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LAWYERS IN THE LEGISLATURE.

The *Irish Law Times*, with reference to the prejudice against lawyers as members of the Legislature, has the following remarks:—

We read in a writ of summons, in the fifth year of Henry IV, "the King willed that neither you, nor any other sheriff (*vice-comes*) of the Kingdom, or any apprentice, nor other man following the law should be chosen." "This prohibition," says Coke, "was inserted in virtue of an ordinance of the Lords, made in the forty-sixth year of Edward III; and by reason of its insertion, this parliament was fruitless, and never a good law made thereat, and therefore called *Indoctum parliamentum*, or lack-learning parliament. Since this time," he adds, "lawyers (for the great and good service of the commonwealth) have been eligible." And yet, to this day, there survives an old-fashioned and most unreasonable prejudice against the election of lawyers as parliamentary representatives, which, apart from either politics or polemics, would justify us in bespeaking fair play for any candidate who happened to be connected with the legal profession. With politics and polemics we have nothing to do; but it is only right that, when a member of the legal profession seeks the suffrages of a constituency, we should deprecate a prejudice detrimental to the interests of the profession generally, while calculated to impede "the great and good service of the commonwealth," which is now more than ever in the power and directly within the province of legal members of the Legislature to effect. It is a time of changes, many and momentous in matters needing the most watchful supervision of lawyers—not that the legal profession alone is vitally affected, but that every subject in the land is vitally affected in his person or property by measures which have been already projected for good or for evil, and which for good or for evil will largely depend on the legal skill that is brought to bear on their provisions. It is a time when, whether the government be conservative or liberal, change is the order of the day, and when the lawyer, whether he be conservative or liberal, is best able to render "great and good service to the commonwealth." And instead of rejecting a lawyer merely because he is a lawyer, it should be considered, that for this very reason, he can do service great and good. Again, none so much as he comes into such public and hostile contact with all classes and ranks of society; it is his pursuit to expose dishonesty and crime; the witness dreads him—the suitor recoils from him. But neither should the prejudice hence arising affect the choice of a parliamentary representative; rather it should be deemed that, by reason of his very familiarity with the legal aspects of vice and folly, his is the voice to guide, and his the pen to prescribe the legislation that vice and folly has rendered necessary. Tested, he should be in many ways; but when he is to be judged of as a lawyer merely, apart from politics or polemics, the truest test is the estimate of his fitness formed by his own profession.

NOTES OF CASES.

SUPERIOR COURT.

MONTREAL, January 31, 1879.

MCEACHERN v. THE CITY OF MONTREAL.

FRASER v. THE CITY OF MONTREAL.

Calling out the Militia—Grounds for the requisition—Liability of City for the cost.

JOHNSON, J. These are two cases by commanding officers of volunteers against the city, to recover the pay due to their men, and the cost of transport of some of them, on the occasion of their having been called out on the 12th of July last. The pleadings and evidence are alike in both cases. The statutes to be looked at are the 36th Vic. c. 36, and the amendment (40 Vic., c. 40). The power in case of actual riot, to obtain the services of the active militia in aid of the civil power, was given by the 27th section of the Act of 1868 (the 31st Vic., c. 40). That was amended by the 1st section of the Act of 1873 (36 Vic., c. 46), which is as follows:—"The active militia, or any corps thereof, shall be liable to be called out for active service, with their arms and ammunition, in aid of the civil power in any case in which

a riot, disturbance of the peace, or other emergency requiring such service occurs, or is, in the opinion of the civil authorities hereinafter mentioned *anticipated as likely to occur*, and in either case to be beyond the powers of the civil authorities to suppress, or to prevent, or deal with, whether such riot, disturbance or other emergency occurs, or is so anticipated within or without the municipality in which such corps is raised or organized; and it shall be the duty of the senior officer of the active militia present at any locality to call out the same or any portion thereof as he considers necessary for the purpose of preventing or suppressing any such actual or anticipated riot or disturbance, or for the purpose of meeting or dealing with any such emergency as aforesaid, when thereunto required in writing by the chairman or custos of the Quarter Sessions of the Peace, or by any three magistrates, of whom the warden, mayor or other head of the municipality or county in which such riot, disturbance or other emergency occurs, or is anticipated as aforesaid may be one; and to obey such instructions as may be lawfully given him by any magistrate in regard to the suppression of any such actual riot, disturbance or other emergency; and every such requisition in writing as aforesaid shall express on the face of it, the actual occurrence of a riot, disturbance or emergency, *or the anticipation thereof*, requiring such service of the active militia in aid of the civil power for the suppression thereof; and every officer non-commissioned officer and man of such active militia, or any portion thereof, shall, on every such occasion, obey the orders of his commanding officer; and the officers and men, when so called out, shall, without any further or other appointment, and without taking any oath of office, be special constables, and shall be considered to act as such so long as they remain so called out; but they shall act only as a military body, and shall be individually liable to obey the orders of their military commanding officer only." Then came the last amendment in 1877 (40th Vict., c. 40), which regards only the cost of transport.

The averments of the declaration in each of these cases seem to follow exactly the requirements of the statute, to which, also, the proof in the case conforms itself completely. There is the requisition in writing, not only by three magistrates, but by six, addressed to the senior officer, and expressing on the face of it the anticipation of a riot, requiring the services of the force in aid of the civil power for its suppression. Then came the order of the senior officer, and the execution of that order, and the transport of some of these troops, and their presence here for the time alleged and charged for. But it is pleaded on behalf of the city that the conditions required by the Statute never arose. That the civil power was perfectly willing and able to have preserved peace and order without the aid of the active militia, and that the Mayor had in fact been specially requested and charged by the Magistrates at a regular meeting with the duty of preserving the peace, and had taken his measures accordingly; and that the requisition made by the six Magistrates to Col. Fletcher, was in direct opposition to the decision of the Magistrates as a body. It is also said that some of the six gentlemen who signed the requisition resided out of the limits of the city; but that is unimportant, because in the first place the power is not limited to those who reside within the city limits; and in the second place, if it were so limited, there would still have been the required number of three, which would have been sufficient under the statute.

I was told that I had to interpret the statute with reference to a most important question. I certainly agree that it is a very important consideration for the ratepayers, whether, upon any and every occasion on which the fears of any three elderly gentlemen in the commission of the peace may be reasonably or unreasonably excited, a bill of perhaps hundreds of thousands of dollars may be run up, and have to be paid; but that consideration does not give rise to any question of interpretation of the statute, nor make it either easier or more difficult to interpret, even if it did give rise to such a question. The fact is that there is nothing to interpret in this statute; and the very first and safest rule in reading statutes is that where the meaning is plain, there is to be no resorting to what is called interpretation. Such being my view of this statute—and as I see nothing to interpret, but only some plain words to be applied to the case before me, I hold that the plea put in by the city cannot be maintained. It amounts to say

ing that these six gentlemen did not act wisely in asking for troops; but there is no law that I am aware of, that can compel magistrates to be wise; and whether wise or unwise, if they conform to the statute, as they have done here, the military service has to be rendered and paid for. I hazard no opinion as to whether these gentlemen acted on good and sufficient grounds in asking for these troops in this particular case or not. It would be very easy to look wise after the event, and to say, on the one hand, that it is a pity the Mayor had not been left to take care of the peace of the city, or on the other, that perhaps the very presence of the volunteers prevented excesses. I assume that all the authorities acted in good faith: that his Worship considered he could preserve the peace, and was determined to do it, even without troops; and that the six gentlemen who asked for the troops were equally impressed with a sense of duty in doing so; if they were not they may be made responsible for it; but having done it, and the services having been rendered, I cannot entertain a doubt that those services must be paid for. The senior officer who was applied to had no discretion to exercise as to whether he would obey or not, nor had the officers of regiments, or their men. Magistrates, in a variety of cases, may subject themselves to action or indictment if they act illegally and in bad faith; but the question here is merely whether they had authority under the statute to do what they did, and I think it is impossible to read the statute that I have quoted without seeing that they were plainly vested with the power they used, and that as a consequence the troops were bound to obey, and are entitled to be paid.

Trenholme & Maclaren for plaintiff McEachern.
R. A. Ramsay for plaintiff Fraser.
R. Roy, Q. C., for defendants.

SOCIÉTÉ D'AGRICULTURE DU COMTÉ DE VERCHERES v. ROBERT et al.

Suretyship—Condition of surety's obligation varied.

JOHNSON, J. Robert, one of the defendants, was secretary-treasurer to plaintiffs, and he is sued as a defaulter, and does not contest the case. The two other defendants are sued as his security, having given their bond for the faithful execution of his office. They pleaded first a preliminary plea or *fin de non recevoir*, which is withdrawn. They pleaded secondly a demurrer, under which it was contended that the declaration did not show the indebtedness of the officer when he ceased to hold office, and therefore that the action should have been one to render an account. If the averments of the declaration are taken as true, which, of course, they must be under the demurrer, I do not think the latter can hold, for it is said that before and at the time of the fusion of the two societies the indebtedness of the Secretary-Treasurer was incurred; and, further, that he acknowledged his indebtedness by his report. So we must look at the question on the merits that is raised by the exception. The point is, whether the defendants in becoming security for a public officer can be held to have made themselves liable for all his private speculations. By a resolution of the 8th October, 1870, the directors authorized the officer to use the public money in hand (then over $200) and to keep it on call, he paying interest for it. Can it be said that this was not varying the condition of the surety's obligation? It appears to me impossible to say that. As a public officer he was not at liberty to touch a copper of this money for his private uses; and it was as a public officer that his two friends became his sureties. Many a man may be trusted not to rob the funds he receives in a public capacity who would never be trusted to use his private judgment in speculations. It was not the law that permitted him to use these funds, but themselves—the directors. I have no doubt that the sureties are discharged, and the action must be dismissed with costs. As to the defendant Robert, he acknowledges his indebtedness, and as between him and the Society, that is conclusive, and there must be judgment against him.

Mousseau & Co., for plaintiffs.
Geoffrion & Co., for defendants.

REBURN v. HUNTER.

Lease of riparian rights—Attachment not contested.

JOHNSON, J. In this case the Court is of opinion that the plaintiff is entitled to recover.

He brought his action for the value of the use of his rights as riparian proprietor, by the defendant who moored his raft opposite the plaintiff's property. I have no doubt whatever that he could relinquish for a consideration the right to the free use of the beach in so far as it might be impeded by this raft. With regard to the amount, there is $10 a month asked; but the action was taken on the 26th June, 1878, and the value is asked at $10 a month from the 1st June, 1875, up to the 1st June then *last past*, which, of course, would mean up to June 1877 only—making two years instead of three that are asked. Then the evidence shows that it is the custom not to charge for the winter months, which would leave only two seasons of six months each. Besides, this appears reasonable and right in itself, for in winter the proprietor relinquishes nothing, and the raftsman gets nothing appreciable. Therefore, judgment will go for $120 and costs. As to the attachment, there it is; it was issued, and it is not contested. I see no affidavit on which it issued, and probably one was necessary, but it was only necessary for the issuing of the writ. Once that the writ has issued, it can only be set aside by a proper form of contestation. Therefore it must be held good.

[In review, the judgment was reformed, 9 July, 1879, and defendant was condemned to pay $174.10; each party to pay his own costs, the plaintiff's declaration having through ambiguity misled the judge of first instance.]

Macmaster & Co., for plaintiff.
Abbott & Co., for defendant.

AMOS v. MOSS et al.

Pleading—Renunciation of prescription by payment.

JOHNSON, J. The firm of A. & E. Amos, which failed and made an assignment, is now represented by the plaintiff under a re-assignment to him of the estate, and he brings his action now alleging that A. &. E. Amos, on the 20th March, 1876, being indebted to the defendants in the amount of some over-due notes which the defendants had discounted, gave them, as collateral security, a draft on Quebec for $915.75. That all the notes for which this draft was given as security have been paid; and, in the meantime, the defendants having collected the draft wrongfully keep the proceeds, and it is for the amount of the draft that the action is brought. The plea is, that the draft was given in part settlement of an old balance due the defendants, and which they insisted on settling before they would discount the notes. The answer is general. At the argument it was contended that the defendants' pretensions were bad in law, because the old claim which is said to have been settled by this draft, and by a further payment of $200 in cash, was in fact an undue preference given on the occasion of a previous failure of the plaintiff's firm; and it was also said that the debt of the plaintiff's firm, on account of which the plea alleges this draft to have been given, was prescribed, and that therefore the plaintiff can repeat the amount as in the case of a payment prohibited by law; but there is nothing of all this in issue by the record. There is no special answer setting up a first insolvency, and the consequent nullity of the transaction on account of its being an illegal preference; and there can be no doubt, whether prescription is regarded as a presumption of payment as under the old law, or as an absolute extinction of the debt, under the new, it can be renounced. The plaintiff had to prove his case as alleged—*i. e.*, he had to prove that the draft was given as a collateral security only, and he has failed to do so. I think all the matters alluded to in the evidence were irregularly gone into under the issue as it stands. I see evidence of a settlement of accounts offered by the defendants, and objected to; but it is not necessary to go into that, as the plaintiff has failed to make out a case. Action dismissed.

[The above judgment was confirmed in Review, 9 July, 1879, Mackay, Torrance, Papineau JJ.]

Loranger & Co., for plaintiff.
Dunlop & Co., for defendant.

COURT OF QUEEN'S BENCH.

MONTREAL, December 14, 1878.

Sir A. A. DORION, C. J., MONK, RAMSAY and TESSIER, JJ.

BOARD FOR THE MANAGEMENT OF THE TEMPORALITIES FUND OF THE PRESBYTERIAN CHURCH OF CANADA IN CONNECTION WITH THE CHURCH

OF SCOTLAND, Appellants, and Rev. R. DOBIE, Respondent.

Injunction—Security required by 41 *Vict. c.* 14, *s.* 4.

Sir A. A. DORION, C.J. Mr. Dobie had taken an injunction against the corporation and against the individual members of the corporation to restrain them from using the funds of the Church in a certain way. The Board pleaded an exception *à la forme*, and the Judge in the Court below dismissed the exception as to the Board of Management, and maintained it as to the individual members of the Board. The effect of this judgment was to hold the security given by the plaintiff good as against the Board. The Court here thought the judgment of the Court below was wrong. The statute says the party must give security to the satisfaction of the Court. Here the security given consisted simply of a letter signed by Messrs. Hickson and Hunter, binding themselves to pay the costs. However high the standing of these gentlemen, and however well able to meet any claim upon them, this was not a judicial security as required by law. The judgment dismissing the exception must, therefore, be reversed.

The judgment was as follows:—

"The Court, &c.,

"Considering that parties suing out a writ of injunction are by law, to wit, by the Act of the Legislature of Québec passed in the 41st year of Her Majesty's reign, ch. 14, sect. 4, required to give security in the manner prescribed by and to the satisfaction of the Court, for the costs and damages which may be suffered by reason of the issue of the writ of injunction;

"And considering that such security being ordained by law, must be entered into in conformity with the requirements of Art. 1962 C. C., and of Arts. 516, 519 and 520 C. P.;

"And considering that the respondent has not given security as provided for by the above cited articles of the Civil Code and Code of Civil Procedure, but has merely produced a letter of guarantee for the costs, not fulfilling any of the said requirements;

"And considering that the proceedings of the said respondents are irregular and informal from want of such security, and that there is error in the judgment rendered by the Court below on the 14th June, 1878;

"The Court doth reverse, set aside and annul the said judgment, to wit, the judgment rendered by the Superior Court at Montreal on the 14th June, 1878, and proceeding to render the judgment which the Court below ought to have rendered, doth dismiss respondent's demand for an injunction, and doth quash and set aside the writ of injunction issued in this cause, with costs," &c.

J. L. Morris for appellants; *S. Bethune, Q. C.*, counsel.

Macmaster, Hall & Greenshields for respondent; *Hon. J. J. C. Abbott, Q. C.*, counsel.

MONTREAL, Feb. 4, 1879.

Sir A. A. DORION, C. J., MONK, RAMSAY, TESSIER and CROSS, JJ.

LEVY et al., (plffs. below), appellants; and BARBEAU, (deft. below), respondent.

Insolvency — List of liabilities — Description of creditor.

The question in this case was whether a discharge under the Insolvent Act could be pleaded against a debt which was entered by the respondent Barbeau in his list of liabilities as due to "Henriette Chaffers" instead of "Henriette Chaffers es qualité," the debt being a judgment obtained by her as tutrix to minors. The appellants pretended that the discharge did not affect this judgment claim, because it had not been included in the insolvent's statement of liabilities. This pretension was overruled by the Court below (Dorion, J.)

The plaintiffs appealed, citing *Duhamel et al.* v. *Payette*, 1 Legal News, p. 162, in support of their contention that the claim must be accurately described in the list, or it will not be affected by the discharge obtained by the insolvent.

Sir A. A. DORION, C. J., said that the judgment must be confirmed. There was nothing to mislead the appellant in the mode in which the debt was put down in the list, because she held no other claim in her own name.

Judgment confirmed.

Doutre, Doutre, Robidoux, Hutchinson & Walker for appellants.

Loranger, Loranger & Pelletier for respondent.

HURTUBISE et al., (plffs. below), appellants, and BOURRET (deft. below), respondent.

Capias—Affidavit—Allegation of place where and time when the debt was contracted—Proof of intention to defraud.

The respondent moved to quash the *capias* issued against him, on several grounds, amongst which were the following:—1. That the affidavit did not state the place where the debt had been contracted; and 2. That the reasons given for the belief of the deponent were insufficient.

The petition was rejected by the Superior Court (Papineau, J.), it being held that the reasons of belief were sufficient, and that it was not necessary to allege specially in the affidavit that the debt arose in Canada.

In Review (Johnson, Torrance, Dorion, JJ.), this judgment was reversed, and the *capias* was quashed for the following reason:—

"Considérant que l'affidavit sur lequel a été émané le bref de *capias ad respondendum* en cette cause est insuffisant en autant qu'il n'indique pas la date à laquelle la dette qu'il réclame a été contractée, ni le lieu où elle a été ainsi contractée."

In appeal, this judgment was confirmed, but for a different reason.

Sir A. A. DORION, C. J., reviewed the jurisprudence of our Courts on the points raised by the respondent, and held that it is not necessary to allege in the affidavit the place where the debt was contracted. The capias, however, was properly quashed, because it was necessary that the affidavit should disclose sufficient grounds to satisfy the Court that the debtor was about to leave the Province with intent to defraud, and the affidavit in the present case did not do so. The Chief Justice concluded his remarks as follows:—

"La cour est d'opinion que le jugement de la Cour de Révision doit être confirmé parce que l'affidavit ne dévoile aucun fait qui soit de nature à créer une présomption que l'intimé était sur le point de quitter le pays pour frauder ses créanciers, et non pas pour les raisons données dans le jugement.

"Ce que la Cour décide c'est:

1o. Que conformément à la jurisprudence suivie depuis que le Code de Procédure a été mis en force, l'affidavit pour *capias* doit indiquer succinctement les causes de la créance du demandeur;

2o. Que les allégués qui dans une déclaration seraient suffisants pour expliquer la nature de la demande le sont également dans un affidavit pour *capias*, et qu'il n'était pas nécessaire dans cette cause-ci d'alléguer dans l'affidavit à quel endroit, ni quand la dette avait été contractée;

3o. Qu'il faut que le déposant donne dans son affidavit des raisons suffisantes pour satisfaire la Cour que c'est avec l'intention de frauder que le débiteur est sur le point de laisser immédiatement la province."

The written judgment was to the following effect:—

"Considérant que le créancier qui veut obtenir un mandat d'arrestation, *capias ad respondendum*, contre son débiteur sur le point de laisser la province, doit établir par déposition sous serment, outre le fait qu'il a une créance personnelle de $40 ou plus, qu'il a raison de croire et croit vraiment pour les raisons qu'il doit indiquer dans sa déposition, que son débiteur est sur le point de quitter immédiatement la Province du Canada avec l'intention de frauder ses créanciers;

"Et considérant que les raisons spéciales alléguées dans une telle déposition doivent par elles-mêmes établir une présomption raisonnable, non-seulement que ce débiteur est sur le point de quitter la province, mais encore qu'il laisse le pays pour frauder ses créanciers;

"Et considérant que les raisons alléguées dans la déposition d'Augustin Crevier, l'un des appelants, que l'intimé 'Alphonse Bourret 'réside à New York, qu'il n'a pas de domicile 'en Canada, qu'il refuse de payer la dette, 'quoique capable par ses moyens de le faire; 'qu'il fonde ses calculs pour échapper au paie-'ment de cette dette, par son absence, et sur ce 'qu'il n'a pas de biens dans le pays que les 'demandeurs puissent saisir; que sa présence 'à Montréal est motivée par des raisons de 'famille qui ne le retiendront que quelques 'heures, et qu'il va immédiatement à New-York 'pour y continuer ses affaires,' quoique suffisantes pour justifier l'allégation que l'intimé était sur le point de laisser la province, n'établissent par eux-mêmes, et sans autres circonstances propres à qualifier la conduite du dit Alphonse Bourret, que ce fut pour frauder ses

créanciers qu'il était ainsi sur le point de laisser le pays, lorsque cette déposition a été produite;

"Et considérant qu'il n'y a pas d'erreur dans le jugement rendu par les juges de la Cour Supérieure siégeant en révision à Montréal le 31 mars 1877,

"Cette Cour, pour les motifs ci-dessus, confirme," etc.

Doutre, Doutre, Robidoux, Hutchinson & Walker for appellants.

E. Carter, Q. C., for respondents.

RECENT ENGLISH DECISIONS.

Assignment.—1. M., being in debt, assigned all his property to the defendant, and mortgaged some leasehold property to him to enable him to borrow money, all for the purpose of paying off and settling with M.'s creditors, among whom was the plaintiff. The defendant realized large sums from the property, and paid some of the debts, but not the plaintiff's. The plaintiff claimed an account, and that M.'s estate should be administered by the court, and his and the other debts paid. There was no allegation that plaintiff had had notice of the assignment by M. to the defendant. Demurrer allowed. *Garrard* v. *Lord Lauderdale* (2 Russ. & My. 45) and *Acton* v. *Woodgate* (2 My. & K. 492) approved. *Dictum* of KNIGHT BRUCE, V. C., in *Wilding* v. *Richards* (1 Coll. 655), disallowed. —*Johns* v. *James*, 8 Ch. D. 744.

2. One G. contracted to build the defendant a ship for £1,375, payment to be made in instalments. G. was short of means, and the defendant made advances to him to enable him to continue the work, so that on October 27, when, by the contract, G. should have been paid only £500, he had been advanced £1,015. On that date, G. gave an order to the plaintiff, to whom he owed a large sum, upon the defendant, to pay the plaintiff £100 out of money "due or to become due" from the defendant to G. The plaintiff gave due notice of this order to the defendant; and the latter acknowledged it, but refused to be bound by it, and continued to make advances to G. up to the full contract price. Without these advances, G. would have been unable to complete his contract with the defendant. The Judicature Act, 1873, § 25, sub-s. 6, provides that a written assignment of a *chose in action* shall be valid, if due written notice be given thereof to the person liable thereon. *Held*, that the assignment was good and binding on the defendant, and he must pay the plaintiff the £100, although he had already paid it to G.—*Brice* v. *Bannister*, 3 Q. B. D. 569.

Bills and Notes.—1. The defendant gave H. his acceptance to an accommodation bill, by writing his name across a paper bearing a bill stamp, and handing it to him. H. turned out not to need the accommodation, and returned the blank to defendant as he had received it. Defendant threw it into an unlocked drawer in a writing desk in his chambers, to which his clerk and other persons had access, and it was stolen, and the plaintiff received it *bona fide* for value, with the name of one C. regularly filled in. *Held*, that the defendant was not liable on the bill. Estoppel, negligence, and the proximate or effective cause of the fraud discussed.—*Baxendale* v. *Bennett*, 3 Q. B. D. 525.

2. A bill of exchange was drawn in England on a party in Spain, payable to defendant in Spain three months after date. The plaintiff purchased the bill in London from the defendant, who indorsed it to him there. Plaintiff indorsed it to one M., and forwarded it to him in Spain. M. indorsed it to C., and C. indorsed it to O., all in Spain. The bill was presented in Spain, May 1, and dishonored; and notice of the refusal to accept was sent to the plaintiff by M. May 13, and received May 26. Plaintiff gave notice to the defendant May 26. In Spain, no notice of non-acceptance is essential. *Held*, that the plaintiff could recover.—*Horne* v. *Rouquette*, 3 Q. B. D. 514.

3. The plaintiff, a merchant in London, procured a loan of £15,000 of the defendant bank, on the security of a cargo of goods in transit to Monte Video, and of six bills of exchange drawn by him on S., the consignee of the goods in Monte Video, and accepted by the latter. Two of these bills having been paid and two dishonored, the defendant bank, through its branch in Monte Video, proposed to sell the goods at once, when the plaintiff wrote to the defendant not to sell, and sent his check for £2,500, as additional security, adding that, when the bills were paid, "you will, of course, refund us the £2,500." The defendant drew the check, and, the other two bills having been

dishonored, the defendant took proceedings against S., as a result of which the goods were, with the plaintiff's consent, sold, and the bills, without the plaintiff's knowledge, delivered up to S. cancelled. The proceeds of the goods were insufficient, even with the £2,500, to satisfy the claim. *Held*, that the plaintiff could not recover the £2,500 from the defendant.—*Yglesias* v. *The Mercantile Bank of the River Plate*, 3 C. P. D. 330; s. c. 3 C. P. D. 60.

Charter-party.—1. A charter-party contained this clause: "Demurrage, if any, at the rate of 20s. per hour, except in case of any hands striking work, frosts or floods, revolution or wars, which may hinder the loading or discharge of the vessel. Dispatch money 10s per hour on any time saved in loading and for discharging." "Steamers are to load and discharge by night as well as by day." *Held*, that, in estimating dispatch money, nine days saved in loading and discharging should be reckoned at twenty-four hours each, and not at twelve.—*Laing* v. *Hollway*, 3 Q. B. D. 437.

2. By a charter-party between the plaintiff and B., it was stipulated that fourteen working-days were to be allowed for loading and unloading at the port of discharge, and ten days on demurrage over and above the loading and unloading days, at £35 per day. A full cargo of grain was taken on board, a part of it consigned to the defendants, and lying at the bottom of the hold. The bill of lading indorsed to the defendants contained the words, to be delivered to order "on paying freight for the said goods, and all other conditions as per charter-party." The consignees of the grain lying above that of the defendants failed to get their grain out in season, so that three days' demurrage accrued before defendants' grain was out. *Held*, that the defendants were liable.—*Porteus* v. *Watney*, 3 Q. B. D. 534.

Contract.—1. The plaintiff was in a position of trust towards the E. railway company, having been employed by it to give advice as to repairing some ships. The defendants agreed to pay the plaintiff a commission, partly for superintending the repairs, which had been awarded to them, and partly, as the jury found, for using his influence with the E. company to get their bid accepted. The jury also found that the agreement with the defendants was calculated to bias his mind; but that it in fact did not, and that his advice was equally for the benefit of the company, and that the company was ignorant of the agreement. *Held*, that the consideration for the contract for a commission was corrupt, and the plaintiff could not recover.—*Harrington* v. *Victoria Graving Dock Co.*, 3 Q. B. D. 549.

2. In October, 1869, the plaintiff made an arrangement with the agent of the defendant to supply the latter with coal-wagons on certain terms. After the agreement was made, the plaintiff agreed to give the agent a gratuity for each wagon supplied. This was done, as the plaintiff said, with a view to future business. In December, before this agreement was executed, it was supplanted by another between the same parties, which proved much less favorable to the defendant than the other would have been. POLLOCK, B., directed the jury that a commission to an agent, though improper, was not necessarily fraudulent; and, in order to affect the contract, it must have been intended by the giver to corrupt the agent, and the latter must have been influenced by it. On a rule *nisi*, a new trial was ordered for misdirection. If a party with whom an agent is negotiating for another agrees to give, or does give, the agent a secret gratuity, and that gratuity influences the agent's mind, directly or indirectly, the contract is vitiated. The direction of POLLOCK, B., did not make it clear that, though the gratuity was given with reference to the first contract only, it might yet have influenced the agent with reference to the second.—*Smith* v. *Sorby*, 3 Q. B. D. 552. Note.

3. H. wrote to W., offering his entire freehold for £37,500, or a portion of it for £34,500, and in a postscript added, that he reserved the right to the new materials used in rebuilding a house on the land, and the fixtures. W. replied, accepting the terms, and agreeing to pay the £37,500, "subject to the title being approved by our solicitors." Subsequently W. insisted that he must be allowed to pay in instalments. This was agreed to. Subsequently W.'s solicitor left with H.'s solicitor a written agreement of the terms of payment, headed "Proposal by H. for purchase of the M. estate." This was verbally accepted, and H. was to have his counsel prepare a formal contract; but none was ever made. H. subsequently declined to perform, and W. brought suit for specific performance. *Held*, that the two letters did not form a complete contract; the phrase, "subject to the title being approved by our solicitors," being a new and material term not accepted by the other party. It amounted to something more than merely what the law would imply.—*Hussey* v. *Horne-Payne*, 8 Ch. D. 670.