The Legal News.

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CRITICISM OF LEGISLATION.

While agreeing in the main with the remarks of Mr. Justice Ramsay, reported on page 346, we hardly feel inclined to go so far as to propose the denunciation of "unprincipled legislation" as a serious part of the functions of the professors of the new law faculty. It is true that some of the measures laid before the bodies known in these latter days as Provincial Parliaments, are excessively crude, and betray too plainly lack of reflection and haste on the part of their authors. We also admit that a professor may sometimes without difficulty find an apt illustration of his text in contemporary efforts at law-making, just as a grammarian may discover examples of solecisms even in authors of classical reputation. But, after all, these "unprincipled" bills are submitted to the criticism of an assembly largely composed of the legal profession, and some at least of whose members are as competent as any professors we have in Canada to point out errors and deviations from sound principles of jurisprudence. While, therefore, we do not wish to damp the wings of newly-fledged professors and lecturers, we venture to throw in a word of caution, that they make sure of their own capacity before they take too bold a flight.

JUDICIAL CHANGES.

The Hon. L. F. G. Baby, Q.C., Minister of Inland Revenue in the Dominion Government, has been gazetted a judge of the Superior Court of Quebec Province, in the place of Judge Polette, resigned. Judge Baby was admitted to the bar in 1857, and has been a member of the Dominion Ministry since the return of Sir John A. Macdonald to power in 1878, representing in the Commons Joliette, the district in which he practised. The new judge has long been characterized by a faithful and conscientious discharge of the duties which he assumed, and we entertain no doubt that he will carry to his new office the high qualities which have won for him success at the bar and in Parliament. At the opening of the Court of Queen's Bench in Montreal, on the 2nd inst., it was announced that Mr. Justice Baby has been temporarily appointed an assistant judge of that court, during the absence of Mr. Justice Tessier, whose ill-health has necessitated a voyage to Europe.

HYPOTHECATION OF PROPERTY OF REAL OWNER.

A case of *City Bank & Barrow* was recently decided by the House of Lords (now reported in 5 App. Cas. 664), in which their lordships had occasion to consider a question of the law of this Province. Barrow was a leather merchant in London. He made an agreement with one Walter Bonnell, who carried on the business of a tanner in the Province of Quebec, to pay him, Bonnell, three half-pence per pound weight for every hide tanned by him in Canada. The hides were to be sent out from England, tanned in this country, and then returned to England. Barrow sent out a large number of hides; they were tanned, but before they were re-shipped to England Bonnell had obtained from the Bank of Toronto (represented in the suit by the City Bank, appellants,) advances on his own account, on bills, and hypothecated the hides to the Bank as security for such advances, engaging to hand over to them the bills of lading if his bills of exchange were not duly honored. They were not duly honored, and the Bank of Toronto claimed to retain the bills of lading and the hides until their demands were satisfied. The decision of the House of Lords is to the effect that, under the circumstances, Bonnell could not, under any law, English or Canadian, claim to be a factor or agent of Barrow entitled to pledge Barrow's goods, and that consequently the Bank could not set up any title to the goods, as derived from him, against the real owners. This judgment appeared to conflict to some extent with *dicta* of the judges of our Court of Queen's Bench in the case of *Cassils & Crawford*, 21 L. C. J. 1. In that case the opinion was expressed by some of the judges that where a good sale could be made, there could be a good pledge, for pledges must be good, wherever sales would be so. The House of Lords dissented from that doctrine, holding that where there is a power, by law, to sell, a purchaser may obtain from the vendor, even as against the true owner, a good title, but

that cannot extend, by implication, to a pledge. This decision has lost much of its importance now, for our readers will remember that an Act was passed by the legislature of Quebec in 1879, making articles 1488, 1489, and 2268 of the Civil Code applicable to the contract of pledge. (See 2 Legal News, p. 319.) We may, however, refer the reader to the remarks of their lordships upon the words "nor in commercial matters generally," in art. 2268, which occasioned so much difficulty in the case of *Cassils & Crawford.*

NOTES OF CASES.

COURT OF REVIEW.

MONTREAL, Oct. 29, 1880.

MACKAY, TORRANCE, RAINVILLE, JJ.

TERRIAULT v. DUCHARME.

[From S. C., Montreal.

Federal Elections Act—Candidate's Personal Expenses.

The personal expenses of the candidate during an election, and connected therewith, are election expenses, and a detailed statement must be included in the statement required by law to be filed after the election.

The judgment under review was rendered by the Superior Court, Montreal, Jetté, J., March 31, 1880. See 3 Legal News, p. 140.

MACKAY, J. The plaintiff inscribes in revision. He sued in the Superior Court for $600 (thirty times twenty dollars) for the penalty of sec. 123 of the Dominion Elections Act of 1874. Defendant was candidate at Verchères at the election in 1878, and is charged with having neglected to make and deliver, as required by law, to the Returning Officer a detailed statement of the payments of election expenses made by him. The plaintiff sues by virtue of sec. 109, which makes the penalty his property; it is a sum not exceeding $20 a day for every day's default.

The plea is that he, the defendant, believes that he made no expenses for which he was or is bound to make statement whatever; then he admits that he did, during the election, make expenditures amounting to $2.45, for himself and horse at Contrecœur and Varennes; that he made no statement about them, believing the law not to call upon him to do so; that he has been in no bad faith; that since the institution of this suit he has furnished the Returning Officer with the statement.

Then he confesses judgment for $10 and interest and costs of the action, as brought, up to that time, and prays for the dismissal of the action as to the surplus of demand, with costs against defendant if he refuse the offers, or press his action farther.

The judgment complained of has exactly followed the defendant's plea, and is according to it, and has dismissed the plaintiff's action in a degree, with costs against him, that is, costs since the time of defendant's plea and offers.

The Court here finds, as the Judge *à quo* seems to have done, that personal expenditures of a candidate (such as were those admitted by defendant,) were and are election expenses, and that detailed statement of them was required, as contended for by plaintiff, but we cannot accept the doctrine that defendant in an action for the penalty could oblige plaintiff to accept any mere offers of compromise, under pain of having costs to pay if refusing them. We do see the defendant to be in nearly as small a sin against the Elections Act as possible; we, therefore, think that this is a case in which we may moderate the penalty against him. We have a discretion, and exercising it, we give judgment for the plaintiff for $30, being one dollar a day for thirty days' default of the defendant, and all costs of suit of the action as brought, and in default of payment within fifteen days next after day of this judgment, the defendant to be imprisoned in the common jail, &c., for thirty days, unless the fine and costs be sooner paid. Costs in revision against defendant. We give plaintiff no interest; none is ordered.

The judgment is as follows:

"The court, etc....

"Considering that defendant violated, as is charged, sect. 123 of the Dominion Elections Act of 1874 referred to, and, therefore, incurred the penalty of it, which the plaintiff, under sect. 109, had right to sue for;

"Considering that plaintiff's action was well brought, and that he was entitled to judgment as has been found, but for a larger amount and not a composition sum, such as defendant tendered and the judgment has declared sufficient;

"Considering that the plaintiff is entitled

also to be relieved from the condemnation in costs pronounced against him by the judgment that he complains of;

"Considering that the judgment complained of is erroneous in a degree;

"This court doth, revising said judgment, reverse the same, and proceeding to render the judgment that ought to have been rendered in the premises, doth condemn the defendant to pay and satisfy to plaintiff a penalty of $1 a day for the thirty days elapsed after the delay prescribed to render an account of his expenses under the provisions of the said Elections Act of 1874, to wit, the sum of $30 for the thirty days of defendant's default found, with costs in the Superior Court of the action as brought against said defendant in favor of said plaintiff, and with costs of this Court of Revision against said defendant in favor of said plaintiff, the said sum of $30 and the costs in the court of first instance to be paid within fifteen days next after this day; in default of which payment it is ordered that the defendant shall be imprisoned in the common jail of this district for thirty days, reckoning from his arrest under this judgment, unless sooner he pay the debt and the said costs."

J. B. Brousseau, and *J. E. Robidoux*, for plaintiff.

Lacoste, Globensky & Bisaillon, for defendant.

COURT OF REVIEW.

MONTREAL, Oct. 29, 1880.

TORRANCE, RAINVILLE, LAFRAMBOISE, JJ.

In re De la DURANTAYE, BEAUSOLEIL, assignee, and De la DURANTAYE, petitioner.

Assignee's fees—Composition—Costs of Assignee's discharge.

The assignee is entitled to the costs of obtaining his discharge as assignee, even where the insolvent has obtained from his creditors a deed of composition and discharge.

This was an appeal from the judgment of Jetté, J., rendered on the 3rd July last, taxing the bill of costs due the assignee. The insolvent had presented a petition for an order on the assignee to return him his estate on payment of $100 allowed him for his account by the inspectors. The assignee on his part presented a petition that his account be taxed at $168.96.

TORRANCE, J. Two questions were presented on behalf of the insolvent now appealing. 40 Vic. c. 41, s. 13, amending s. 43 of the Insolvent Act, enacted that the remuneration of the assignee should be fixed at a meeting of creditors, or by the inspectors, subject to revision by the Court or Judge, and if not so fixed, should be established by the Court or Judge. The insolvent submitted that the Judge had no jurisdiction to tax the account as he had done. On this we shall simply say that we do not consider the certificate or opinion signed by the inspectors is a compliance with the law.

The remaining question is whether the bill taxed by the judge on the petition of the assignee is in conformity with the law. Sections 47, 48 and 118 of the Insolvent Act relate to the matter. A grievance of the insolvent is the allowance for the assignee's discharge,—$30, which here the insolvent says was quite unnecessary, as the estate was returned to him on a composition. We are of opinion that the bill has been rightly taxed, and that the revision of this Court sees no error in the taxation made of $158.96.

Pagnuelo, Q.C., for the insolvent.

Geoffrion, for the assignee.

SUPERIOR COURT.

MONTREAL, Oct. 29, 1880.

GAREAU v. CINQ MARS.

Lessor and Lessee—Sub-lease—Rescission.

The lessor has not a right to obtain the rescission of the lease for violation of a stipulation against sub-letting, where the sub lease has terminated before the institution of the action, and the lessor has not been injured thereby.

In the circumstances of this case there was no sub-letting.

This was an action to rescind a lease given by plaintiff to defendant in January last. The ground was that the tenant had sub-let contrary to the stipulations of the lease. The defendant pleaded that for nine years, he had had a lease of the same premises from plaintiff, and during this time to his knowledge and even at his solicitation, part of the leased premises

had been occupied by divers sub-tenants who put outside signs and notices, that in fact Provencher, complained of in the declaration, had for two years before the lease in question, to the knowledge of Gareau, occupied a part of said premises and placed signs and notices, on the outside; that he was the tailor of the establishment of Cinq-Mars and occupied a little room where customers of Cinq-Mars were measured for clothes, which were cut and made by Provencher; that it was true that Cinq-Mars was in the habit of charging Provencher and other tailors before him, $4 or $5 per month, but it was rather for the privilege of being tailor of the establishment than as rent; that at the date of the institution of the action, Provencher did not occupy as sub-tenant, but simply as tailor attached to the establishment, and that the fact of such occupation to the knowledge of the plaintiff was not a contravention of the lease, &c., &c. Gareau answered that he had been informed by Cinq-Mars as a witness before the Recorder, that Provencher was a sub-tenant, and he knew for the first time by defendant's plea that Provencher had ceased to be sub-tenant.

Torrance, J. There is evidence that Provencher had the partial use along with Cinq Mars of a small room as tailor of the establishment of Cinq-Mars. For this privilege he paid $4 or $5 per month until 1st July. The action was taken out on the 22nd July. One Paradis was there before him and plaintiff knew it, though he says he did not know the relation in which Paradis stood to Cinq-Mars. It is to be remarked that Provencher had no exclusive control of this room in which he worked, and he had only access to it during the hours when the premises were open to the other *employés* of the defendant. He had no key for himself. Apart from these facts, the jurisprudence does not give a proprietor in all cases a right to eject his tenant for violation of the stipulation in the lease against sub-letting. Agnel, Code des propriétaires, p. 229, says (517) "si à l'époque de la demande en résiliation, la cession ou la souslocation n'existe plus, et si d'ailleurs le bailleur ne peut alléguer aucun préjudice causé par la sous location, la résiliation n'a pas lieu." Numerous cases are cited: see also 6 Toullier, No. 549, et suiv.: Duvergier Tom. 3, n. 370, Troplong, n. 139. By this jurisprudence the grievance having ceased before the action, the action must fail. I say this in full view of C.C. 1638. There is still the question of costs. On this, I incline to the pretension of the defendant, that Provencher's right to the room was rather a privilege than a right as sub-tenant. He was tailor of the establishment of Cinq-Mars. The action should therefore be dismissed with costs.

J. E. Robidoux for plaintiff.

T. C. DeLorimier for defendant.

Montreal, January 10, 1880.

Tate v. Torrance et al.

Vessel—Liability of registered owner for repairs.

The registered owner of a vessel is not liable for the cost of repairs unless such repairs be ordered by a recognized agent.

Repairs were ordered by, and the work was done on the responsibility of, the owner in actual possession, without the knowledge of the registered owner, who was such merely for the purpose of securing a debt due to him by the real owner. Held, that the registered owner was not liable.

Action for $5,265.89, against the fiduciary legatees and executors of the late David Torrance, for work and repairs done by the firm of Tate & Co., now represented by plaintiff, to a barge called the "Frontenac," of which the late David Torrance was the registered owner and proprietor. The declaration alleged that when the barge was received by Tate & Co. for repairs, she was rotten and worthless, and by the work done she was rendered seaworthy, and that Tate & Co. looked to Torrance for the payment of this work and for the value of the materials furnished.

The defendants, besides other pleas, alleged that if the firm of Tate & Co. did any work to the "Frontenac," it was not at the instance or request of the late David Torrance, nor on his credit, but solely at the instance of a certain forwarding firm of Miller & Jones to whom the barge belonged, and who were in possession thereof, and who navigated the vessel for their own profit; that Torrance was only registered as owner in order to secure the payment of a debt due to the firm of David Torrance & Co. by said Miller & Jones, and Torrance had no interest in the barge except as security for this debt; and that Tate & Co. never knew Torrance

as owner of the barge, nor gave credit to him for payment of the repairs.

JETTE, J., rendered judgment as follows, dismissing the action :—

"La Cour, etc....

"Considérant que le demandeur réclame des défendeurs en leur qualité d'exécuteurs testamentaires et administrateurs de la succession de feu David Torrance, une somme de $5,265.89, pour le coût et valeur de réparations faites en 1872 au navire "Frontenac," dont le dit feu David Torrance apparaissait alors aux régistres de la Douane de cette ville être le propriétaire, ayant titre dûment enregistré; le demandeur alléguant que le dit David Torrance était comme tel responsable du coût des dites réparations, lesquelles avaient été faites pour son bénéfice et avantage ;

"Considérant que les défendeurs ont plaidé à cette demande, entre autres choses, que le titre du dit navire n'était ainsi au nom du dit David Torrance que pour garantir à Messieurs David Torrance & Cie. le paiement d'une créance considérable qu'ils avaient contre Messieurs Miller & Jones, négociants expéditeurs, lesquels étaient les seuls et vrais propriétaires du dit navire, et en avaient alors la possession pleine et entière, et l'administration et contrôle absolu; et que les dites réparations ont été demandées et ordonnées par les dits Miller & Jones, et accomplies sur telle demande par le demandeur et son associé pour le temps d'alors; lesquels ont accepté la responsabilité des dits Miller & Jones pour le coût des dites réparations, et que le dit David Torrance n'a jamais eu connaissance d'icelles, et n'en a jamais été tenu responsable par le dit demandeur et son dit associé ;

"Considérant qu'il est établie en preuve qu'à l'époque où les dites réparations ont été faites par le demandeur et son associé, les dits Miller & Jones avaient depuis deux ans la possession et le contrôle absolu du dit navire, et le naviguaient à leur profit et avantage exclusif; que c'est à la demande des dits Miller & Jones que les dites réparations ont été ainsi faites, sans que le dit David Torrance en ait jamais eu connaissance; que le dit demandeur et son associé ont alors accepté pour le paiement des dites réparations la responsabilité personnelle et suivi la foi des dits Miller & Jones, à qui ils ont chargé le coût d'icelles, conjointement avec le coût d'autres réparations faites à d'autres navires possédés par les dits Miller & Jones; qu'ils ont reçu des paiements considérables des dits Miller & Jones en à-compte des dits ouvrages, et qu'ils ont même exigé et obtenu d'eux pour la garantie du paiement de ce qui pouvait leur être ainsi dû, une hypothèque s'élevant à la somme de $4,000 sur le navire "Minnie," possédé par les dits Miller & Jones;

"Considérant que le seul fait de la propriété d'un navire n'impose pas au propriétaire la responsabilité des engagements qui peuvent être pris par qui que ce soit à raison de ce navire, mais que la loi a limité au contraire cette responsabilité aux cas où ces engagements sont pris par des agents reconnus et autorisés du propriétaire, et pour des choses nécessaires au navire, et ce à raison de la présomption qu'elle établit alors d'une autorisation implicite du propriétaire à telles fins;

"Considérant que, vû la preuve faite dans l'espèce, les dits Miller & Jones n'étaient pas et ne pouvaient pas être considérés comme les agents du propriétaire du dit navire "Frontenac," et par suite n'ont pu l'engager;

"Considérant enfin que loin d'agir comme agents ou représentants du propriétaire, les dits Miller & Jones ont au contraire contracté directement et en leur propre nom avec le demandeur et son associé pour les dites réparations, et que c'est à eux et à eux seuls que le demandeur et son associé ont donné crédit pour les dits travaux et réparations; et que par suite les dits Miller & Jones étaient seuls responsables du coût des dites réparations, et non le dit David Torrance ;

"Renvoie la motion du demandeur pour rejet de partie de la preuve faite par les défendeurs ;

"Renvoie la première exception des défendeurs comme mal fondée en droit; mais maintient les autres défenses des défendeurs *es qualité*, et en conséquence renvoie l'action du demandeur avec dépens."

Abbott, Tait, Wotherspoon & Abbott, for plaintiff.
G. B. Cramp, for defendants.

MONTREAL, April 14, 1880.

COMMERCIAL MUTUAL BUILDING SOCIETY v. McIVER et vir, and PLFF., petr.

Sheriff's Sale—Vacating of Sale on ground of fraud.

On a petition to vacate a Sheriff's Sale, held, that

in the circumstances stated below, the evidence was insufficient under C.C.P. 714 *to set aside the sale.*

TORRANCE, J. This is a petition to set aside a sale made by the Sheriff on the 11th December of defendant's land, on which the petitioner had a mortgage of $4,000. This property was purchased by Alfred G. Isaacson for $2,200 as the last and highest bidder. The allegation was that the purchase by Alfred G. Isaacson was fraudulent; that he was son of the defendant, and her *prête-nom;* that he had no intention of purchasing, and defendant used artifices to prevent persons from attending and bidding, namely, Elijah E. Shelton, who was prepared to bid up to $4,500; that petitioner would have been paid if the property had been sold at its value.

It was proved at the trial that the property was worth over $4,000, and sold for $2,200, and was bought by Alfred G. Isaacson for $2,200, and that the mortgage claim of petitioner was $4,000. But it is not proved, as required by C.C.P. 714, that fraud and artifice were employed with the knowledge of the purchaser to keep people from bidding. It is true that the male defendant, Mr. Isaacson, N.P., had asked Mr. Shelton to bid up the property to $4,000 or $5,000, to prevent it being sacrificed to his loss, and a day or two afterwards Mr. Isaacson told Mr. Shelton that he thought the building society would buy it in, and that he would be able to rent it from them, and that if Mr. Shelton did not want it, he did not consider that it would be any benefit to him to buy it in as he had asked. But I find no artifice proved. The truth is that the sale was fixed for 10 a.m., and the society was unrepresented in consequence of their agent having made a mistake in the hour, and only attending at 11 a.m. There being few bids, Alfred G. Isaacson became the purchaser. His acquisition cannot be disturbed.

Petition dismissed.

W. H. Kerr, Q.C., for petitioner.

W. W. Robertson, for purchaser.

[In Chambers.]

MONTREAL, May 1, 1880.

COMMERCIAL MUTUAL BUILDING SOCIETY v. MCIVER et vir, and PLFF., petr.

Costs—Petition to vacate Sheriff's Sale.

Costs upon a Petition to set aside a Sheriff's Sale on ground of fraud are the same as those allowed in ordinary suits.

The plaintiff presented a petition to set aside a sheriff's deed on ground of fraud on the part of the purchaser, and the petition was dismissed with costs. (See preceding case.)

A petition to revise the taxation of the bill was now made by petitioner, he alleging "that respondents have included in their bill of costs, taxed herein, an item of $50 as attorneys' fee on said petition; that respondents are not by law entitled to such fee; that the only costs respondents can exact are the sum of $3, as provided by Art. 26 of tariff of advocates, and the sum of $8, as provided by Art. 42 of said tariff; and that by the tariff no attorney's fee is allowed on such proceedings."

RAINVILLE, J., dismissed the petition.

Kerr, Carter & McGibbon, for petitioner.

Robertson & Fleet, for respondent.

LIABILITY OF ACCIDENT INSURANCE COMPANIES.

There is much truth in the observation that it is extremely difficult, if not impossible, to formulate a rule or principle which shall apply to a number of cases, each of which depends upon the construction of different instruments. Nevertheless, that observation is deprived of its force where those cases or instruments have certain circumstances in common, and those circumstances are alone sufficient upon which to found the *ratio decidendi.* Hence arises the utility of examining cases such as *Winspear* v. *The Accident Insurance Company* (42 L. T. Rep. N. S. 900) which is the last reported case dealing with the rights of a person insured against injury caused by accidental external means. In that case the policy provided that no claim should be made "for any injury from any accident unless such injury should be caused by some outward and visible means," or for "any injury caused by or arising from natural disease or weakness, or exhaustion consequent upon disease, or any medical or surgical treatment, or operation rendered necessary by disease, or any death arising from disease, although such death may have been accelerated by accident." The assured, in crossing a stream or brook, was seized with an epileptic fit, and fell down, and, whilst suffering such fit, was drowned. The

question raised for the Exchequer Division by a special case was whether his executrix could recover under the policy.

The cases cited as having a bearing upon the question were *Fitton* v. *Accidental Death Insurance Company* (inf.). *Smith's case* (inf.), *Trew's case* (inf.), *Sinclair's case*, and *Reynold's case*, 22 L. T. Rep. N. S. 120.

The condition in *Fitton* v. *Accidental Death Insurance Company*, 17 C. B. N. S. 122, was that the policy insured against stabs, cuts, concussions, when accidentally occurring from material and external cause, where such accidental injury was the direct and sole cause of death to the insured, or disability to follow his avocations; but there was an exception that the policy did not insure against death or disability arising from hernia or any other disease or cause arising within the system of the insured before or at the time or following such accidental injury, whether causing death or disability directly or jointly with such accidental injury. The death of the insured in this case was from hernia, caused solely and directly by external violence, followed by a surgical operation performed for the purpose of relieving the patient, and the Court held that the death was not within the exception. On behalf of the company it was contended that the policy did not extend to cover death from hernia and a surgical operation performed to relieve or cure the same. When, however, it was urged that the condition in the policy contained a clear indication that the company would not be liable for death from hernia, not being the direct result of and solely caused by accidental violence, Mr. Justice Williams intimated that the real question was whether hernia, which was the result of accidental violence, was insured against by the policy. "Looking at the language of the policy," said his Lordship, "and taking the first condition altogether, I am of opinion that it means to exempt the company from liability only where the hernia arises within the system." Mr. Justice Willes thought it was extremely important, with reference to insurance, that there should be a tendency rather to hold for the assured than for the company, where any ambiguity arose upon the face of the policy. It was contended on behalf of the assured that rheumatism and gout are always excepted because they always arise within the system; whereas hernia and erysipelas are excepted only when they arise within the system. This view appears to have been adopted by the Court.

The Court of Queen's Bench decided the case of *Sinclair* v. *Maritime Passengers Insurance Company*, 3 E. &. E. 478. Chief Justice Cockburn pointed out that it is difficult to define the term accident so as to draw with perfect accuracy a boundary line between injury or death from accident and injury or death from natural causes. "We cannot think disease produced by the action of a known cause can be considered as accidental," said his Lordship. "Thus disease or death engendered by exposure to heat, cold, damp, the vicissitudes of climate or atmospheric influences, cannot, we think, properly be said to be accidental, unless at all events the exposure is brought about by circumstances which may give it the character of accident." The question was whether death from sunstroke was an accident to the assured within the ordinary meaning of that word. The court came to the conclusion that the death arose from a natural cause and not from accident.

In *Reynolds' case* (*sup.*) Mr. Justice Willes said, "The death resulting from the action of the water upon the lungs, and from the consequent interference with respiration, I think that the fact of the deceased falling into the water from sudden insensibility was an accident, and that consequently our judgment must be for the plaintiff."

One of the provisions in the policy in *Smith* v. *The Accident Insurance Company*, 22 L. T. Rep. N. S. 861, was that the assured should be insured against all forms of cuts, stabs, tears, bruises, or concussions, when accidentally occurring from material or external causes operating upon the person of the insured, where such accidental injury is the direct and sole cause of death to the insured, or disability to follow his vocation. But it did not insure against death or disability arising from erysipelas or any other disease or secondary cause or causes arising within the system of the assured before or at the time or following such accidental injury, whether causing such death directly or jointly with such accidental injury. The question for the opinion of the court was, whether death from erysipelas, supervening upon and caused solely and exclusively by an accidental wound in the foot of the insured,

and but for which wound he would not have had erysipelas, came within the exception, so as to free the defendants from liability upon the policy. The case was heard by Chief Baron Kelly, and Barons Channell, Martin, and Cleasby.

Those learned judges were not unanimous, but, as the three last mentioned were in favor of answering the question in the affirmative, judgment was entered for the insurance company. Speaking of the words contained in the exception to the provision, Baron Martin expressed his opinion that the object of the company was to include something beyond erysipelas, and that they had done so. The Chief Baron was of opinion, in conformity with what fell from Mr. Justice Williams in Fitton's case, that the effect of the condition was to exempt the company from liability only in respect of a death from erysipelas, where the erysipelas arose within the system, and, further, where the erysipelas was collateral to, and not caused by, the accident which had befallen the assured. The majority did not at all differ from the opinion of the common pleas expressed as in Fitton's case.

The decision of the Exchequer Chamber in *Trew* v. *Railway Passengers Assurance Company*, 4 L. T. Rep. N. S. 433, has a bearing upon the present case. The defendants agreed to pay the representatives of the assured a sum of money if he died from "injury caused by accident or violence." The policy provided that no claim should be made in respect of any injury unless the same should be caused by some outward and visible means of which satisfactory proof could be furnished to the directors. The evidence in this case was that the assured went to bathe in the sea, and was not seen alive afterwards. His clothes were found on the beach, and a naked body, believed to be his by some of his friends, was subsequently washed ashore. Chief Baron Pollock directed a nonsuit, ruling that there was no evidence of the death of the insured, or of an accident within the terms of the policy. The ruling was upheld by the full court. In the Exchequer Chamber it was argued that upon the facts proved, the assured might have died a natural death in the water; that the death had not been caused by any outward visible means; and that there was no proof of death. Chief Justice Cockburn, in delivering the judgment of the court, dealt first with the objection that death by drowning was not within the policy; secondly, with the objection that there was no evidence of such death, and allowed the appeal. To the first objection the *reductio ad absurdum* method was applied. If the policy does apply where the cause is one which would produce immediate death without outward lesion, then it would not apply to an accidental fall from a height or to a case of suffocation. "There is no ground for supposing he committed suicide," said his Lordship. "It is true he may have died from cramp or apoplexy. But the number of persons who die in the water from those causes is very few in proportion to those who die in it from being drowned. If he died from the external cause of the water producing suffocation, the death is a death by external violence within the meaning of the policy."

Winspear's case differed from Trew's in that it was admitted as a fact that the assured in the former fell into the stream where he was drowned, when suffering from an epileptic fit, but that he died from drowning. Two questions were raised in the judgment; first, what was the *causa causans* of the death; secondly, was the *causa causans* within the benefit of the policy? "The real *causa causans* in this case," said the Lord Chief Baron, "was the influx of water into the deceased man's lungs and the consequent stoppage of his breath, and so he was drowned. Anything which led to that, such as his being, if he were, subject to epileptic fits, would be *causa sine qua non*. If he had not had the fit he would probably have crossed the stream in safety, but that does not make the fit the *causa causans*, the actual proximate cause of his death." Was that *causa causans* within the benefit of the policy? The question is concluded by authority. The defendants relied on the words "the insurance shall not extend to any injury caused by or arising from natural disease or weakness or exhaustion consequent upon disease." Here the death was caused by drowning, and the words quoted are inapplicable. The case is not without difficulty. What, it may be asked, is the rule or principle underlying all the cases? The rule is that, in determining the cause of death or injury, those circumstances must be looked for which indicate the proximate cause, and not any of the more or less remote causes. This rule seems to us to be a reasonable one.—*Law Times* (*London.*)