THE

# LEGAL NEWS.

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## *CURRENT TOPICS.*

More than two and a half years ago reference was made in this journal (vol. 14, p. 65) to the extreme inconvenience caused to judges, counsel and others who had business to attend to in the Montreal Court House. On that occasion it was suggested that a short recess in the work of the Courts might be desirable, in order that some of the more difficult parts of the reconstruction might be accomplished without interruption. It was hardly anticipated at that time that after the lapse of thirty months the chaos would be greater than ever. During all this time the necessary work of the Courts has been conducted amidst the greatest confusion. Not only has the public business suffered by the fact that it had to be carried on while extensive alterations were in progress, but the cost of reconstruction has doubtless been largely increased. The judges have been compelled to shift about from room to room, and hold their courts in any hole or corner that chanced to be available from day to day. In the light of the past three years' experience it is clear that it would have been wiser to occupy other premises during the alterations. Even after three successive Long Vacations the access to the edifice at the time of writing is more difficult than ever, and the interior is far, very far, from completion. It would be unsafe to predict that the workmen will be out of the building before the lapse of another year. Fortunately, however, the work has

been accomplished without serious accident, and it may be hoped that the increased accommodation obtained by the additional story will suffice for a good many years to come.

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Whether it be due to the condition of the Court House or not, it is certain that legal business has been unusually stagnant during the Vacation. Little or nothing of special interest has come before the Judge in Chambers. For more than thirty years there has not been so dull a Vacation. Apparently, clients as well as lawyers are more out of town now than when the city was only one third the size, and when the proportion of its inhabitants who felt bound to absent themselves during the summer months was comparatively insignificant. The dullness of legal business is all the more remarkable this year, for even in Montreal there has been very little summer weather. It was cold in May and cool in August, and the intervening months brought little that could be described as sultry.

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Nevertheless, in spite of midsummer inactivity and Court House alterations, a considerable amount of business is, somehow or other, disposed of during the year. This fact has been recently pressed upon our attention in connection with work upon the reports. The registers of judgments rendered by the Superior Court in 1892 (exclusive of cases in Review) fill six large folio volumes of nearly a thousand pages each, equal to about a dozen printed volumes of six hundred pages each. This little fact shows that a seat on the bench of the Superior Court is not a sinecure.

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The judges of the Supreme Court of Canada for a good many years seemed to bear a charmed life, for death touched them not. Chief Justice Richards resigned some years before he passed away, and the place of Mr. Justice Henry in 1888 was the first vacancy created by death.

Now, in quick succession to Chief Justice Ritchie, we have to record the death of Mr. Justice Patterson (July 24). The deceased, Christopher Salmon Patterson, though only appointed a judge of the Supreme Court in 1888, had a long judicial career. He was born in London, England, in 1823, and was called to the bar of Upper Canada in 1851. He was a member of the Law Reform Commission in 1871, and was appointed to the Ontario Court of Appeal in 1874. His career was referred to by the Chancellor of Ontario in these words:—"Since the last session of the Vacation Court the death of Mr. Justice Patterson, of the Supreme Court of Canada, has brought to a close the work of a good judge and a good man. He needs no eulogium from the lips of his judicial brethren, for his life was lived openly so that all could see and value his devotion to the claims of his country and of his fellow-men..... His judgments will live after him, and will supply not a few landmarks for future practitioners and judges. Speaking for myself, I lament the loss of a much-loved friend; but, apart from personal considerations, I now bear testimony to the assiduous and conscientious discharge of public duty which characterized his life as a judge. He was a friend of the student as well as of the solicitor and counsel who practised before him. He spared no pains to discharge that debt which every lawyer owes to his profession, by seeking to conform the practice and principles of jurisprudence to the advancing and developing needs of a more complex civilization. But I need not dwell longer on his merit—I would sum up all in words already used—he was a good judge and a good man."

## *SUPERIOR COURT ABSTRACT.*

*Subrogé-tuteur—Action en destitution—Art.* 282, *C. C.*

Action demandant la destitution d'un subrogé-tuteur pour les causes suivantes: 1. Parceque le tuteur avait intenté contre ce subrogé-tuteur une action lui demandant de rendre compte d'un certain nombre de billets; 2. Parceque la mère du subrogé-

tuteur avait à la suggestion de ce dernier, intenté une action contre le dit tuteur; 3. Parceque le défendeur avait refusé de consentir à une licitation volontaire des immeubles de son pupille; 4. Parceque le défendeur était animé de sentiments antipathiques à l'égard de son pupille et avait refusé de remplir les devoirs de sa charge; 5. Parceque le défendeur était sur le point de partir de la province de Québec et de la Puissance du Canada. Le départ projété du défendeur et ses sentiments antipathiques ne furent pas prouvés, et il fut démontré que les immeubles qu'on voulait faire liciter étaient substitués.

*Jugé:*—Que les causes de destitution invoqués étaient insuffisantes en loi pour justifier la destitution d'un subrogé-tuteur.—*Fyfe* v. *Bourdeau*, & *Fyfe et vir*, Montréal, Ouimet, J., 31 mai 1892.

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*Procédure—Péremption d'instance—Requête civile.*

*Jugé:*—Que la simple production de la requête civile n'ayant pas, comme l'opposition à jugement, qui est un véritable plaidoyer, l'effet de mettre de côté le jugement dont on se plaint, le défendeur requérant ne sera pas reçu, lorsqu'on n'a pas procédé sur la requête civile pendant plus de trois ans, à demander la péremption de l'action du demandeur, ce dernier ayant déjà un jugement en sa faveur, et que la seule instance qui pourrait être déclarée périmée, c'est la requête civile du défendeur.—*Lavigne et al.* v. *Dame & Dame*, Montréal, Pagnuelo, J., 16 mai 1892.

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*Action pour dommages contre un hôtellier qui vend des liqueurs enivrantes à une personne après avoir reçu avis de ne point le faire —Art. 929 S. R. P. Q.*

*Jugé:*—1. Le recours mentionné à l'article 929 S. R. P. Q., contre un hôtellier qui vend des liqueurs enivrantes à une personne après avoir reçu avis de ne point le faire, ne constitue ni une amende, ni une pénalité, mais un simple droit à des dommages personnels qui peuvent et qui doivent être recouvrés devant les tribunaux ordinaires.

2. Le fait d'avoir, dans une semblable action, allégué que le défendeur avait agi contrairement au statut de Québec, 41 Vic., ch. 3, sec. 96, au lieu de l'article 929 qui remplace cette disposition, ne constitue pas une erreur fatale.—*Willett* v. *Viens*, Montréal, Jetté, J., 30 juin 1892.

*Témoin—Privilège—Frais.*

*Jugé:*—Lorsque les faits dont un témoin dépose sont relatifs à la cause dans laquelle il est examiné, et qu'ils sont articulés de bonne foi et sans malice, il ne saurait y avoir ouverture à un recours en dommages à raison des paroles ainsi prononcées. Cependant, dans l'espèce, le défendeur ayant juré que la demanderesse n'était pas croyable sous serment, et ayant donné, comme base de sa croyance, des motifs mal fondés, et ayant de plus laissé percer une certaine prévention contre la demanderesse, il n'y avait pas lieu d'accorder au défendeur les frais d'action.—*Marquis* v. *Gaudreau*, Jetté, J., 30 juin 1892.

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*Liquidateur—Autorisation pour poursuivre—S. R. C. ch.* 129, *sec.* 31.

*Jugé:*—Le liquidateur d'une compagnie doit être spécialement autorisé à poursuivre une réclamation de cette compagnie, et une autorisation générale de poursuivre le recouvrement de tout l'actif de la compagnie ne suffit pas.—*Freygang et al.* v. *Daveluy et al.*, Mathieu, J., 18 nov. 1892.

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*Procédure—Capias—Septuagénaire—Dommages à une propriété hypothéquée—Articles* 800, 801, 805, *C. P. C.*

*Jugé:*—1. Le septuagénaire qui détériore une propriété hypothéquée n'est pas exempt d'arrestation.

2. Les dommages dont il est question en l'article 800 du code de procédure civile, sont des dommages non liquidés; en conséquence le *capias* basé sur cet article ne peut émaner que sur l'ordre d'un juge conformément à l'article 801.—*Ouimet* v. *Meunier dit Lapierre*, C. S., St-Hyacinthe, Tellier, J., 3 janvier 1893.

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*Bail—Privilège du locateur.*

*Jugé:*—Lorsqu'un locateur a fait saisir-gager les meubles de son locataire pendant que ce dernier était dans sa maison, le nouveau locateur n'acquiert aucun privilège sur ces meubles au préjudice du saisissant, même si ce dernier ne l'a pas notifié; en conséquence, un bref de saisie-gagerie par droit de suite est inutile et doit être cassé avec dépens.—*Chaussée* v. *Christin dit St-Amour*, C. C., Montréal, Doherty, J., 13 février 1893.

*Huissier—Demande de destitution—Réponse en droit.*

*Jugé:*—Qu'en loi, il est permis de demander la destitution d'un huissier pour malversations ou actes de fraude par lui commis en dehors de l'exercice de sa charge.—*Desmarteau* v. *Reed*, Montréal, Davidson, J., 6 février 1893.

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*Dénonciation calomnieuse—Privilège—Témoin.*

Le défendeur, dont le magasin avait souffert d'un incendie, après que son témoignage devant les commissaires des incendies fut clos, déclara aux dits commissaires que certains effets avaient disparu de son magasin, pendant que la police en avait la garde, et il consentit que rapport de cette accusation fût fait au chef de police. La preuve démontra que rien ne justifiait cette dénonciation.

*Jugé:*—Que les déclarations du défendeur devant les commissaires des incendies n'étaient pas privilégiées et que chaque homme de police qui avait participé à la garde du magasin du défendeur, avait droit d'action contre ce dernier à raison de cette accusation.—*Prairie* v. *Vineberg*, Montréal, Jetté, J., 28 juin 1892.

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*Procédure—Production de pièces—Art.* 103, *C. P. C.*

*Jugé:*—Bien que l'article 103, C. P. C., prescrive que jusqu'à ce que les pièces du demandeur aient été produites, le dit demandeur ne peut procéder sur sa demande, le défendeur sera cependant reçu à demander, par motion, à ce qu'il ne soit pas tenu de plaider, et les dépens de cette motion lui seront accordés.—*Haines* v. *Baxter*, Mathieu, J., Montréal, 8 nov. 1892.

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*Contrainte par corps—Frais—Discrétion de la cour—Articles* 2272, 2276, *C. C.*

*Jugé:*—1. Un demandeur qui a obtenu un jugement pour injures personnelles, ne peut demander la contrainte par corps pour des frais distraits à son procureur.

2. Les juges, en vertu des termes de l'article 2 du titre 34 de l'ordonnance de 1667, ont un pouvoir discrétionnaire d'accorder ou de refuser la contrainte par corps, ou de fixer l'étendue et la durée de cette contrainte.—*Quenneville* v. *St-Aubin*, Mathieu, J., Montréal, 2 déc. 1892.

*Insurance, Life—Amount payable to wife—Divorce, Effect of.*

*Held:*—Where an insurance is effected upon the life of the husband, the amount whereof is payable to his wife on a date named in the policy or on the previous death of the husband, and the parties are subsequently divorced, the wife ceases to have any claim to the amount of the policy, which reverts to the husband.—*Hart* v. *Tudor*, Gill, J., Montreal, Dec. 12, 1892.

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*Absence—Partage—Art.* 104, *C. C.*

*Jugé:* —Celui qui était absent lorsqu'une succession testamentaire s'est ouverte en sa faveur et en faveur d'autres co-héritiers, et qui est encore absent, doit être écarté du partage des biens de la succession.

2. Dans ce cas, les héritiers présomptifs de l'absent sont sans droit à prétendre concourir au partage pour la part de ce dernier. —*Lawlor* v. *Lawlor et al.*, Gill, J., Montréal, 26 déc. 1892.

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*Partnership—Action against secret partner—Art.* 1836, *C. C.*

*Held:*—Where a person though not a registered member of a firm, must nevertheless be deemed to be a partner by reason of a private agreement involving participation by him in the profits and contribution to the losses of the firm, such person may be sued for a debt of the firm jointly and severally with the registered partners.—*Carter* v. *Grant*, Taschereau, J., Montreal, Dec. 5, 1892.

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*Procedure—Service—Person residing at hotel—Art.* 57, *C. C. P.*

*Held:*—When the defendant resides at a hotel, the servants and employees of the hotel are persons belonging to his family within the meaning of Art. 57, C. C. P., and service effected at the hotel, speaking to an employee, is a good service.—*Bastien* v. *Kennedy*, Montreal, Doherty, J., June 24, 1892.

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*Promissory note—Warrantor—Protest.*

*Held:*—A warrantor (*donneur d'aval*) occupies the same position as an endorser, and is discharged by omission to protest. Hence a declaration in an action against a warrantor which does not allege that the note was protested is demurrable.

2. An allegation in the declaration that the defendant acknowledged to owe and promised to pay the amount of the note, is destroyed by an allegation also contained therein, that payment of the note was refused at the time of presentment, and had always since been refused.—*Emard* v. *Marcille*, Montreal, Wurtele, J., September 19, 1892.

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*Procédure—Shérif—Honoraires.*

*Jugé :*—Les dispositions de la loi qui accordent au shérif une commission de deux et demie pour cent sont encore en vigueur.—*Lambert* v. *Larivière*, et *Le dit demandeur*, créancier colloqué, et *La Banque de St-Hyacinthe*, opposante, Montréal, Mathieu, J., 11 juin 1892.

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*Mariage—Nullité.*

*Jugé :*—Un mariage de deux catholiques mineurs célébré devant un ministre protestant sans l'observation d'aucune des formalités requises par la loi, et notamment sans publication de bans, sera annulé à la demande d'un des époux.—*Valade* v. *Cousineau*, Montréal, Mathieu, J., 12 novembre 1892.

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*Procédure—Désistement—Inscription.*

*Jugé :*—1. Un désistement fait sans l'offre de payer les frais, n'en constitue pas moins, de la part de la partie qui le fait, une renonciation aux prétentions qu'elle a émises dans la procédure dont elle se désiste, et un jugement peut ensuite intervenir sur ce désistement et condamner cette partie aux dépens s'il y a lieu. Par conséquent, un tel désistement ne sera pas rejeté du dossier sur motion de la partie adverse.

2. Rien n'empêche qu'un désistement soit mis dans une inscription.

3. L'inscription d'une cause faite devant un juge de la cour supérieure au lieu de l'être devant le tribunal lui-même, est irrégulière.—*Bousquet* v. *Duquette*, Montréal, Mathieu, J., 5 novembre 1892.

## *OFFENCES COMMITTED IN PARLIAMENT.*

The recent occurrences in the British House of Commons when the members came to blows and engaged in a general affray, have suggested the question whether offences committed by members in Parliament are punishable in any other place, and the *London Law Times* has devoted considerable time and space to the subject. The results of its research are not without interest to students of parliamentary law and history. It is declared by the Bill of Rights "that the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any place out of Parliament." It is however submitted, in accordance with the well-known rule of construction, that the word "proceedings" must be governed in its meaning by the preceding words "freedom of speech and debates," and would not apply to an affray—the category under which the recent fracas, had it taken place in public outside the walls of Parliament, must be placed. The legal definition of an "affray" tallies with this scene in the House of Commons. An affray is an unpremeditated fighting between two or more persons in some public place to the terror of Her Majesty's subjects. Harris Crim. Law, 105. The declaration in the Bill of Rights is clearly inserted in repudiation of the conduct of King James II, complained of in that measure, namely, his "prosecutions in the Court of King's Bench for matters and causes cognizable only in Parliament." The fact, too, that breaches of the peace have from time immemorial been regarded as disentitling members of Parliament to freedom from arrest, would in itself go far to strengthen the surmise that offences against the person, even when committed by members within the walls of Parliament, would not be regarded as "cognizable only in Parliament." By a resolution of the Commons, of the 20th of May, 1675, it was declared "that by the laws and usages of Parliament privilege of Parliament belongs to every member of the House of Commons in all cases except treason, felony and breach of the peace." It was again stated by the Commons, at a conference on the 17th of August, 1641, "that no privilege is allowable in case of breaches of the peace betwixt private men, much more in the case of the peace of the kingdom;" and on the 14th of April, 1697, it was resolved that "no member of this House has any privilege in case of breach of the peace." May Parl. Prac. 145-146. These resolutions however refer solely to the question of

the liability of members to arrest for breaches of the peace committed outside Parliament, and cannot, of course, be carried further than suggesting strong surmises of the probable action of either House with reference to breaches of the peace committed by members within the walls of Parliament. The case of *Holles* v. *Valentine* in 1629 is the nearest precedent, from a constitutional point of view, to the late affray in the House of Commons. After the dissolution of the Parliament convened by Charles I, in 1628, the attorney-general exhibited an information against Sir John Eliot for words uttered in the House, namely, that the council and judges had conspired to trample under foot the liberties of the subject; and against Mr. Denzil Hollos and Mr. Valentine for a tumult on the last day of the session, when the speaker, having attempted to adjourn the House by the king's command, had been forcibly held down in the chair by some of the members while a remonstrance was voted. They pleaded to the court's jurisdiction, because their offences were supposed to be committed in Parliament, and consequently not punishable in any other place. The court were unanimous in holding that they had jurisdiction, though the alleged offences were committed in Parliament, and that the defendants were bound to answer. The privileges of Parliament, said one of the judges, did not extend to breaches of the peace, which was the present case; and all offences against the crown, said another, were punishable in the Court of King's Bench. On the parties refusing to put in any other plea, judgment was given that they should be imprisoned during the king's pleasure, and not released without giving surety for good behavior, and making submission; that Eliot, as the greatest offender and ringleader, should be fined £2,000, and Holles and Valentine a smaller amount. 3 Rushworth State Trials; 2 Hallam Const. Hist. 4, 6. The great question of freedom of speech in Parliament, on the determination of which, according to Mr. Hallam, the power of the House of Commons, and consequently the character of the English Constitution, seemed to depend, was decided by this judgment in a sense clearly adverse to popular rights. In 1667 however the subject was again revived. It was then resolved by the House of Commons that an act of 4 Hen. VIII, which the judges had held at the trial of Eliot, Holles, and Valentine to be merely of a particular application, was a general law "extending to indemnify all and every the members of both Houses of Parliament in

all Parliaments for and touching any bills, speaking, reasoning or declaring of any matter or matters in and concerning the Parliament to be commenced and treated of." They resolved also that the judgment given in the 5th year of Charles I against Sir John Eliot, Denzil Holles, and Benjamin Valentine was an illegal judgment against the freedom and privilege of Parliament. To these resolutions the lords solemnly gave their concurrence, and Holles then became a peer; having brought the record of the King's Bench by writ of error before them, they solemnly reversed it. This decision has established beyond all controversy the great privilege of unlimited freedom of speech in Parliament; unlimited, that is to say, "by any authority except that by which the House itself ought always to restrain indecent and disorderly language in its members." 2 Hallam Const. Hist. 6. But does the reversal of this judgment decide that offences committed in Parliament by members, as indeed was argued in the case of Holles and Valentine, are not punishable in any other place, and that, accordingly, the participators in the recent affray are not answerable in a court of justice for their conduct? Mr. Hallam gives the following reply to this query. "It does not however appear," he says, "to be a necessary consequence from the reversal of this judgment (in the case of Eliot, Holles and Valentine) that no actions committed in the House by any of its members are punishable in a court of law. The argument on behalf of Holles and Valentine goes indeed to this length; but it was admitted in the debate on the subject, in 1667, that their plea to the jurisdiction of the King's Bench could not have been supported as to the imputed riot in detaining the speaker in the chair, though the judgment was erroneous in extending to words spoken in Parliament. And it is obvious that the House could inflict no adequate punishment in the possible case of treason or felony committed within its walls, nor if its power of imprisonment be limited to the session, in that of many smaller offences." 2 Const. Hist. 6, 7.—*Albany Law Journal.*

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## *THE BEHRING SEA AWARD.*

The daily papers have announced the contents of the award of the Behring Sea arbitrators, and we have witnessed the unwonted sight of both parties applauding the decision. The English papers express their satisfaction, having read the first part of the award; the United States press is truly thankful, having read

the rest. Lucky arbitrators! Rare judges be ye who satisfy both sides!

Unfortunately we must to some extent play the part of the wet blanket amid the joyful scene. The truth is that we are to a considerable extent losers in the action. We are winners where we were certain to win, and we are partly losers on the essential question.

Our readers will find fully discussed in our former issues the matters with which the arbitrators had to deal. To enable them to understand the decision we must recapitulate the points.

Art. 6 of the treaty required a separate answer on the five following questions:

'1. What exclusive jurisdiction in the sea now known as the Behring Sea, and what exclusive rights in the seal fisheries therein, did Russia assert and exercise prior and up to the time of the cession of Alaska to the United States?

'2. How far were these claims of jurisdiction as to the seal fisheries recognised and conceded by Great Britain?

'3. Was the body of water now known as the Behring Sea included in the phrase "Pacific Ocean," as used in the treaty of 1825 between Great Britain and Russia? and what rights, if any, in the Behring Sea were held and exclusively exercised by Russia after said treaty?

'4. Did not all the rights of Russia as to jurisdiction and as to the seal fisheries in Behring Sea, east of the water boundary, in the treaty between the United States and Russia of March 30, 1867, pass unimpaired to the United States under that treaty?

'5. Has the United States any right, and, if so, what right, of protection in the fur-seals frequenting the islands of the United States in Behring Sea when such seals are found outside the ordinary three-mile limit?'

In the alternative, Art. 7 provided: 'If the determination of the foregoing questions as to the exclusive jurisdiction of the United States shall leave the subject in such position that the concurrence of Great Britain is necessary to the establishment of regulations for the proper protection and preservation of the fur-seal in, or habitually resorting to, the Behring Sea, the arbitrators shall then determine what concurrent regulations outside the jurisdictional limits of the respective Governments are necessary, and over what waters such regulations should extend, and to aid them in that determination, the report of a joint commis-

sion, to be appointed by the respective Governments, shall be laid before them, with such other evidence as either Government may submit.'

The answer to the first five points was practically a foregone conclusion. The court has decided upon all of them in favour of Great Britain. The answers to the first, second, and third were even concurred in by Judge Harlan, one of the two American arbitrators, and on the point that the Behring Sea is a part of the Pacific Ocean they were unanimous, the American denial of this being too much even for the patriotic Senator Morgan. On the fifth point the two American arbitrators stood aloof, the British, French, Italian and Norwegian arbitrators being otherwise unanimous. The decision on this question is a theoretically important one. It is that 'the United States has not any right of protection or property in the fur-seals frequenting the islands of the United States in Behring Sea when such seals are found outside the ordinary three-mile limit.' This is an authoritative statement in favour of the three-mile limit which has lately been exercising the minds of foreign international jurists.

So far this is satisfactory enough, but the Americans presumably do not care what the grounds are so long as what they get is what they want.

The British Commissioners proposed that a close season should be provided, extending from September 15 to May 1, during which all killing of seals should be prohibited, and that no sealing vessels should enter Behring Sea before July 1. They stated that, as a fact, Behring Sea is now usually entered by the pelagic sealers between June 20 and July 1, that the seals begin to travel towards Behring Sea about June 1. Now, it is only when the seals are on their way to Behring Sea that the Canadians have a chance of catching them. Great Britain has acquiesced all through in the principle of a measure for the preservation of seal life, but she contended that the measure should not be one-sided, and that they should include the regulations of the slaughter on the breeding islands, which are under the exclusive jurisdiction of the United States.

The United States on their side contended that the entire suppression of pelagic sealing was the only measure by which the utter destruction of seal life in the North Pacific could be prevented.

Let us now see how the tribunal has dealt with the question.

It has laid down the law to govern the future of North-west American sealing in the following seven articles:

'Art. 1. The Governments of the United States and Great Britain shall forbid their citizens and subjects respectively to kill, capture, or pursue at any time and in any manner whatever, the animals commonly called fur-seals, within a zone of sixty miles around the Pribiloff Islands, inclusive of the territorial waters.'

The miles mentioned in the preceding paragraph are geographical miles, of sixty to a degree of latitude.

'Art. 2. The two Governments shall forbid their citizens and subjects respectively to kill, capture, or pursue, in any manner whatever, during the season extending, each year, from May 1 to July 31, both inclusive, the fur-seals on the high sea, in the part of the Pacific Ocean, inclusive of the Behring Sea, which is situated to the north of the 35th degree of North latitude, and eastward of the 180th degree of longitude from Greenwich, till it strikes the water boundary described in Art. 1 of the Treaty of 1867 between the United States and Russia, and following that line up to Behring Straits.

'Art. 3. During the period of time and in the waters in which the fur-seal fishing is allowed, only sailing vessels shall be permitted to carry on or take part in fur-seal fishing operations. They will, however, be at liberty to avail themselves of the use of such canoes or undecked boats, propelled by paddles, oars, or sails, as are in common use as fishing-boats.

'Art. 4. Each sailing vessel authorised to fish for fur-seals must be provided with a special license issued for that purpose by its Government, and shall be required to carry a distinguishing flag to be prescribed by its Government.

'Art. 5. The masters of the vessels engaged in fur-seal fishing shall enter accurately in their official log-book the date and place of each fur-seal fishing operation, and also the number and sex of the seals captured upon each day. These entries shall be communicated by each of the two Governments to the other at the end of each fishing season.

'Art. 6. The use of nets, firearms, and explosives shall be forbidden in the fur-seal fishing. This restriction shall not apply to shot-guns when such fishing takes place outside of Behring Sea, during the season when it may be lawfully carried on.

'Art. 7. The two Governments shall take measures to control the fitness of the men authorised to engage in fur-seal fishing;

these men shall have been proved fit to handle with sufficient skill the weapons by means of which this fishing may be carried on.

'Art. 8. The regulations contained in the preceding articles shall not apply to Indians dwelling on the coasts of the territory of the United States or of Great Britain, and carrying on fur-seal fishing in canoes or undecked boats, not transported by, or used in connection with, other vessels, and propelled wholly by paddles, oars, or sails, and manned by not more than five persons each, in the way hitherto practised by the Indians, provided such Indians are not in the employment of other persons, and provided that, when so hunting in canoes or undecked boats, they shall not hunt fur-seals outside of territorial waters under contract for the delivery of the skins to any person. This exemption shall not be construed to affect the municipal law of either country, nor shall it extend to the waters of Behring Sea or the waters of the Aleutian passes. Nothing herein contained is intended to interfere with the employment of Indians, as hunters or otherwise, in connection with fur-sealing vessels as heretofore.

'Art. 9. The concurrent regulations, hereby determined with a view to the protection and preservation of the fur-seals, shall remain in force until they have been, in whole or in part, abolished or modified by common agreement between the Governments of the United States and of Great Britain.'

The said concurrent regulations shall be submitted every five years to a new examination, so as to enable both interested Governments to consider whether, in the light of past experience, there is occasion for any modification thereof.

Thus the United States are given a zone of sixty miles' jurisdiction round the Pribiloff Islands, of which the lessees of the islands will have the exclusive benefit. To this we have no objection. It is only right that they should be protected from raiding on the islands or in their immediate neighborhood.

As regards the close time, the arbitrators appear to have divided the season when the seals are to be found on the high seas. They have left August, one of the best months, open to the pelagic sealers, but they have far from adopted the British proposals.

Steam-vessels are excluded from sealing operations, and inside Behring Sea even ordinary guns are forbidden.

It is significant that these regulations were only carried by

four arbitrators against three. The Americans and Sir J. Thompson dissented. If Lord Hannen had dissented too, there would have been no decision, as Sir Charles Russell had consented to the whole question forming one decision, though this is contrary, as the writer believes, to the sense of Art. 7 of the Treaty of Submission.

There is a difficulty of execution still to be dealt with. The arbitrators' decision applies only to Great Britain and the United States. The co-operation in the proposed measures of other States is indispensable, and this under the treaty both parties are to use their best efforts to secure.

The work of the Court of Arbitration is concluded by the following recommendations, to supplement the regulations they have decided upon, by concurrent regulations applicable to within the limits of the sovereignty of the two powers interested. They also recommend that, 'in view of the critical condition to which it appears certain that the race of fur-seal is now reduced in consequence of circumstances not fully known,' both Governments come to an understanding in order to 'prohibit any killing of fur-seals either on land or at sea for a period of two or three years, or, at least, one year, subject to such exceptions as the then two Governments might think proper to admit of.'

Certain facts as to the claim for damages are found, but, as the agents of the two Governments submitted them jointly, this part of the decision is of no interest.

Thus ends a *cause célèbre* in international law, the full importance of which, as showing the efficacy of arbitration, cannot yet be judged. The weakness of the arrangement was in the case submitted being partly a legal and partly a technical one. For the legal part of the question no better court ever sat; for the technical part of the case the court was reduced to the good old device of splitting the difference, the course pursued by all those who, while wishing to be just, doubt their own powers too much to be emphatic.—*Law Journal (London.)*