It was there held that a bicycle is not a carriage within the meaning of a statute which provides that highways shall be kept in repair so that they may be reasonably safe and convenient for travellers with horses, teams and carriages. The plaintiff was

injured by being thrown from his bicycle because of a depression in the highway, and he sought to recover damages from the municipality. He succeeded before the trial judge, but this judgment was set aside by the Supreme Court. The *Albany Law Journal* takes the same view as the Court, remarking as follows: "It would seem, therefore, that while for certain purposes the bicycle may be considered a vehicle, and is to be governed by the statutes and ordinances pertaining to vehicles generally, it is not to be so regarded in contemplation of a statute requiring roads and highways to be kept in safe condition for the passage of vehicles. We entirely agree with the Court that it would be an intolerable burden to compel all highways to be kept in condition for the safe passage over them at all times of bicycles, and that the general construction of cycle paths is a convincing proof that they are not so regarded."

On the question of corroboration in prosecutions for rape a recent case tried before Wright, J., at the Lincoln Assizes in England is of interest. In a letter said to have been written by the girl to her mother immediately after the alleged crime an account was said to have been given of what had happened. The judge did not allow the letter to be read, although he did not say that in strict law it was inadmissable. In this he followed the ruling in *Reg.* v. *Ingrey*, 64 J.P. 106. The general rule in such cases is laid down in *Reg.* v. *Lillyman* (1896), 1 Q.B. 167. The *Solicitors' Journal* thus comments upon the subject: "These cases shew what difficulty the judges have in applying the principle of *Reg.* v. *Lillyman.* Of course the letter itself, or any complaint made by the woman, cannot be evidence of the facts therein alleged. The complaint can only be evidence to shew that the conduct of the woman was consistent with her story in the witness-box, negativing her consent to what was done. This is clearly laid down in the judgment of the Court for Crown Cases Reserved. Now, it is notorious that many charges of assaults on women and girls are unfounded, and no jury will convict a man without some fairly strong corroboration. Can a complaint be any corroboration? It may be, if made at the earliest possible opportunity, when the woman is still fresh from the outrage and has had no time to recover from the immediate effects of the alleged violence. Except under such circumstances, however, to admit the terms of

a complaint is to put a premium on trumped-up charges. Nothing (it is submitted) could be more dangerous than to admit a letter under almost any circumstances. The writing of a letter must be a deliberate and considered act, and this element of deliberation ought alone to be sufficient to exclude the latter. Where no complaint is made immediately after the assault (as was the case in both the recent cases referred to), the writing of a letter containing a detailed account of the alleged crime will probably seem to most persons more consistent with an imaginary assault or a fabricated charge than with a true story. Anyhow, it must always be most dangerous to allow a letter of this sort to be read by a jury, for it is impossible to secure that a jury shall give to it only its proper weight."

We notice the following sentence contained in the July number of *The Law Quarterly Review* in a review of Beal's Law of Bailments:—"It is a novelty to find Canadian cases attached. To English lawyers they may sometimes be useful, and they will no doubt add greatly to the value of the work in Canada. As they are all added in foot notes apart from the English cases and kept out of the text altogether, even the most insular of English lawyers has only to disregard them." It might be quite in order to criticize the above extract somewhat sharply; but we are quite sure that there was no intention on the part of the writer to say anything offensive. The peculiarity, however, of a certain type of Englishmen is that they seem unable, when speaking of any country outside the "tight little island," not to say something which leaves an unpleasant sensation of being "sat upon." The reviewer would probably be quite unable to see the implied sneer in the above quotation, and is doubtless serenely unconscious of what would be palpable in that respect to anyone else—and for the simple reason, that the class to which he belongs goes through life in a curiously constructed atmosphere, which whilst blinding them to their own egotistical arrogance and general ignorance of all matters outside their own island, at the same time throws a bright light on peculiarities which either irritate those whose skins are not as thick as their own, or else amuses those of us who know that they really cannot help it, and that after all they are not such bad fellows when you come to know them.

LORD RUSSELL OF KILLOWEN

One of England's greatest judges and one of the best known men of recent days has passed off the scene. Lord Chief Justice Russell died after a short illness on the 10th ulto. An obituary notice, giving the principal incidents in his life, appears in another place.

The *Times* introduces an interesting sketch of his life and career by saying "A great judge, the foremost advocate of his time and a striking figure in English society, has disappeared from among us with startling suddenness." As an advocate, as a judge and as a citizen he had a personality all his own. In his capacity as an advocate he had many marked characteristics. In the examination of hostile witnesses it is said that he has had no equal in the present century, with possibly the exception of Lord Brampton, better known as Sir Henry Hawkins. This power was recognized as one of the chief factors of his success at the Bar, and may best be illustrated by his demolition of the evidence of Pigott in the Parnell Commission. Another feature was the character of his addresses. Eloquent he certainly was, though he did not depend upon eloquence, but rather upon a careful and masterly marshalling of his facts and a clear, logical and forcible presentation of them. In his address before the Parnell Commission, (Sir James Hannen presiding), which was said to be equal to some of the greatest efforts of Erskine, both characteristics were brought out. And we may here recall the incident that Sir James Hannen at the close of this address wrote to Sir Charles on a slip of paper, "A great speech worthy of a great occasion." Though gifted with unsurpassed quickness of comprehension, he relied mainly on hard work and an indefatigable study of details, whilst at the same time he plunged into every case entrusted to him with unexcelled earnestness and vigor. But after all it was his industrious preparation of his cases more than his eloquence, his nervous energy and his splendid physique that brought him success. Combined with all this was a tremendous power of concentration which enabled him to give to his clients the best that was in him, and he never spared himself.

As to his judicial qualifications he had a rare power of getting at truth with an unequalled thoroughness in the investigation of

complicated facts, and he possessed an ampitude of grasp and unfailing good sense. There may have been lawyers with more profound knowledge of our jurisprudence, such as Jessel, Bowen, Bramwell, Selborne or Watson, and there have been lawyers of note also who were philanthropists and leaders of men in other and sometimes higher spheres, such as Lord Cairns, but of Lord Russell, holding as he did the greatest purely judicial office in Great Britain, it has been said "In the combination of qualities which command the respect of the profession and also exact the interest of the public at large he has had no equal in our time."

He was a great man as well as a great advocate and judge. Although masterful and at times domineering, he was always generous and ready to ask pardon for any breach of courtesy or kindness, and on the Bench his natural impulsiveness and impatience were under great control.

An Irishman through and through, he never faltered in his love and devotion to his native land, and was an outspoken champion of his race. This came out very forcibly in the greatest rhetorical effort of his life, The Parnell Commission, where his sympathies went hand in hand with his brief.

Lord Russell was a Roman Catholic, his family being devoted adherents of that Church, and he was the first of that faith who occupied the high position of Chief Justice of England since the accession of William III.

His intense love of the truth and a hatred of imposters was very marked, and this was the case in matters both great and small. An amusing instance of this may be here referred to. A juryman once asked him to be excused on the ground of infirmity, explaining that he was deaf and could not hear the evidence. "You can go" replied the Chief Justice in a whisper. The unwary juryman, forgetting for the moment his assumed deafness, said, "Thank you, my Lord," when the Chief Justice concluded his sentence in a loud and peremptory tone—"into the box and do your duty."

He was a keen sportsman, especially devoted to the turf, and well known also in dramatic circles, but never allowing these things to interfere with his work or his official duties.

The profession in Canada have a special interest in the late Chief Justice by reason of his visit to this country in 1896, and also by reason of the leader of the Canadian Bar, Mr. Christopher

Robinson, having been associated with him on behalf of England and Canada in the Behring Sea Arbitration.

We conclude with another quotation from the *Times*—"With one voice the Bench and Bar of England to-day will say of the late Chief Justice he had noble instincts; he maintained the traditions of English justice, and loved the best in public and private life."

ENGLISH CASES.

EDITORIAL REVIEW OF CURRENT ENGLISH DECISIONS.

(Registered in accordance with the Copyright Act.)

PROBATE—ADMINISTRATION WITH WILL ANNEXED—NEXT OF KIN OUT OF JURISDICTION—ASSETS, AND SOME BENEFICIARIES, WITHIN JURISDICTION—GRANT TO STRANGER WITHOUT CITING NEXT OF KIN.

In The Goods of Moffatt (1900) P. 152. In this case application was made for the grant of administration with the will annexed without citing the next of kin, who were resident abroad. The will was made by the testatrix, domiciled in Hayti. There was no appointment of executors, but the will contained the words, "M. E. Bordu, of Port-au-Prince, and Mr. J. B. Wallace, of Liverpool, will carry out my last wishes." The only estate in England consisted of the sum of £1260 7s. 11d. in the hands of Mr. Wallace's firm. The sole next of kin, who was entitled to one-half of this fund, lived in Hayti, and had not been cited. The beneficiaries of the other half were in England and assented to Mr. Wallace being appointed administrator with the will annexed. Jeune, P., granted the application, as best carrying out the terms of the will.

ADMINISTRATION DE BONIS NON—REVOCATION OF GRANT ON DISAPPEARANCE OF ADMINISTRATOR—FRESH GRANT.

In The Goods of Loveday (1900) P. 154, a grant of administration had been made to the widow of a deceased intestate in 1885. She had since disappeared and could not be found upon due inquiry, and an application was now made by one of the next of kin to revoke the former grant, and to make a new grant de bonis non to the applicant. Jeune, P., granted the application, though admitting he was going a little beyond any decided case in doing so.

PASSENGER TRAVELLING ON FREE PASS—LOSS OF LIFE AND PROPERTY BY PASSENGER TRAVELLING ON FREE PASS—CONDITIONS OF FREE PASS—LORD CAMPBELL'S ACT (9 & 10 VICT., C. 93)—(R.S.O. C. 135).

The Stella (1900) P. 161, wa : an application in the Admiralty Court made by a widow on behalf of herself and children to recover out of a fund paid into court by the owners of a steamship which had been wrecked, compensation for the loss of her husband, and also for the loss of certain property in consequence of the negligence of the owners of the steamer or their servants. The facts were that the husband was a railway official and had obtained from another railway company a free pass for himself and wife from London to Jer. y, the pass being subject to a condition printed on the back, "That it shall be taken as evidence of an agreement that the company are relieved from the responsibility for any injury, delay, loss or damage, however caused, that may be sustained by the person or persons using this pass." Part of the journey had to be made in a steamer, which, owing to the negligence of the servants of the railway company, was stranded, and the husband was drowned and his own and also his wife's luggage was lost. Barnes, J., on appeal from the registrar of the court, held that the claim for compensation could not be sustained, that in respect of the loss of life, the widow and children could only claim under Lord Campbell's Act (R.S.O. c. 135), where, if death had not ensued, the deceased would have been entitled to maintain an action, and that the condition on the pass was a bar to any such action which applied as well to the sea passage as to the land transit; and that the condition on the pass also precluded any claim for damages either as administratrix for the loss of her husband's luggage, or individually for the loss of her own property.

COMPANY—DECEASED SHAREHOLDERS—NOTICE WHERE SHAREHOLDER IS DEAD—REGISTERED ADDRESS—FORFEITURE OF SHARES.

In *Allen* v. *Gold Reefs* (1900) 1 Ch. 656, the Court of Appeal (Lindley, M.R., and Williams, and Romer, L.JJ.,) have reversed the decision of Kekewich, J., (1899) 2 Ch 40 (noted ante vol. 35, p. 678). The case when before him was disposed of on the ground that the proceedings taken to forfeit the shares of a deceased shareholder were invalid for want of due notice, the notice of the meeting having been sent to the registered address of the deceased, and not to his personal representatives. The articles of association provided that

notice of general meetings was to be given to "members" and that such notice might be served upon any member personally or by post addressed to "such member" at his registered address. The Court of Appeal held that in the case of a deceased member it was not necessary either to send a notice addressed to him at his registered address, or to serve his legal personal representatives unless they have themselves become "members" by formal registration, and on the merits of the case the Court of Appeal came to the conclusion that the shares in question had been validly forfeited.

COMPANY—DIRECTOR, ACTION AGAINST—DIRECTORS' LIABILITY ACT, 1890, (53, 54 VICT., C. 64) S. 3—(R.S.O. C. 216, S. 4)—3, 4 W. 4 C. 42, S. 3—(R.S.O. C. 72, S. 1 (*g*)).

In *Thomson* v. *Clanmorris* (1900) 1 Ch. 718, the Court of Appeal (Lindley, M.R., and Rigby, and Williams, L.JJ.) have affirmed the decision of Kekewich, J., (1899) 2 Ch. 523 (noted ante p. 20). The action was brought against a director of a company to recover damages for loss occasioned by misrepresentation in a prospectus, and the Court of Appeal agreed that the action was not one for penalties, and was consequently not governed by 3 & 4 W. 4, c. 42, s. 3—(R.S.O. 72, s. 1 (*g*)) but was governed by the statute 21 Jac. 1, c. 16: and the Court of Appeal intimated that the cause of action arises when the shares are subscribed for, and the action must be commenced within 6 years from that date; and not from the issue of the prospectus in question. 3 & 4 W. 4, c. 42, s. 3, from which R.S.O. c. 72, s. 1 (*g*), is taken, is held to apply only to "penal actions."

POWER OF APPOINTMENT—APPOINTMENT OF FUND—ACCRETIONS TO FUND, PASSING UNDER APPOINTMENT.

In re Cruddas, Cruddas v. *Smith* (1900) 1 Ch. 730. In this case the effect of an appointment made under a power is discussed. A lady under her father's will had a power of appointment over a sum of £30,000 invested in trustees, in which she had also a life interest. The daughter by her will reciting verbatim the gift and power, in exercise thereof appointed the said sum of £30,000 "together with the interest and annual proceeds thereof, by the said will of my father to be held in trust for me, my children and grandchildren, and over which I have such power of appointment as

aforesaid" in various specified sums in favour of her children and in trust as to another sum of £6,000, which was described as "the residue of the said sum of £30,000" for another child. On her death the securities in which the £30,000 had been invested were worth £39,000, and Kekewich, J., held that as to the £9,000 there was no valid appointment, and that it passed as upon default of appointment. The Court of Appeal (Lindley, M.R., and Rigby, and Williams, L.JJ.) on the other hand, were of the opinion that the testatrix was dealing with the fund as an invested fund, and that the whole of it was appointed in the proportions indicated by her will, and the decision of Kekewich, J., was therefore reversed.

COMPANY—DIRECTOR—FIDUCIARY CHARACTER—CONTRACTS WITH COMPANY—COLLATERAL PROFITS MADE BY DIRECTOR.

Costa Rica Ry. Co. v. *Forwood* (1900) 1 Ch. 756, was an action brought by the plaintiffs to recover profits made by a director out of a contract entered into by the company with another company of which the director was also a director. The articles of association of the plaintiff company provided that a director should vacate his office if he was concerned in, or participated in, the profits of any contract with the company without declaring the nature of his interest, but no director should vacate his office by reason of his being a member of any corporation, company or partnership which has entered into contract or done work for the company; or by reason of his being interested either in his individual capacity or as a member of any company, corporation, or partnership in any adventure or undertaking in which the company also have an interest; but the director was not to vote on contracts of this kind, and if he did his vote was not to be counted. The plaintiff company, of which Forwood was a director, entered into contracts with a steamship company for the carriage of bananas. Forwood was the largest shareholder in the steamship company, and was also a partner in the firm which managed it. No disclosure was made of Forwood's interest in the steamship company, either in the prospectus of the plaintiff company, or when the contracts were entered into. Profits were made by the steamship company out of the contracts with the plaintiffs in which Forwood participated. Forwood having died the action was brought against his representatives to make them account to the plaintiffs for these profits. Byrne, J., who tried the case, although of the opinion that on the

ordinary principles of equity, apart from the articles of association, the plaintiff company would be entitled to recover the profits made by Forwood on the contracts with the steamship company, yet considered that the articles of association prevented the application of those principles, and that as the articles provided that a director should not vacate his office by reason of being interested as a member of a company in any adventure or undertaking in which the plaintiff company might also have an interest, he was of opinion the case was brought within the decision of Lord Hatherley in *Imperial Mercantile Credit Association* v. *Coleman*, L.R. 6 Ch. 558, and the plaintiffs were therefore not entitled to recover, and he dismissed the action.

WILL—CONSTRUCTION—"DIE WITHOUT CHILD OR CHILDREN"—EXECUTORY GIFT OVER.

In re Booth, Pickard v. *Booth* (1900) 1 Ch. 768, Byrne, J., was called on in this case to construe a will of a testator whereby he devised one-half of his estate absolutely to the plaintiff, "but should she die without child or children" then over among the defendants. The plaintiff contended that the words "die without child or children" meant "die without ever having had a child or children," and that as she had now a child she was absolutely entitled. Byrne, J., however, agreed with the defendants that the words meant "without child or children living at her death," and he made a declaratory judgment declaring that the plaintiff is now absolutely entitled to one half of the estate in question subject to an executory gift over in favour of the defendants in the event of the plaintiff not having any child who should survive her or attain 21 in her lifetime. Why the latter clause was added is not stated; it seems to create an ambiguity in the declaration.

MORTGAGE—MORTGAGE OF POLICY OF LIFE INSURANCE—COVENANT—PAYMENT TO MORTGAGEE BY INSURANCE COMPANY—REAL PROPERTY LIMITATION ACT, 1874, (37 & 38 VICT., C. 57) S. 8—(R.S.O. C. 133, S. 23).

In re Clifden, Annaly v. *Agar—Ellis* (1900) 1 Ch. 774 decides, per Byrne, J., an important point on the law of mortgages. In 1871 the defendant's testator executed a mortgage of certain reversionary interests, and also of a policy of life insurance. The mortgage contained the usual covenants for payment of principal and interest, with power of sale and surrender of the policy. The

mortgagor never made any payment of principal or interest. In 1893 the mortgagee surrendered the policy and received from the insurers £1468 14s. The mortgagor had no notice of the surrender. The mortgagee died in 1895, and the mortgagor in 1899. The question presented for decision was whether the representatives of the mortgagee were entitled to enforce the covenant in the mortgage against the representatives of the mortgagor, and the case turned on whether or not the payment of the surrender value of the policy in 1893 was a payment within the meaning of the Real Property Limitation Act, s. 8, (R.S.O. c. 133, s. 23). Byrne, J. decided that it was not and that the remedy on the covenant was barred. We may observe that in Ontario this section has been held not to apply to actions on the covenant for payment contained in a mortgage, but is held to apply only to actions to enforce the mortgage against the land itself: see *Allan McTavish*, 2 Ont. App. 278; *Boice* v. *O'Lorane*, 3 Ont. App. 167. In the circumstances of the present case the payment of the surrender value of the policy would probably be held not to keep alive the remedy on the covenant beyond 20 years, under R.S.O. c. 72: see Ib. s. 8. Byrne, J., succinctly sums up the result of the case thus: "It appears to me that when the statute has once run, and the twelve years have elapsed, the realization of the property by the morgagee after that date does not amount to and cannot be construed as a payment by the mortgagor or his agent, or by some person entitled by virtue of the contract to make a tender of the money to a person bound to accept it," which seems to apply both to payments under R.S.O. c. 133, s. 23, and R.S.O. c. 72, s. 8.

COSTS – DEBENTURE HOLDERS' ACTION.

In re Queen's Hotel (1900) 1 Ch. 792, decides, per Cozens-Hardy, J., that the action of a debenture holder of a company to realize his security, though it enures to the benefit of other debenture holders, is on the same footing as to costs as an ordinary mortgage action for foreclosure or sale, and that the plaintiff is not entitled to costs as between solicitor and client as against the other debenture holders who come in and get the benefit of the action, but only to party and party costs.

WILL—CONSTRUCTION—"ELDEST SON ENTITLED TO POSSESSION"—SALE BY ELDEST SON.

In *Shuttleworth* v. *Murray* (1900) 1 Ch. 795, the construction of a will was in question. By the will successive life estates in Blackacre were limited to the members of a class, other than and except an eldest or only son for the time being entitled to the possession or receipt of the rents of Whiteacre as tenant for life or a greater estate. A tenant in tail in remainder of Whiteacre joined with his father, who was tenant for life, in a sale of Whiteacre, of which he had the benefit, and the question was whether the son who had thus sold his interest in Whiteacre was nevertheless still to be regarded as coming within the exception in the will. Cozens-Hardy, J., held that on the death of his father he became the eldest son within the meaning of the will and incapable of succeeding to a life estate in Blackacre: in the opinion of the learned judge the son in question having joined in the disentailing deed, under which he took benefits, must be treated as having had and enjoyed the estate.

WILL—MORTGAGEE IN POSSESSION—DEMISE OF MORTGAGED PROPERTY—MORTGAGE DEBT IMPLIEDLY BEQUEATHED.

In re Carter, Dodds v. *Pearson* (1900) 1 Ch. 801, the short point decided by Cozens-Hardy, J., was that where a mortgagee in possession of the mortgaged property specifically devised the mortgaged premises in fee simple, the devisee was also entitled to the mortgage debt.

COMPANY—MEMORANDUM OF ASSOCIATION—STOCK SUBSCRIBED FOR BY ARTICLES OF ASSOCIATION—DOUBLE ALLOTMENT—COMPANIES' ACT, 1867 (30 & 31 VICT., C. 131) S. 25—(R.S.C. C. 119, SS. 5, 27—R.S.O. C. 191, S. 10).

In re Whitehead (1900) 1 Ch. 804, was an application by the representatives of a deceased shareholder in a joint stock company to compel the company to register a memorandum of a contract to take shares as fully paid up, and that it might be declared that such memorandum shall operate as a sufficient contract within the meaning of the Companies' Act, 1867, s. 25 (see R.S.C. c. 119, s. 27). The facts were, that the company was formed in 1870 for the purpose of acquiring a woolen mill from one Whitehead, and by agreement, recited in the articles between the company and Whitehead, it was agreed that the purchase money for the mill should be paid for by the issue of 1068 fully paid shares to Whitehead.

Whitehead signed the articles of association and agreed to accept 1068 shares, and the question now arose whether his estate was not liable to have these shares treated as not fully paid up, by reason of the fact that no contract had been filed previously to the issue of the shares. The difficulty was occasioned by the decision in *Dalton Time Lock Co.* v. *Dalton*, 66 L.T. 704, to the effect that the issue of the certificate of incorporation operated as an allotment of the shares subscribed for in the memorandum of association. Cozens-Hardy, J., made the order asked for, prefacing the order with a recital that the 1068 shares referred to in the agreement were those for which he subscribed the memorandum of association.

POWER—JOINT DONEES—CONVEYANCE BY ONE DONEE AND PERSONS ENTITLED IN DEFAULT—CONCURRENCE OF OTHER DONEE—NO REFERENCE TO POWER—IMPLIED RELEASE.

In *Foakes* v. *Jackson* (1900) 1 Ch. 807, a husband and wife had a joint power of appointment over certain property, and subject thereto, the survivor had a separate power of appointment over the same property in favour of certain objects. The husband and wife and the persons entitled in default of appointment executed a deed whereby the wife (with her husband's concurrence) and those persons according to their several and respective estates and interests as beneficial owners, assigned the property to an object. The joint power was not referred to in this deed. The wife died, and the husband then executed a deed purporting to appoint the property in favour of other persons. Farwell, J., however, held that this latter appointment was inoperative, and that if the deed of assignment executed by the wife, with the husband's concurrence, did not operate as a joint appointment, which he was inclined to think was the case, it nevertheless operated as a release of the husband's separate power, following *Re Hancock* (1896) 2 Ch. 173, 183 (noted ante vol. 32, p. 619).

EVIDENCE—STATUS AND BOUNDARIES OF FOREIGN STATE—JUDICIAL COGNIZANCE OF STATUS OF FOREIGN STATE.

In *Foster* v. *Globe Venture* (1900) 1 Ch. 811, two of the issues raised were, whether the tribes of Suss were independent, or were subjects of the Sultan of Moracco; and whether a tract of land between the Atlas Mountains and the River Pure was the territory of those tribes, or of the Sultan of Morocco. For the purpose of

determining these questions Farwell, J., held that he was bound to take judicial cognizance of the status and boundaries of foreign states, and if his personal knowledge of the matter was insufficient he was bound to apply to the Secretary of State for Foreign Affairs and that his answer would be conclusive on the parties, a course which he deemed necessary to take in the present case.

VENDOR AND PURCHASER — COMPENSATION — RESTRICTIVE COVENANTS—SPECIFIC PERFORMANCE.

Rudd v. *Lascelles* (1900) 1 Ch. 815, was a purchaser's action for specific performance of a contract for the sale of land, with compensation on the ground of undisclosed restrictive covenants affecting the property. There was no provision in the contract for compensation for defects. The covenants in question related to building and user of the premises. The plaintiff claimed that these covenants depreciated the value of the property £1000, and he stated that he had lost a sale at an advance of £1000 solely on the ground of the restrictive covenants. Farwell, J., was of opinion that the jurisdiction to enforce specific performance with compensation in cases where there is no provision in the contract regarding compensation rests on the equitable estoppel referred to in *Mortlock* v. *Buller*, 10 Ves. 292, 315, viz., that a vendor representing and contracting to sell an estate as his own cannot afterwards be heard to say he has not the entirety. In the present case there was no representation beyond the mere offer to sell, and the purchaser knew that the vendor was ignorant as to his title, so that Farwell, J., considered that there was no such representation as would raise an equitable estoppel. To enforce the contract with compensation he considered would not be proper, because of the difficulty of assessing compensation, and because it would be virtually imposing a new contract on the parties, and that the plaintiff's own statement that he had lost a sale at £1000 advance would seem to indicate that the price he had agreed to pay was the proper value of the property, subject to the restrictive covenants. He therefore dismissed the action with costs.

COMPANY—SHARE CERTIFICATE—ESTOPPEL—DIRECTOR, DUTY OF.

In *Dixon* v. *Kennaway* (1900) 1 Ch. 833, the plaintiff sued a joint stock company and the chairman of its board of directors, claiming a declaration that the plaintiff was entitled to 30 shares,

numbered 115 to 144, and to the dividends accrued thereon since 31st Dec., 1893, or to damages. The plaintiff purchased the shares in question in 1897 from a broker named Riddell, who was also secretary of the company, and paid him the purchase money therefor. She subsequently received, accepted, and returned to Riddell a transfer of 30 shares, not specifying the numbers, executed by Pitman, a clerk of Riddell's, who did not own any shares, and was a man of straw. Pitman received no consideration for the transfer, which he executed by Riddell's direction. The transfer was placed before the board of directors, and the board without requiring the production of Pitman's certificate passed the transfer, ordered it to be registered, and a new certificate issued, and at the same meeting a new certificate was issued under the seal of the company, signed by two directors and countersigned by the secretary, in accordance with the articles, wherein it was certified that the plaintiff was the owner of 30 shares, numbered 115 to 144 inclusive. The chairman, who presided at the meeting, did not sign the certificate, and did not notice that the shares therein specified formed part of his own holding, as was the fact. The certificate was subsequently handed over to the plaintiff and dividends paid to her, and also to the chairman in respect of the shares, Riddell concealing the fraud by paying a corresponding amount into the dividend account. He was subsequently dismissed, and notice was given to the plaintiff by the company that the certificate was invalid, and declining to recognize her as a shareholder. There were consequently two points in the case, the first as to the right of the plaintiff against the chairman, and secondly, as to her rights against the company. As to the chairman the plaintiff contended that he was estopped from denying her title to the shares mentioned in the certificate on the ground that he had presided at the board meeting at which the certificate was passed, but Farwell, J., held that the chairman was not bound by the certificate signed by the other two directors, nor estopped from disputing its validity as against himself; but he held that the certificate having been accepted and received by the plaintiff and relied on by her, was binding on the company and they were estopped from disputing it, and as the shares in question belonged to someone else they were liable in damages for the full value of the shares, and for which he gave judgment in favour of the plaintiff.

PATENT—UTILITY.

Welsbach Incandescent Light Co. v. *New Incandescent Lighting Co.* (1900) 1 Ch. 843, was an action to restrain the infringement of the plaintiff's patent. The defendant, besides denying the alleged infringement, pleaded that the defendant's patent was not useful. The patent in question was granted in respect of the application of thorium in the manufacture of mantles for gas lights. It was claimed that this material used alone gave greater rigidity to the mantles, and when mixed with other ingredients gave them greater flexibility than had been obtained by any methods previously in use. Buckley, J., who tried the action, held that a very small amount of utility is sufficient to support a patent and that in this case the suggestion to the public of this rare earth as a means to an end, and giving a useful choice of another substance to be used in making the mantles, was sufficient evidence of utility and he therefore overruled this defence.

INSURANCE—REPUDIATION BY ASSURER OF LIABILITY—ACTION FOR DECLARATION OF LIABILITY.

Honour v. *Equitable Life Assurance Society* (1900) 1 Ch. 852, was a somewhat unusual action. One Powis had effected a policy of insurance on his own life with the defendant company, which he had assigned to the plaintiff. After two premiums had been paid the defendants refused to receive any further premium and repudiated any liability on the policy. The plaintiff commenced the action in the lifetime of Powis, and claimed a declaration that the policy was valid and binding on the defendants, and for an injunction to restrain them from repudiating it. The defendants contended that the action would not lie, and that until the death of Powis the Court should make no declaration as to whether the policy was valid or not, and they contended that the plaintiff's only remedy was to bring an action for damages. Buckley, J., who tried the case, although agreeing that the action could not be maintained, thought that the plaintiff ought not to be prejudiced by the defendants' refusal to accept the premiums, and he therefore, as a condition of dismissing the action, required an undertaking from the defendants that in case an action should thereafter be brought on the policy the defendants would not rely on the non-payment of premiums as a defence. Subsequently, on the plaintiff submitting to be examined as a witness, the objection to the form of the action was withdrawn and the case heard on its

merits, with the result that the policy was held to have been obtained by fraud, and was ordered to be delivered up to be cancelled.

COSTS—TAXATION AT INSTANCE OF CESTUI QUI TRUST—BILL PAID BY TRUSTEES MORE THAN 12 MONTHS—SOLICITORS' ACT, 1843 (6 & 7 VICT., C. 73) SS. 37-41—(R.S.O. C. 174, SS. 45, 49).

In re Wellborne (1900) 1 Ch. 857, was an application by a cestui que trust to tax a solicitor's bill which had been paid by the trustees more than twelve months previous to the application. It was contended by the solicitor that s. 41 of the Solicitors Act, 1893 (R.S.O. c. 174, s. 49) applied and that there could be no taxation after the lapse of six months from payment of the bill. Kekewich, J., however, held that s. 41 does not apply to applications for taxation by a cestui que trust. It may be noted that R.S.O. c. 174, although authorizing an application to be made for taxation in certain cases by third parties liable to pay or who have paid a bill of costs, does not expressly include the case of a cestui que trust, although applications by a cestui que trust appear to have been entertained in *Sandford* v. *Porter*, 16 Ont. App. 565, and *Re Skinner*, 13 P.R. 276.

COMPANY—PROMOTERS OF COMPANY—SECRET PROFIT BY PROMOTERS.

Glucksperie v. *Barnes* (1900) A.C. 240, was known in the court below as *In re Olympia* (1898) 2 Ch. 153, (noted ante vol. 34, p. 724). The proceeding was one in a winding-up matter to compel the promoters of the company in liquidation to pay over to the liquidator for the company secret profits made by the promoters. The facts were as follows: A syndicate was formed to buy and resell to a company to be formed a place of entertainment called Olympia. Four members of the syndicate of whom Gluckstein was one, also agreed to become directors of the proposed company, which was to be formed for the purpose of buying Olympia from the syndicate. Olympia was purchased by the syndicate for £140,000. There were certain charges outstanding against Olympia which the syndicate also purchased, so as to yield a profit of £20,000. The company was duly formed and in the prospectus it was stated that Olympia had been purchased by the syndicate for £140,000, and was to be sold to the company for £180,000, and the only reference made to the purchase of the charges was as

follows : "Any other profits made by the syndicate from interim investments are excluded from the sale to the company." It was the share of the four members of the syndicate, who were also directors, in the £20,000 made by the syndicate from the purchase of the charges against Olympia, that the liquidator now sought to recover. The Court of Appeal decided the application in favour of the liquidator, and the House of Lords (Lord Halsbury, L.C., and Lords Macnaghten and Robertson) have now affirmed that decision. Lord Macnaghten was of opinion, however, that the Court of Appeal had not gone far enough, and that the four directors ought to have been required to make good the whole £20,000, and that instead of being charged with 3 per cent. interest it was a case for penal interest. Only one of the directors appealed and he asked that the liquidator should be ordered to proceed against his co-directors before calling on him to make good the whole amount which the directors had received, but Lord Macnaghten remarked that he did not think it a case in which indulgence should be shown to the appellant, that he might or might not be able to recover contributions from those "who joined him in defrauding the company." He goes on to say: "He can bring an action at law if he likes. If he hesitates to take that course, or takes it and fails, then his only remedy lies in an appeal to that sense of honour which is popularly supposed to exist amongst robbers of a humbler type." A pretty severe comment on the transaction truly.

AGREEMENT FOR LEASE—RIGHT OF WAY—CONSTRUCTION—MUTUAL MISTAKE IN CONSTRUCTION OF DOCUMENT—CONTEMPORANEOUS INTERPRETATION OF DOCUMENT.

The North Eastern Ry. Co. v. *Hastings* (1900) A.C. 260, is the case known in the court below as *Hastings* v. *The North Eastern Ry. Co.* (1899) 1 Ch. 656 (noted ante vol. 35, pp. 182, 439). The action was brought to recover rent payable under a lease made in 1854 whereby the plaintiff granted to the defendant a right-of-way through his land for 1000 years, the company paying a specified rent on coal carried over "any part of the railway comprehended in" a bill which afterwards became The Company's Special Act of 1854, and which should be shipped at Port Blyth. For more than forty years rent was paid by the company for coal carried over the railway and shipped at Port Blyth when the coal passed over the

plaintiff's land, but no rent was ever paid or claimed for coal carried over the railways and shipped at Port Blyth but not passing over the plaintiff's land. The House of Lords (Lord Halsbury, L.C., and Lords Macnaghten, Davey and Robertson) unanimously agreed with the Court of Appeal that the agreement was perfectly plain and unambiguous, and the fact that the parties had interpreted the words in a different sense from that which they plainly bore could not affect the construction: that the defendants were liable to pay rent for coal carried over any part of the railway comprehended in the Special Act and shipped at Port Blyth, although it did not pass over the plaintiff's land, and that the plaintiff was entitled to an account for six years prior to the issue of the writ.

TRUST—TRUSTEE—BREACH OF TRUST—NEGLIGENCE—IMMUNITY CLAUSE—TRUSTEE ACT, 1893 (56 & 57 VICT., C. 53) S. 17, SUB-S. 3—(R.S.O. C. 130.)

Wyman v. *Paterson* (1900) A.C. 271, although an appeal in a Scotch case, is one that it will be useful to note. The defendants were trustees of a fund set apart to answer a life annuity and devisable on the annuitant's death among the persons entitled in remainder, of whom the appellant was one. The sum of £3700, part of this fund, was invested in a heritable bond. On July 15, 1887, the bond was paid off, and the trustees allowed their law agent to receive the money and retain it in his hands uninvested for six months. At the end of this time the law agent had misappropriated the money, became bankrupt, and the greater part of the fund was lost. It appeared that the agent had deposited the money in a bank for behoof of the trustees, and that they had requested the agent to deposit it in their own names, which the law agent failed to do, the trustees on making enquiries being put off with a statement that he was ill and could not attend to business. On January 19, 1888, they first heard that he was in embarrassed circumstances, and they immediately employed a new agent, and on the same day informed the bank that the old agent had ceased to act for the trustees and was not entitled to withdraw the money, but it appeared that he had withdrawn it on the previous day. The will creating the trust contained the usual immunity clause in favour of the trustees. The case was twice argued before the House of Lords, first before Lord Halsbury, L.C.,

and Lords Macnaghten and Ludlow, and again before Lord Halsbury, L.C., and Lords Macnaghten, Morris, Shand, and Hereford. Their Lordships reversed the decision of the court below which had adjudged the trustees not liable, and held that the trustees had been guilty of a positive breach of trust and were bound to make good the fund, and that the immunity clause in the will afforded them no protection. Lord Morris, however, dissented, and Lord James hesitated and concurred with the majority with regret.

MINING LEASE—NOTICE OF ABANDONMENT OF INTEREST IN LEASE BY JOINT LESSEE.

Palmer v. *Moore* (1900) A.C. 293, is an appeal from the Supreme Court of New South Wales, which declared that one Lamrock, an insolvent, had no beneficial interest in a certain gold mining lease and was merely a trustee for the respondent of his legal interest, if any, and that the appellant, as official assignee, had no interest in the lease and no claim to any part of the purchase money agreed to be paid for it. The facts were that Lamrock and two others were joint lesees of the Crown for the purpose of gold mining. The lessees were called on to shew cause why the lease should not be cancelled for non-performance of the conditions thereof. Before receiving this notice one of the lessees had received a letter from Lamrock saying he was unable to contribute to the expenses of working the mine and that the other lessees could do what they liked with it, "I am out of it." The other lessees succeeded in avoiding the cancellation of the lease, and thereafter found all the money for working the mine, and ultimately sold it for £1200, in which the assignee of Lamrock now claimed to participate. The Judicial Committee of the Privy Council (Lords Hobhouse, Morris and Davey and Sir R. Couch) agreed with the Court below and dismissed the appeal.

PURCHASE BY HUSBAND—IN NAME OF WIFE AND DAUGHTER.

Eddy v. *Eddy* (1900) A.C. 299, was a curious action instituted by a father against his daughter for the recovery of $187,000 under the following circumstances. The plaintiff and his deceased wife were married in Vermont in 1846. In 1854 they removed to Hull in the Province of Quebec, where by their joint efforts, they built up a large business. Two properties were purchased and conveyed to the wife, and another property was purchased and

conveyed to the daughter, the purchase money in each case being paid by the cheques of the plaintiff. The wife died and devised the properties thus conveyed to her to her daughter, and the plaintiff now claimed to be a creditor of his daughter, and of his deceased wife's estate, in respect of the purchase money of all three properties, and also for other sums subsequently advanced by him for their improvement. Some questions arose in the case touching the Quebec law as to gifts by husband and wife, and as to whether the husband, claiming to have advanced money for his wife, could bring an action of this kind without first rendering an account of rents and profits received by him, as, until he had done so, it would be possible that he might have been recouped his alleged advances; but the judgment of the Judicial Committee of the Privy Council largely turns upon the fact that the actions of the plaintiff himself were inconsistent with the claim he now sets up. In 1873 he had conveyed what purported to be all his estate for the benefit of his creditors, but did not include in the property so assigned the alleged debts due by his wife and daughter. In 1876 he became insolvent and sent in upon oath a statement of assets and liabilities, and though he entered his wife as a creditor, he did not enter among his assets the alleged debts due by her, or his daughter, and these omissions were not explained, and the only evidence of the alleged debts was the fact that the plaintiff had given his own cheques for the sums claimed, but this fact their Lordships considered was consistent with the fact that the plaintiff was advancing money in his hands belonging to his wife. The judgment of the Court below dismissing the action was therefore affirmed.

TELEPHONE WIRES — ILLEGALY STRETCHING WIRES ACROSS A STREET—REMOVAL OF WIRES.

National Telephone Co. v. *Constables of St. Peter Port* (1900) A.C. 317, was an appeal from the Royal Court of Guernsey. The action was brought by a telephone company against municipal officers for removing the plaintiffs' telephone wires, which were stretched across a public street without obtaining the defendants' permission, and contrary to their prohibition. The Judicial Committee (the Lord Chancellor and Lords Macnaghten, Morris, Shand, Davey, Brampton, and Robertson) being of opinion that the plaintiffs' had failed to make out any statutory right to stretch their wires across, could not succeed in the action, even though it

was not made out that the respondents had any legal power to pro-hibit the plaintiffs from stretching the wires. In short, their Lordships think that an action would not lie for the mere removal of the appellants' goods from a public place in which they had no right to place them. The dismissal of the action was therefore held to be right.

SUCCESSION DUTIES—COVENANT TO PAY—CONSTRUCTION—"WITH INTENT TO EVADE PAYMENT OF DUTY."

Suris v. *Registrar of Probates* (1900) A.C. 323, was a South Australian case, in which a question under a Succession Duty Act arose. A deceased person in his lifetime covenanted to pay £200,000 to his children with interest at 1½ per cent. per annum, the debt being payable at call. He regularly thereafter paid the interest, but paid no part of the principal. On his decease a claim was made on behalf of the Crown against the covenantees for payment of double succession duties in respect of the £200,000 on the ground that the covenant was made "with intent to evade payment of duty" under the Act. The Court below had given judgment in favour of the Crown, but the Judicial Committee of the Privy Council (the Lord Chancellor, and Lords Hobhouse, Macnaghten, Morris, Davey and Robertson) reversed the decision, holding that, in the absence of evidence to the contrary, the covenant conferred on the children complete ownership of the debt, and was a non-testamentary disposition of property within the meaning of the South Australian Succession Duties Act, and not subject to duty under that Act, as the testator died more than three months thereafter; also that in the absence of evidence of some device or contrivance for that purpose, the covenant could not be deemed to have been made "with intent to evade the payment of duty" under the Act.

The Forum.

A CAUSERIE OF THE LAW.

CONDUCTED BY CHARLES MORSE.

Graduation in arts at Oxford University is no longer a sine qua non in respect of the degree of B.C.L. therefrom. Now the holder of an arts degree from some recognized university other than Oxford is entitled to supplicate for the degree of Bachelor of Civil Law, provided he pursues the prescribed law course at Oxford, and passes the examinations. This lesion of the old policy of Oxford law degrees for Oxford arts men only is said to be due to that militant reformer, Professor A. V. Dicey.

* * * The death of Lord Russell, of Killowen, Lord Chief Justice of England, recalls his visit to America in 1896, when he delivered his great address on International Law, before the American Bar Association. Lord Russell enunciated many wise and noble sayings on that occasion, but nothing finer than the following passage from his peroration :

> "What, indeed, is true civilization? By its fruit you shall know it. It is not dominion, wealth, material luxury; nay, not even a great Literature, and Education wide spread—good though these things be. Civilization is not a veneer; it must penetrate to the very heart and core of societies of men. Its true signs are thought for the poor and suffering, chivalrous regard and respect for women, the frank recognition of human brotherhood, irrespective of race, or color, or nation, or religion, the narrowing of the domain of mere force as a governing factor in the world, the love of ordered freedom, abhorrence of what is mean, and cruel, and vile, ceaseless devotion to the claims of justice. Civilization in that, its true, its highest sense, must make for peace."

An echo of Lord Russell's plea for international arbitration, which was the real burden of this address, was heard at the recent banquet given by the Bench and Bar of England, in the Middle Temple Hall, to representatives of the Bench and Bar of America.

* * * Lord Russell did not long survive his warm friend the late Mr. Lockwood, Q.C., who accompanied him on his visit to America. When "rare Frank Lockwood" died there was sorrow as sincere felt by the Bar in this country, as that whi marks the demise of the more eminent of the two well-known men.

* * * Poor Mr. Augustine Birrell, lawyer and litterateur, what a time of it he has to be sure between legal admirers, who are too kind in their praise of his divagations in letters, and literary railleurs who are ever diligent to disparage them. Of the latter sort must be classed the editor of *Literature*. In the issue of that journal of July 21, the head-master of Blackheath school is ridiculed for referring to Mr. Birrell as "a modern Macaulay." And this is how the editor argues the point: "This comparison is surely inept. As well might Charles Lamb be bracketed with Gibbon, or any literary light-weight with any other literary heavy-weight. There might be excuse for pointing out some similarities between Lamb and Mr. Birrell. But between Macaulay, the complete exponent of machine made English, and Mr. Birrell, with his genial whimsies and irresponsible somersaults, are not the differences too wide and deep to need emphasis? The head-master was doubtless led away by the occasion. Mr. Birrell's 'Obiter Dicta,' was one of his prize volumes, and so, no doubt, was Macaulay's 'Lays,' perhaps the 'Essays,' and as Macaulay's books and Mr. Birrell's looked much alike in red and gilt with mottled edges, the head-master was moved to his Gilbertian jest." Why may not Mr. Birrell be persuaded that Law is to-day, as she was in the time of Sir William Blackstone, a jealous jade—a Casaubon and a Mansfield at one and the same time? C'est impossible.

* * * There is no doubt that the failure of the Belgian authorities to adequately punish the infamous Sipido had its effect in stimulating the assassin of King Humbert to perpetrate his foul crime. It is all very well to bespeak some international measures for the suppression of anarchy, as Lord Salisbury is now doing, and we trust that a convention of the powers may be had for this purpose in the near future; but we believe that in every country in Europe there exists at the present day legal machinery of a domestic kind quite sufficient to cope with this pestiferous propaganda, if such machinery were properly operated. We often read in the professional press of the contempt foreign jurists entertain for the English law as compared with the salutariness and exactness of their own. Conceding that the criticism is just, how often do we hear in England of political murders? Clearly anarchy does not thrive in England. We think it was Guizot who said

that England had the worst system of criminal law in the world at his day, but that, on the other hand, it was the best administered. And he was right.

REPORTS AND NOTES OF CASES.

Dominion of Canada.

SUPREME COURT.

Que.] PARSONS *v.* HART. [June 12.

Shipping—Bill of lading — Ship's agent—Mandate — Customs of port—Delivery—Carriers.

A trade custom, in order to be binding upon the public generally, must be shewn to be known to all persons whose interests it would be to have a knowledge of its existence, and, in any case, the terms of a bill of lading, inconsistant with and repugnant to the custom of a port, must prevail against the custom.

Judgment appealed from reversed, the Chief Justice dissenting.

Atwater, Q.C., and *Duclos* for appellant. *Macmaster*, Q.C., and *F. S. Maclennan*, Q.C., for respondent.

Que.] BRIGHAM *v.* BANQUE JACQUES CARTIER. [June 12.

Insolvency—Compromise—Secret agreement—Bribery.

A commercial firm having made an abandonment of its property for the benefit of its creditors under the provisions of the Code of Civil Procedure, a secret arrangement was made whereby a particular creditor, without any legal right to preference or priority, was secured an advantage over the other creditors, through the assistance of one of the inspectors of the insolvent estate to whom was promised a sum of money for his personal use upon his advising the acceptance of proposal for the purchase of the estate upon a composition at a rate on the dollar to be paid to the creditors of the estate generally. The preferred creditor was, under the concealed arrangement, to receive an amount greater than the rate of the composition proposed, such additional sum to be paid by a third person who took no direct interest in the estate purchased.

Held, that the agreement was fraudulent and void; that the proposed payment by the third person was as much a fraud upon the general body of

the creditors as if it had been promised by the insolvent firm itself, and that the additional sum could not be recovered by the creditor so preferred.

Held also, that the promise of the payment to the inspector was a bribe and, for that reason alone, the transaction to induce which it was given should be adjudged corrupt, fraudulent and void.

Judgment of the Court of Review, at Montreal, reversed.

Aylen, Q.C., for appellant. *Foran*, Q.C., and *Lajoie*, for respondent.

Que.] DINGWALL *v.* MCBEAN. [June 12.

Mandate—Partnership—Agency—Factor—Pledge—Lien—Notice—Right of action—Intervention—Res judicata—Arts. 1739, 1740, 1742, 1975 C.C.

A partner entrusted with possession of goods of his firm for the purpose of sale may, either as partner in the business or as factor for the firm, pledge them for advances made to him personally, and the lien of the pledgee will remain as valid as if the security had been given by the absolute owner of the goods, notwithstanding notice that the contract was with an agent only.

Where a consignment of goods has been sold and they remain no longer in specie, the only recourse by a person who claims an interest therein is by an ordinary action for debt, and he cannot claim any lien upon the goods themselves nor on the price received for them.

The plea of res judicata is good against a party who has been in any way represented in a former suit deciding the same matter in controversy.

Leet, Q.C. for appellant. *Greenshields*, Q.C., and *Dickson*, for respondent.

Province of Ontario.

HIGH COURT OF JUSTICE.

Ferguson, J.] LYLES *v.* WINDSOR FAIR GROUNDS. [July 2, 1898.

Contract—Use of race track—Lease or license—Construction of document—Nature of possession—Forfeiture.

An agreement under seal made between the defendants, an incorporated association, of the first part, and the plaintiff and another, of the second part, dated the 4th March, 1897, recited that the latter was desirous of obtaining so much of the grounds and track of the association as might be necessary for the purpose of conducting race meetings during the season of 1897, for the days and times hereinafter mentioned, and had agreed to pay therefor $2,000.00 and a quarter of the net profits of such venture for such use, subject to the terms and conditions thereinafter mentioned. The agreement then provided:—

(1). That the parties of the second part should have the permission

to use the race track and so much of the said grounds, barns and buildings of the association as might be necessary for the purpose of holding race meetings commencing on the 1st May, 1897, and thence up to the 1st of November, 1897, subject to the terms and conditions thereinafter mentioned, upon payment of $2,000.00, etc , and that the parties of the second part should provide and keep proper books of account and employ a book-keeper first approved of by the association, whose duty it would be to make all necessary and proper entries in the books of all transactions which would relate to or be incidental to the said race meetings, and to which books the association should have access, and that a balance sheet should be prepared, etc., and the parties of the second part should pay to the association one quarter of the net profits or proceeds of such race meetings and of all matters incidental thereto, in addition to the money *rental* of $2,000.00.

(2). That the race meetings should be conducted in a manner specified and set out.

(3). That the race meetings should not be held at certain times.

(4). That the betting privileges should be let in a manner specified and set out.

(5). That the parties of the second part should, at their expense, keep a nightwatchman on the premises for the safety of the buildings, and should observe and conform to all the requirements of the insurance companies having risks thereon.

(6). That if additional barns or other improvements were required by the parties of the second part, they should provide the same at their own expense, but under the directions of the association, whose property such barns or improvements should be and remain.

(7). That the number of races per day should be as specified.

(8). That the parties of the second part should keep in repair the track, grounds, buildings, fences, and all other equipments and property of the association and deliver the same back in as good shape and repair as when taken, and the president and directors of the association should at all times have access to the track, grounds and buildings to view state of repair, or for any purpose whatever, and the parties of the second part should repair and otherwise comply with and observe the requirements of this agreement as might be required of them, and the shareholders should be allowed free entry to race meetings.

(9). That the president and directors of the association should have free access as aforesaid, and might require performance and observance of all the covenants, terms and conditions of the agreement, and the parties of the second part should immediately comply with such requests as aforesaid, and in case of non-performance or non-observance or in case of any breach or violation of the terms and conditions of this agreement in any respect, it should become null and void and of no effect, and the association should be entitled to resume possession, and, if necessary, to

enforce *delivery of such possession under the Act respecting overholding tenants*, and the then current *rental* should immediately become due and payable.

(10). That in case the parties of the second part should, without the consent of the association, cease racing or neglect to continue their race meetings, for the space of fifteen days, save for the purposes hereinbefore mentioned, they should cease to have any rights under this agreement, and, unless they give notice of such abandonment, they should be liable to pay at the rate of $30.00 per day for every day of such abandonment without notice, and the association might resume possession at any time after such notice or after the expiration of such period of fifteen days.

(11). That this agreement should not interfere with or affect the rights and privileges of the lessee of the club house and premises and other things mentioned in his lease.

(12). That this agreement or the rights thereunder should not be sold, transferred, assigned or sublet without the consent, first had, of the association, in writing.

During the currency of the period the association, by a resolution of of their board of directors, at a meeting held in accordance with their by-laws, declared the agreement void and at an end, and served upon the plaintiffs a notice stating that the plaintiff and the other party of the second part had violated the agreement in certain ways and manners, specified and set out, and that the association had resumed possession of the track and of the lands and premises in connection therewith, and had declared the agreement null and void.

Held, that the agreement was not a lease, but a mere license, and the relationship of landlord and tenant did not exist between the contracting parties.

The granting part was free from ambiguity in respect of the character and quantity of the interest that was intended to pass by it; it is the proper office of this part of the deed to denote what the premises or things are that are granted, and it is the place where the intent of the grantor and what he has actually done in that respect is more particularly to be looked for; recourse must be had to the proper and efficient part of the deed to see whether the grantor has actually granted what it is urged that his expressions denote that he supposed he had granted, for the question properly is not what he supposed he had done, but what he really has done by his grant. There was nothing in the granting part of this document shewing a a grant of the exclusive right of entry or the exclusive right of possession during the period indicated. The privilege of using for certain defined purposes was what and all that was granted by these words, and this fell short of what is necessary to constitute a lease.

Even if the granting words were considered ambiguous, there was nothing in the other parts of the document of sufficient force and clearness

to enlarge or explain the meaning of the granting words in such a manner as to shew that the document was a lease.

The provisions in regard to a nightwatchman, to additional barns or improvements, and to keeping the track, grounds, buildings, fences and equipments in repair and delivering them up in as good shape and repair as when taken, were all reconcilable with the view that the document was a license only, and not a lease; and, besides, there was a provision for access and entry at all times and for any purpose whatever.

The provision in the forfeiture clause that, in the event of a breach, the association should be entitled to resume possession only meant that the association should have the right to resume such possession as the grantees should have, which clearly was not an exclusive possession. The words, "and, if necessary, to enforce delivery of such possession under the Act respecting overholding tenants," could not, taken alone, have the effect of stamping the character of a lease upon the instrument. These words merely pointed to a supposed ready method of getting from the grantees such possession as at the time they might have.

Held, also, upon the evidence, that there was a breach of the contract, and that the contract was in law properly forfeited and declared void by the defendants.

Watson, Q.C., for plaintiff. *Riddell*, Q.C., for defendants.

Robertson, J.] RE MCCARTEE AND TOWNSHIP OF MULMUR. [June 8.

Liquor License Act—Local option by-law—Omission to nominate deputy-returning officers in—Defect—Quashing.

When a by-law requires the vote of the electors, the deputy-returning officers to take their votes should be named in the by-law; and a by-law passed under s. 141 of the Liquor License Act R.S.O. (1897) c. 245, from which their names were omitted, was quashed, even although deputy-returning officers were subsequently appointed by a general by-law.

Haverson, for the motion. *G. M. Vance*, contra.

Meredith, C.J.] ONTARIO BANK *v.* ROUTHIER. [June 20.

Banks and banking—Deposit—Right to set off—Ranking on estate for balance—Deficiency of assets.

A testator having a deposit to his credit in a bank at the time of his death was a debtor to the bank on a note, under discount which had not then matured. After its maturity the bank brought an action on the note against his executors in which it was contended, assets of the testator being insufficient to pay his debts in full, that the bank should rank on his estate for the amount of the note and give credit on the dividend received for the deposit.

Held, that the deposit having been withdrawn or demanded before

the maturity of the note the bank was entitled to set off the debt on the note against the deposit and rank for the balance.

William Wyld and *Glyn Osler*, for plaintiffs. *Belcourt*, Q.C., and *J. A. Ritchie*, for defendant.

Province of Manitoba.

QUEEN'S BENCH.

Full Court]. PARENT *v.* BOURBONNIERE. [July 12.

Vendor and purchaser—Sale of land—Rescission of agreement by sale to third party.

The plaintiff's claim was for payment of an instalment of the purchase money overdue on an agreement of sale of a hotel property to defendant which provided that, upon default in payment, the plaintiff might put an end to the contract by notice in writing.

After the due date of the instalment defendant notified plaintiff that she would not carry out her contract and, about twenty days later, the plaintiff, without giving defendant any notice, entered into a binding agreement of sale of the property to a third party. He then brought this action.

Held, that the plaintiff had practically rescinded the contract of sale to defendant and could not thereafter sue upon it. Appeal from the Judge of the County Court of Emerson allowed with costs.

Forrester, for plaintiff. *Ewart*, for defendant.

Obituary.

LORD RUSSELL OF KILLOWEN.

Lord Russell of Killowen, Lord Chief Justice of England, whose death has created a profound feeling of grief throughout the whole country, died suddenly on the 10th inst., at his residence in Cromwell Houses, South Kensington.

Charles Russell was born in November, 1832, at Newry, and spent his early boyhood at Killowen, a little hamlet between the Killowen Mountains and the shores of Carlingford Bay. His father was Mr. Arthur Russell, of Seafield House, Killowen, who, though a devout Roman Catholic, was held in high esteem by the Protestant Ulstermen

of his day; while his uncle was Dr. Russell, president of Maynooth College, to whom Cadinal Newman refers so affectionately in his 'Apologia.' He received his early education at a private school at Newry, and afterwards went to St. Malachy's College in Belfast and to St. Vincent's College at Castleknock, near Dublin. His name was entered as a student at Trinity College, Dublin, but he never proceeded to a degree there. Like Lord Truro, Lord Field, and the late Mr. Justice Manisty, the Lord Chief Justice started his career in the legal profession as a solicitor. It was in the latter town that Charles Russell began his brief career as an Irish solicitor. He was articled to Messrs. Hamill & Denver, a Newry firm of solicitors, and completed his articles with Messrs. Alexander & O'Rorke, a Belfast firm. His friends, who were impressed by the oratorical powers he displayed, advised him early to give his talents a wider field, and accordingly he crossed the Channel and became a student at Lincoln's Inn, where he was called to the Bar in 1859. Joining the Northern Circuit, he settled in Liverpool for a time, and speedily acquired a practice in the Court of Passage and other Lancashire Courts. He wrote a small book on the practice of the Court of Passage—the only work which he ever published, with the exception of the letters on the Irish land question he contributed to the *Daily Telegraph*, which he republished in volume form. Starting from Liverpool his practice soon extended all over the Circuit. A story is told that the late Lord Herschell, Lord Russell, and the present Speaker, dining together and bewailing their bad luck, resolved to seek their fortunes in the colonies. This incident must have occurred early in Mr. Russell's career, for his period of brieflessness was comparatively short. During his early days in London he acted as a reporter in the gallery of the House of Commons, but it was not long before the claims of his profession engaged the whole of his energy. While Russel was still a young forensic hand he argued a case before Lord Westbury, who gave the young advocate some advice which appeared to exercise a great influence upon him. Speaking some years ago of the secret of his methods, Lord Russell narrated the incident in these words: 'If you ask me to reduce the common habit of my life to a formula, I will tell you that I have only four ways of preparing my work. First, to do one thing at a time, whether it is reading a brief or eating oysters, concentrating what faculties I am endowed with upon whatever I am doing at the moment; secondly, when dealing with complicated facts, to arrange the narrative of events in the order of dates—a simple rule not always acted upon, but which enables you to unravel the most complicated story, and to see the relation of one set of facts to other facts. My third rule is never to trouble about authorities or case-law supposed to bear upon a particular question until I have accurately and definitely ascertained the precise facts. The last rule is one which the professional man will appreciate better, perhaps, than the layman. It is not only valuable

—I may say this as I did not invent it—but very interesting to me individually, as I got it from Lord Westbury when a young hand at the Bar and pleading before him. I was plunging into citation of cases, when he very good-naturedly pulled me up and said: "Mr. Russell, don't trouble yourself with authorities until we have ascertained with precision the facts, and then we shall probably find that a number of authorities which seem to bear some relation to the question have really nothing important to do with it." My fourth rule is to try to apply judicial faculty to your own case in order to determine what are its strong and weak points, and in order to settle in your own mind what is the real turning-point in the case. This method enables you to discard irrelevant topics and to mass your strength on the point on which the case hinges.'

Thirteen years after joining the Bar—a period more notably brief in those days than at the present time—Russell took silk. This important step, which he took in 1872, created some misgiving among his friends. Baron Martin, in a letter written some years later to Lord Selborne, confessed that he had misjudged the young barrister's powers, but that events had shown how wisely he had acted. He was fortunate in the circumstances that attended his early career as a leader. Coleridge and Hawkins and several other leading advocates were giving their whole time to the Tichborne case. But Russell, with his rare combination of forensic gifts, must have achieved with rapidity a foremost place in the profession, even if his career as a Q.C. had been commenced under less favorable conditions. Few men have brought a richer store of gifts to forensic work. He possessed a broad knowledge of legal principles, a firm and ready grasp of essential facts, and a wide acquaintance with the world; he was gifted with an eloquent tongue, a pleasant voice, and a handsome presence; he was a man of remarkable tact, of dauntless courage, and boundless industry. To mention the cases in which he appeared in the heydey of his success would be to write a list of all the causes celebres from the seventies to the nineties. Among the more celebrated were the convent case of *Saurin* v. *Starr*, the Belt case, the Dilke divorce case, the Colin Campbell case, Miss Fortescue's breach of promise case, the famous Baccarat case, the great 'Pearl' case, the Maybrick murder trial, the Marks and Butterfield case, and the Hansard Union trial. His practice was by no means, however, confined to mere Nisi Prius advocacy. But the most notable of his triumphs was achieved before the Parnell Commission in 1889. He appeared, with Sir R. T. Reid, the late Sir Frank Lockwood, and Mr. Asquith, for Mr. Parnell, to rebut the serious accusations of the *Times*. The six days' speech he delivered on this occasion was the most brilliant effort of his lifetime, and will probably rank among the finest orations ever delivered at the Bar. 'I have spoken,' he said at the close of this memorable speech, 'not merely as an advocate—I have spoken for the land of my birth; but I feel, I profoundly feel, that I have been speaking, too, for and in the

best interests of England—of the country where very many years of my laborious life have been passed, and where I have received a kindness, a consideration, and a regard which I should be glad to be able to repay.' These words must have been recalled by many on Tuesday, when representatives of every class of English life assembled in the Brompton Oratory and at his graveside at Epsom to do honour to his memory.

As became an Irishman with strong and earnest convictions and with conspicuous ability to express them, Charles Russell took an active part in politics quite early in his career at the Bar. He stood for Dundalk in the Liberal interest in 1865, and again in 1874, but was defeated at both elections. In 1880, however, he defeated his antagonist, and, as an independent supporter of Mr. Gladstone's Irish policy, soon obtained a recognized place as a debater in the House of Commons, though never at any period of his long Parliamentary career did he achieve any success in the House at all comparable to his reputation in the Courts. Two years after he entered the House of Commons—in the middle of 1882—he was offered the puisne judgeship made vacant by the promotion of Bowen to the Court of Appeal. This was not the first occasion on which a judicial post had been offered him. While he was a junior he received from Lord Westbury the offer of a County Court judgeship. His refusal of both these offers shows that Lord Russell had at two different stages of his career a keen appreciation of his powers. At the general election in 1885 he was returned for South Hackney against the present Mr. Justice Darling, and he continued to represent this constituency until his promotion to judicial office. He threw himself with characteristic vigour into the Home Rule agitation, and became Attorney-General in Mr. Gladstone's short lived Ministry in 1886. It was while the succeeding government of Lord Salisbury was in office that he made his chief reputation as a politician. His speech in the House of Commons on the report of the Parnell Commission was a masterly performance which received the full admiration of Mr. Gladstone and his supporters; but it was mainly as a platform speaker that he became an eminent figure in his party. He spoke in all parts of the country at Home Rule meetings. No place seemed too remote or too small—he travelled from London after a busy day in the Courts, and spent the evening in exercising his fervid oratory in a heated hall; and there can be little doubt but that the strain which his enthusiasm thus placed upon his physical strength did something to undermine even his fine constitution. On the return of the Liberal party to power in 1892 he resumed the office of Attorney-General. He objected to the new condition of exclusion from private practice, and informed his constituents that only his personal loyalty to Mr. Gladstone had induced him to resume the position on such terms. The most notable event of his second tenure of office as first Law Officer of the Crown was his appearance before the Behring Sea Commission in Paris in 1893, when, with Sir Richard

Webster, he represented the interests of Great Britain. In recognition of the valuable services he rendered the country at this memorable inquiry he was made a G.C.M.G. Mr. Gladstone more than once introduced into the House of Commons a bill for the purpose of making Roman Catholics eligible for the office of Lord Chancellor. It was satirically described as the Russell Relief Bill—a description based largely upon the pointed reference which Mr. Gladstone made to Sir Charles Russell in introducing the measure. 'It is a great thing, morally as well as socially,' he said, 'for a man to arrive at the head of the Bar.' But the bill was not passed, and the expectation that Sir Charles Russell would become Lord Chancellor was doomed to disappointment.

Not long afterwards—in the early part of 1894—a Lordship of Appeal fell vacant through the death of Lord Bowen, and, much to the surprise of the profession and the public, Sir Charles Russell accepted the office with a life peerage. In the House of Lords he had little opportunity of distinguishing himself, and it may be doubted whether he would ever have made any great mark as a member of that tribunal. A few months later the death of Lord Coleridge made vacant a position for which he was far more qualified, and, amid universal approval, he was appointed Lord Chief Justice of England—the office in which, after little more than six years, he has died. His career on the Bench, though marked by some defects, was worthy of the best traditions of what Sir Edward Clarke called 'the greatest purely judicial office in this country.' He made a most dignified president of the common-law Courts, and the tributes which his colleagues have paid to his memory show clearly how successfully he performed the adminstrative part of his duties. To all the great qualities he displayed at the Bar he added the judicial spirit when he was promoted to the Bench. The manner in which he presided over the trial at Bar in 1896 of *Regina* v. *Jameson and others* was, in a peculiar degree, characterized by the best qualities of the English Bench. There were, however, less important occasions on which he appeared to exhibit too great a tendency to bring the arguments of counsel and the evidence of witnesses to a close. He was apt, too, to be impatient with persons less gifted than himself with quickness of apprehension, and to use his giant's strength like a giant. He had, in other words, the defects of his qualities and the qualities of his defects. His failings all bore traces of a strong, manly nature; they never obscured—they did, perhaps, but throw into greater relief—the great and admirable qualities he displayed as a judge. He succeeded the late Lord Herschell as a member of the Venezuelan Commission last year, and achieved as much success as an arbitrator on this tribunal as he had formerly won as an advocate before the Behring Sea Commission. The thoughtful and eloquent address on international law he delivered before the Bar Association of America at Saratoga in 1896 earned for him a considerable reputation throughout the world as a student of international questions, which

was strengthened by the successful part he played in connection the Venezuelan Commission. He was president of the Society of Comparative Legislation, and not many weeks before he died received an invitation from M. Saleilles to become a patron of the Congress of International Law.—*English Law Journal.*

Book Reviews.

The Law Quarterly Review. July 1900. London: Stevens & Sons, Limited, Chancery Lane.

This number keeps up the high character of this publication. The notes of cases are in the usual crisp style of the writer, and selected with his usual intuitive knowledge of what would be helpful and interesting to the profession. The leading articles are as follows: The Near Future of Law Reform, dealing principally with a rearrangement of the Courts and especially the vexed question of Appellate Jurisdiction; the Consideration and the Assignment of Choses in Action, which gives the net result of the writer's enquiries into the subject as follows: "Equity does not, and never did, require a consideration for the validity of the assignment of a chose in action; but (a) Voluntary assignees of chose in action may be postponed (at any rate where their titles are not protected by the Judicature Act) to subsequent acquirers with a better claim; and (b) An imperfect assignment of a chose in action will not be completed by the Court at the suit of a volunteer." The Growth and Development of International law in Africa is exhaustive as well as timely. We have then Election between alternative remedies; the Rule in *Hadley* v. *Baxendale*; *DeNichols* v. *Curlier*; and the New German Law, and Contempt of Court and the Press.

Flotsam and Jetsam.

UNITED STATES DECISIONS.

Tenancy in common—Sale of logs by co-tenant—Refusal of buyer to receive.—1. One of several tenants in common cannot cut and sell logs from the land without the consent of his co-tenants, so as to divest them of their interest.

2. Where co-tenant attempts to sell logs cut from the land without consent of co-tenant, the buyer may refuse to receive the logs upon the ground that he has not title.—*Nevels* v. *Kentucky Lumber Co.*, *Central L. J.*, 486.

Damages.—The recovery of damages by a husband for the loss of his wife's services on account of personal injuries is held, in *Selleck* v. *Janesville* (Wis.) 47 L.R.A. 691, not to be limited to the proved money value of her services as a hired servant, but to include the loss or impairment of his right to conjugal society and assistance.

Bicycle Law.—Bicycles are held, in *Taylor* v. *Union Traction Co.* (Pa.) 47 L.R.A. 289, not to be within the meaning of an ordinance giving vehicles a right of way upon street-railway tracks in the direction in which the cars usually run over vehicles going in the opposite direction, so as to entitle a bicyclist to the right of way over a vehicle approaching from the opposite direction. With this case is an extensive note on bicycle law.

Contract.—An agreement to furnish crushed stone "in such quantities as may be desired," to be "delivered on street" in a certain city, without making any more definite provision as to the quantity to be furnished, though made with one who has a contract for paving a street in that city, is held, in *Hoffman* v. *Maffioli* (Wis.) 47 L.R.A. 427, to be insufficient to bind the other party to furnish him at his option all the stone needed for paving such streets, since it does not bind him to take such quantity.

Negligent act—Mental shock.—A recovery for sickness due to the purely internal operation of fright caused by a negligent act is denied in *Smith* v. *Postal Teleg. Cable Co.* (Mass.) 47 L.R.A. 323, even if the negligence was gross and the party in fault ought to have known that the result would follow his act. But, on the other hand, physical injury resulting from fright or other mental shock caused by wrongful act or omission, is held, in *Gulf, C. & S. F. R. Co.* v. *Hayter* (Tex.) 47 L.R.A. 325, to be sufficient to sustain a recovery of damages, if the negligence or wrong was the proximate cause of the injury, and the injury ought, in the light of all the circumstances, to have been foreseen as a natural or probable consequence thereof.

The courts of this country appear to be doing their part toward the extirpation of lynching. Recently the Supreme Court of Ohio has affirmed the constitutionality of the act passed some time ago in that State which provided in cases of lynching that a penal remedy might be recovered. The recovery of this remedy by those having an interest in the life of the person lynched, as well as the tax rate authorized and required by the provisions of the act, are held to be within the general powers of the legislature, and not violative of the mandate of equal taxation. Nearly a dozen States of the Union already have passed acts of this character, and in every case in which the question of their constitutionality has come before a court of last resort they have been sustained. It will be remembered that by the common law mob violence can be assessed upon any region which fails to protect life and property, and the laws referred to are but an extension of the same principle.—*Albany Law Journal.*

An English exchange calls attention to the fact that an extraordinary claim of privilege was made recently in County Longford, Ireland, by a parish priest who had been summoned to give evidence as to the handwriting of the prisoner, who was one of his parishoners. He objected to giving evidence on the ground that he was an American citizen and that, therefore, the court had no jurisdiction over him. He said that he had given his allegiance to the American government and had "renounced all allegiance to every foreign prince, potentate and power." While the privilege was what the English exchange refers to as "ridiculously untenable," the prosecutor in this case, who felt the hardship of compelling a clergyman to give evidence against one of his own flock, did not press the matter. An attempt was then made to prove the handwriting of the prisoner by calling his solicitor as a witness, but the latter also pleaded privilege and refused on that ground to give evidence—a contention with which the magistrates agreed. Our English contemporary is doubtful, however, whether they were right. It adds: "There are a great many exceptions to the privilege of communication between a solicitor and his client, and one of them seems to be that a solicitor may be called to prove his client's handwriting, even though he be acquainted with it only from having seen him sign documents in the case." (*Hurd* v. *Moring*, 1 C. & P. 327.)—*Albany Law Journal.*

According to a recent compilation made by the New York *Herald*, there were from 1848 to 1897 twenty-eight attempts, many of them successful, on the lives of royal personages and rulers. The list follows: Pietro Acciarito tried to kill King Humbert on April 22, 1897. Four attempts were made to assassinate Napoleon I. Queen Victoria's life has been attempted three times. Two efforts were made to kill the Prince of Wales. Napoleon III was frequently shot at but died in bed. The King of Prussia was twice fired at in 1851, but escaped injury. King Victor Emmanuel of Italy narrowly escaped death at an assassin's hands in 1853. King Ferdinand of Naples was stabbed by a soldier in 1856. Queen Isabella of Spain was attacked by Fuentes in 1856. The Queen of Greece, was shot by a student in 1862. Abraham Lincoln, President of the United States, died on April 15, 1865, from a bullet fired by Wilkes Booth the night before. One attempt on the life of the German Emperor in 1873 and another in 1878. King Alfonso of Spain was shot at in 1878. Alexander II of Russia was assassinated on March 13, 1881, in St. Petersburg. Unsuccessful attempts on his life had been made in St. Petersburg in 1866 and in Paris in 1867. President James A. Garfield was shot by Charles J. Guiteau on July 2, 1881, and died on September 19. President Carnot of France was stabbed to death by Caserio Santo in Paris, June 24, 1894. A bomb was thrown at President Faure of France June 13, 1897.—*Albany Law Journal.*