The Legal News.

Vol. IV. SEPTEMBER 3, 1881. No. 36.

THE LEGAL VACATION.

The brief annual holiday, misnamed the "Long Vacation," accorded to the legal profession in Canada, has come to a close. In Ontario, Trinity Term began August 22, and in the Province of Quebec, the Courts resumed their usual work on the 1st instant. We see, by some of our United States contemporaries, that in the larger American cities there is a growing disposition to make the most of the brief respite afforded by the summer vacation from exhausting toil, and lawyers of eminence, at any sacrifice, desert their offices for a plunge into the mountains, or other secluded spots, where only, at a distance from telegraph and telephone, they may obtain the change and the rest which are so essential to build up the energy impaired by long months of continuous exertion. In England the "Long Vacation" means something more than a few weeks' suspension of active work, and English barristers probably owe a good deal to their lengthened opportunity for physical and mental recreation.

In Canada the first of September usually brings the temperate weather conducive to comfortable activity, but this year has been an exception. The vacation came to a close in a torrid temperature, and, in the cities, with its usual accompaniment, fetid odors, and a debilitating atmosphere. We have the certainty, however, that summer heats must speedily pass away, and the Courts will resume their usual aspect. We trust that our readers have all enjoyed to the full the season of relaxation, and we take the opportunity of the beginning of another legal year, to invite in a larger measure their co-operation and support. To the judiciary we are already indebted for much valuable assistance; and the profession is equally indebted to them, for, without such aid, a work of this kind could probably not be sustained at all. We think, however, that our readers, especially in the country districts, have it in their power to add considerably to the interest of their weekly visitor, by contributing brief memoranda of the decisions in those cases on which they have bestowed the most labor, and in which they have taken the deepest interest. For all such assistance we shall be grateful.

UNPROFESSIONAL PUFFING.

The profession in the Province of Quebec are probably aware of indirect advertising indulged in to some extent by certain irrepressible members, but we think we may claim to be free from the indecent quackery which unfortunately appears to be too common in some districts of the sister Province of Ontario. One "barrister" announces in the public journals that he "will continue his law, loan, and insurance practice with good assistants." Another professional gentleman proclaims the curious combination "Dry Goods, Groceries, Commissioner and Conveyancer, Real Estate Agent, Boots and Shoes." "Conveyancing" seems to be a favorite ground for poachers of all denominations, but even a licensed solicitor has informed the public by advertisement that he will do work of this description at half the usual prices "for cash".

Our bar associations are often treated with ridicule, and the bulwarks against unprofessional conduct are regarded as contemptible. We are not among those who attribute to them undue excellence or importance; but at least we do not suffer by comparison with some features of outside customs.

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

Montreal, June 30, 1881.

Dorion, C. J., Monk, Ramsay, Tessier, Cross, JJ.

Nicholson (deft. below), Appellant, and Metras (plff. below), Respondent.

Evidence—Appeal where case turns upon evidence which is contradictory.

The appeal was from a judgment of the Court of Review, Montreal, Sept. 30, 1879, (Rainville, Papineau, Jetté, JJ.) which reversed a judgment of the Superior Court, Montreal Feb. 28, 1879, (Mackay, J.)

In appeal the judgment in revision was reversed, and the original judgment restored.

RAMSAY, J. This is an appeal from a decision of the Court of Review, reversing the judgment of the court of first instance. The action was by appellant for the price of a milk waggon. The contract was verbal, and appellant's defence is that the waggon tendered is not suitable for the purpose for which it was ordered nor conformable to the order given. The evidence is very contradictory. Plaintiff tries to prove his case by his work-people, who heard from the shop what passed between the parties. Their evidence is contradicted by relatives of the defendant. It seems to me that if there had been nothing further the action should have been dismissed, for it was for the plaintiff to prove his case. But in addition to this we have a fact about which there is no difficulty, and which seems to be decisive. The waggon was to be made like one belonging to a person called McGee, and the plaintiff actually measured McGee's waggon; but the new waggon is not like McGee's. The places for the milk cans are wrong, the axles are too wide, and the wheels won't turn under. It is with great regret that we reverse a judgment on a matter of evidence. Usually we do not do so when either view of the evidence may, in our opinion, be fairly maintained, even although we might incline to a view different from that taken. I desire particularly not to be misunderstood in saying this, for I am perfectly aware that the rule we follow has been subjected to some misconception in different quarters. We do not say that we look upon the decision of the court below as we should on the finding of a verdict by a jury, for that would be a manifest error as to our law. On the contrary we are obliged to examine and appreciate the proof; but we do not readily reverse on mere appreciation of the evidence. It appears to me that however difficult it may be to express this rule, its application offers no practical difficulty. In this case, however, we have not to consider this rule. We have only to decide between two judgments, and we think that the judgment in the first instance was correct, and that it should not have been touched. The judgment in review will, therefore, be reversed with costs.

Judgment reversed.

Maclaren & Leet, for appellant.

Coursol, Girouard, Wurtele & Sexton for respondent.

COURT OF QUEEN'S BENCH.

MONTREAL, Jan. 26, 1881.

DORION, C. J., MONK, CROSS, BABY, JJ.

BLACK et al. (plffs. below), Appellants, and STODDART (intervenant below), Respondent.

Procedure—Injunction.

Where an injunction is issued in a case which does not fall within any of the cases provided for by the Injunction Act of 1878, (41 *Vic.* [*Quebec*] *c.* 14), *the delay prescribed for ordinary suits must be allowed between service and return.*

The appeal was from a judgment of the Superior Court, Montreal, May 31, 1880, (Papineau, J.) quashing an injunction.

The injunction had been asked to restrain one Hood, of the city of Montreal, from publishing in Canada certain books, containing articles prepared for the Encyclopedia Britannica, the latter work having been registered by the appellants under the Copyright Act of 1878.

After the return of the writ, the respondent petitioned to be allowed to intervene as being interested in the publication, and the respondent, by a preliminary exception, then attacked the regularity of the proceedings, alleging that the ordinary delays should be followed, whereas in the present case the writ had been served only four days before the return day.

The COURT, affirming the decision of the court below, held that as the case did not fall within any of the cases provided for by the Act of 1878 (41 Vic. cap. 14), the proceedings were irregular, and the respondent had a right to take advantage of the irregularity by a preliminary plea.

Judgment confirmed.

Archibald & McCormick, for appellants.

Kerr, Carter & McGibbon, for respondent.

COURT OF QUEEN'S BENCH.

MONTREAL, June 30, 1881.

DORION, MONK, RAMSAY, CROSS, BABY JJ.

CAFFREY (deft. below), Appellant, and LIGHTHALL (plff. below), Respondent.

Capias—Affidavit.

An affidavit for capias, which sets out merely the intended departure of defendant without paying his debt to plaintiff, is insufficient.

Appeal from a judgment of the Superior Court, Montreal, Jan. 31, 1879.

RAMSAY, J. The affidavit in this case sets out no fact beyond the departure of defendant, and his failure to pay what he owes. It has now been so often laid down that this is not sufficient that the jurisprudence must be considered settled on the point. How a departure is to become "with intent to defraud" otherwise than by the non payment of the debtor's liability, it is not easy to understand, but the law would cease to be interesting if it had not its little mysteries. I take it, however, that the recent rulings have completely annihilated "the seafaring man" doctrine.

The judgment is as follows :—

"The Court, etc.

"Considering that the affidavit of the respondent in this cause contains no sufficient statement of the reasons of the deponent's belief that the appellant was about to leave immediately the Province of ———, to wit, the heretofore Province of ———, with intent to defraud his creditors in general, or the said respondent in particular ;

"And considering therefore, that there was no sufficient ground stated in the said affidavit as required by law to justify the issue of a *capias ad respondendum* in this cause ;

"And considering that there is error," &c.

Judgment reversed.

Carter, Church & Chapleau, for appellant.

D. Macmaster, for respondent.

COURT OF REVIEW.

MONTREAL, April 29, 1881.

JOHNSON, RAINVILLE, PAPINEAU, J J.

CORSE et vir v. DRUMMOND es qual., and DRUMMOND, opposant.

Succession—Ascendant—Beneficiary heir.

The judgment of the Superior Court in this case, reported in 3 Legal News, p. 341, was unanimously confirmed.

Piché & Moffatt, for opposant.

Ritchie & Ritchie, for plaintiffs contesting.

SET-OFF BY STOCKHOLDER IN INSOLVENT BANK.

PENNSYLVANIA SUPREME COURT, MARCH 14, 1881.

MACUNGIE SAVINGS BANK v. BASTAIN.

A stockholder in an insolvent bank, who is also a depositor, cannot set off the amount of his deposit against the amount due for unpaid assessments on the stock subscription.

Action to recover the amount of unpaid assessments upon a subscription for stock in the plaintiff bank.

The bank was incorporated in 1867, when defendant subscribed for one hundred shares of its stock. The par value of each share was $20, but defendant only paid $5 per share. In 1878 the bank made an assignment for creditors. The assets were not sufficient to pay the debts and an assessment of $15 per share was made on the stockholders. In this action defendant set up that he had deposited in the bank $4,425 which he claimed to set off against his liability on his stock subscription. The court below held that he was entitled to the set-off. To review such decision plaintiff took a writ of error.

STERRETT, J. The capital stock of a corporation, whether fully paid or partly outstanding in the hands of subscribers thereto, is undoubtedly a trust fund for the benefit of its creditors. *Germantown Railway Co.* v. *Fitler*, 16 P. F. Smith, 131 ; *Woods* v. *Dummer*, 3 Mason, 308 ; *Mann* v. *Pentz*, 3 Comst. 422. While such unpaid subscriptions pass, as assets, to the assignee under a voluntary assignment for the benefit of creditors, and the directors of the insolvent corporation may be required to make such calls on subscribers to the stock as may be necessary to enable him to collect the same, they still retain the impress of trust funds and must go into the hands of the assignee intact, for the purpose of distribution among those for whose benefit they were intended. In this respect they differ from ordinary choses in action belonging to the assignor at the date of assignment. Against the latter, legitimate claims of set-off may exist, and what remains after deducting the same is all that can properly be considered a part of the trust fund.

The demand against defendant in this case is not grounded on business transactions between him and the bank since its organization. It originated in the very creation of the bank, of which he was one of the corporators. As a condition precedent to the granting of letters of incorporation, they were required by the sixth section of the charter "to raise and form a capital of not less than five nor more than fifty thousand dollars, in shares of twenty

dollars each" for the security of depositors. The defendant subscribed for one hundred shares of the capital stock thus required and paid twenty-five per cent thereof. By resolution of the board, after the assignment, the remaining seventy-five per cent was "called in for liquidation of the indebtedness of the corporation." He refused to pay in obedience to the call, and when suit was brought by the assignee in the name of the bank, to recover the balance due and owing by him on his subscription, his defence was that the bank was indebted to him as a depositor in a much larger sum, and therefore he should not be compelled to pay.

If such a defence were entertained, the effect would be to withdraw from depositors and other creditors of the insolvent bank a portion of the the very fund which was specially provided for the common benefit of all alike, and apply it to the sole benefit of the defendant, who, at best, has no better right thereto than other depositors. If every delinquent subscriber to the capital stock could thus pay his subscription, what would become of other depositors and creditors of the insolvent bank? It is not difficult to see what a perversion it would be of the trust fund, and to what gross injustice it would necessarily lead. From the fact that the directors called in the whole of the outstanding subscriptions for the purpose of liquidating the indebtedness of the bank, we have a right to assume that it is all required for that purpose. If defendant's indebtedness to the bank at the date of the assignment had been founded on an ordinary business transaction, such as making or ndorsing a note, he might with some show of reason insist on setting up by way of defence a counter-claim as depositor. This would bring him within the principle of *Jordan* v. *Sharlock*, 3 Norris, 368.

In *Sawyer* v. *Hoag, Assignee*, 17 Wall. 610, it is held that a stockholder indebted to an insolvent corporation for unpaid shares cannot set off against this trust fund for creditors a debt due him by the corporation; that the fund arising from such unpaid shares must be equally divided among all creditors. That case, it is true, arose under the National Bankrupt Act; but so far as the principle now under consideration is concerned, the right to set-off and rule of distribution, under that act, do not materially differ from our voluntary assignment law.

The defence set up in this case derives no support from the principle involved in *Fox's Appeal*, 8 Week. Notes, 556. The fund for distribution there included proceeds of outstanding subscriptions to capital stock of the Kutztown Savings Bank, which had been collected by the assignee. The whole fund was insufficient to pay depositors, who claimed that as a preferred class they were entitled to the fund for distribution to the exclusion of other creditors, and if not entitled to the entire fund, they had at least an exclusive right to that portion of it which represented capital, collected by the assignee; but it was held that the depositors as a class had no exclusive right to the whole or any particular portion of the fund.

As the case was presented to the court below, we are of opinion that the plaintiff was entitled to judgment for want of a sufficient affidavit of defence.

It is ordered that the record be remitted to the court below with instructions to enter judgment against the defendant for fifteen hundred dollars with interest from the time the same was due and payable according to the call, unless other legal or equitable cause be shown to said court why such judgment should not be so entered.

PAYMENT UNDER COMPULSION.

SUPREME COURT OF WISCONSIN.

PARCHER v. MARATHON COUNTY.

Where payment is made under compulsion of legal process, accompanied by protest that the demand is illegal and the party paying will take measures to recover it back, it is not a voluntary payment

To constitute compulsion of legal process, actual seizure or threat to seize property by virtue of the process is not necessary; it is sufficient if the officer demands payment by virtue of the process and manifests an intention to enforce collection by seizure and sale of property.

The action was brought to recover back the amount of a tax assessed upon the personal property of the plaintiffs in the year 1877, in the city of Wausau, which the plaintiffs allege they paid by compulsion and under protest. It was admitted on the trial by the defendant county that the tax was illegal. It appears that the treasurer of Wausau demanded the

amount of such tax of the plaintiffs, who refused to pay it on the ground that it was illegal and void. The city treasurer returned the tax as delinquent to the county treasurer of Marathon county, who afterwards issued his warrant to the sheriff to collect the same pursuant to the statute. It is alleged in the complaint that "the said sheriff did present said warrant for the collection of said personal property tax, for the year 1877, to these plaintiffs, and demanded payment thereon, but that these plaintiffs refused to pay the same for the reason that the same was illegal and void; that said sheriff threatened to levy upon the personal property of these plaintiffs, and advertise and sell the same to satisfy said personal property tax. Whereupon, to save said personal property from sale, and under compulsion and protest, they paid the sheriff the amount of said tax, together with interest and his costs, and took his receipt therefor, but that they notified said sheriff that they considered said tax illegal and void, and that they should attempt to recover the same." And, further, that the sheriff paid the amount of the taxes so paid by them into the county treasury for the use of the county. The substance of the answer is that the plaintiffs, with full knowledge of all the facts which invalidated the tax levy, voluntarily paid the sheriff the amount of taxes so assessed against them. A trial of the action resulted in a verdict for the defendant. The plaintiffs appeal from the judgment against them entered pursuant to the verdict. The case is further stated in the opinion.

LYON, J.—It is not denied that the complaint states a cause of action. The testimony given on the trial tended to prove all the material averments in the complaint, and was undoubtedly sufficient to support a verdict for the plaintiffs had the jury found for them. The only question litigated on the trial was whether or not the plaintiffs paid the illegal tax voluntarily. On this question, after submitting to the jury the question whether the payment was made by them with the view of preventing a levy upon and seizure of their goods, with an instruction that if made for that purpose the plaintiffs should recover, the learned circuit judge further instructed the jury as follows: "It is not enough that an officer gets a warrant in his hand and notifies all tax payers, 'The amount of this tax must be paid or I will enforce the collection by levy.' That is not enough. It must be a present purpose, an intent, of levying,—of taking the goods then and there; not that he will do so in the course of some future days, but that he intends to levy, and having that intention and purpose, and warrant of authority to do it, and the party pays to prevent his goods being seized,—if he does it under such circumstances, it is compulsory payment. If it is not under such circumstances, it is what the law calls a voluntary payment. However the man may squirm about the tax it is called a voluntary payment, and he cannot recover it back. A threat to levy, to levy now at the time, and with the purpose to take the goods then and there, and if the money is paid then and there to prevent the act, it is what is meant by compulsory payment in the law, and a person who pays that way, the tax being illegal, can recover it back; not otherwise."

In *Van Buren* v. *Downing*, 41 Wis. 122, this court had occasion to consider the question of the liability of an officer or agent to refund an illegal tax or duty collected by him paid over to his principal. The defendant in that case was an assistant treasury agent, and as such collected of the plaintiff a license fee imposed by a statute afterwards adjudged invalid, and paid the fee into the State treasury. The action was to recover back the sum so paid. Because the plaintiff did not pay the fee under protest, or deny his liability therefor, or notify the agent of his intention to bring suit to recover it back, we held the payment voluntary, and that the agent was not liable after he had paid the money into the treasury in good faith. The cases cited in the opinion abundantly show that the rule of the liability of officers or agents in such cases is correctly stated in *Erskine* v. *Van Arsdale*, 15 Wall. 75. That was an action against a collector of internal revenue to recover the amount of an illegal tax assessed against and paid by Van Arsdale. This is the rule laid down by the court: "Taxes illegally assessed and paid may always be recovered back if the collector uuderstands from the payer that the taxes are regarded as illegal, and that suit will be instituted to compel the refunding of them." Judge Cooley, in his treatise on the Law of Taxation, says that "all payments of taxes are supposed to be voluntary which are not made under protest or under the apparent

compulsion of legal process," and that when a protest is relied upon, nothing very formal is requisite: Page 548. He also quotes approvingly the rule laid down by the Supreme Court of the United States in *Erskine* v. *Van Arsdale, supra.*

Such is the rule in an action against the officer or agent to whom the money was paid in the first instance. Certainly no stronger rule prevails in favor of the principal after the money has been paid over by such officer or agent. Indeed, there are authorities to the effect that the rule is more favorable to the plaintiff in the latter case, than when the action is against the officer or agent. This distinction is mentioned in *Atwell* v. *Zeluff*, 26 Mich. 118. We need not discuss this distinction. We prefer to consider this case on the theory that to entitle the plaintiff to recover against the county he must make as strong a case as he would be required to make were his action against the sheriff. *Atwell* v. *Zeluff*, is an instructive case on the general question of what are and what are not voluntary payments. The rule is there stated as follows: "Where an officer demands a sum of money under a warrant directing him to enforce it, the party of whom he demands it may fairly assume that if he seeks to act under the process at all he will make it effectual. The demand itself is equivalent to a service of the writ on the person. Any payment is to be regarded as involuntary which is made under a claim involving the use of force, as an alternative, as the party of whom it is demanded cannot be compelled or expected to await actual force, and cannot be held to expect that an officer will desist after once making demand. The exhibition of a warrant directing forcible proceedings,, and the receipt of money thereon, will be in such case equivalent to actual compulsion." We do not say that we would assent to that rule as broadly as there stated. Perhaps a protest, at least, should be required, especially if the action be brought against the officer or agent after he has paid over to his principal the money illegally collected. The opinion in the Michigan case recognizes the hardship of the rule, and suggests a modification of it by the Legislature.

But whether the rule of the Michigan case is or is not correct, we think it must be held, on principle and authority, that the payment of a demand, under compulsion of legal process, such payment being accompanied by a protest that the demand is illegal, and that the payer intends to take measures to recover back the money paid, is not a voluntary payment. And, further, to constitute compulsion of legal process it is not essential that the officer has seized, or is immediately about to seize, the property of the payer by virtue of his process. It is sufficient if the officer demands payment by virtue thereof, and manifests an intention to enforce collection by seizure and sale of the payer's property at any time. On the general question we are considering, numerous authorities are cited in Cooley on Taxation, in the notes on pages 568-571. The case of *Powell* v. *Sup'rs of St. Croix Co.* 46 Wis. 210, is an illustration of what constitutes a voluntary payment. It follows from the views above expressed, that when the learned circuit judge instructed the jury that unless when the tax was paid the sheriff had the present intention and purpose to seize the plaintiffs' goods then and there, the plaintiffs could not recover, and that an intention to seize at a future day was not sufficient, he laid down a limitation of the liability of the defendant which the law does not sanction.

For this error the judgment must be reversed, and the cause remanded for a new trial.—*Chicago Legal News.*

RESTRICTIVE COVENANTS—CONSTRUCTIVE NOTICE.

Cases on the question of constructive notice have now become very common, since it has become well established law that many restrictive covenants which would not at common law be binding on the purchasers of landed property, under the rules in Spencer's case, do bind the purchasers, according to the rules of equity, if they have had notice, actual or constructive, of the existence of such covenants. We have lately reported two cases bearing on the subject, the one, *Williams* v. *Williams*, 44 L. T. Rep. N. S. 573, having been heard by Mr. Justice Kay, and the other, *Patman* v. *Harland*, 44 L. T. Rep. N. S. 728, by the Master of the Rolls. The relief sought in the two actions was very different, but in both of them the case of *Jones* v. *Smith*, 1 Hare, 43; 1 Ph. 244,

was discussed and relied on, being followed in the first and distinguished in the second. That was a case where an intending mortgagee had inquired of the mortgagor and his wife whether any settlement had been made on their marriage, and was informed that a settlement had been made of the wife's property only, and that it did not include the husband's estate, which was proposed as the security. It was held by Vice-Chancellor Wigram, and on appeal by Lord Lyndhurst, that the mortgagee, having advanced his money *bona fide* in the belief that the settlement did not include the husband's estate, was not affected with notice of it. The action of *Williams* v. *Williams* was also one turning upon constructive notice of a marriage settlement, having been instituted for the purpose of rendering a solicitor liable as constructive trustee of the purchase-money of property which had been sold by him, but which was in fact subject to the settlement. It appeared that the husband, who was married in India but had subsequently settled in England, in giving instructions to the defendant for the preparation of his will, informed him that a settlement had been prepared, but stated that it had arrived at the place where the marriage took place after its celebration, and had therefore not been executed. After the testator's death, on the occasion of the sale, a telegram relating to the settlement was brought before the solicitor, but being confident that it had come to nothing, he instructed his clerk to reply in the negative to a question by the purchaser's solicitor as to whether there had been any settlement affecting the property. Mr. Justice Kay, whilst of opinion that the solicitor had been guilty of negligence, which made it proper that he should pay the costs of the suit, considered that the case fell within the rule in *Jones* v. *Smith*, and accordingly declined to make the solicitor a constructive trustee of the purchase-money for the beneficiaries under the settlement. In the case of *Patman* v. *Harland*, the purchaser of a portion of a building estate subject to certain covenants, amongst which was one restraining the erection of any building other than a private dwelling-house, built a dwelling-house upon it and then leased it to the defendant. The lease contained a special provision for the erection in the garden of a corrugated iron building, to be used as an art studio. On the lessee commencing the erection of the studio, the plaintiff, the original vendor of the land, brought his action to restrain the defendant from proceeding. The Master of the Rolls held, on motion, that he was entitled to an injunction. The principal argument for the defendant was based on *Jones* v. *Smith*, it being contended that that case lays down a general rule to the effect that where the person, through whom the notice of a deed which may affect the title has been received, has at the same time led the purchaser to believe that the deed does not really affect it, the doctrine of constructive notice does not apply. But the Master of the Rolls in his judgment pointed out the wide difference between the cases where, as in the case before him, the deed forms a necessary part of the chain of title, and where, as in *Jones* v. *Smith*, it is only one which (to use the words of Lord Lyndhurst), "may or may not affect the the title." In the latter case there is no duty on the part of the vendor to disclose the terms of the deed unless it really does affect the title, and he cannot be compelled to disclose them if he has replied in the negative to a question whether the deed affects the title or not. His Lordship therefore held that the lessee was not released from liability by the representations made by the lessor.—London *Law Times*.

RECENT ENGLISH DECISIONS.

Club—Rules governing interference of court with action of Club.—The rules of a club provided that in case the conduct of any member, either in or out of the club-house, should, in the opinion of the committee, or of any twenty members of the club who should certify the same in writing be injurious to the character and interests of the club, the committee should be empowered (if they deemed it expedient) to recommend such member to resign, and if the member so recommended should not comply within a month from the date of such communication being addressed to him, the committee should then call a general meeting, and if a majority of two-thirds of that meeting agreed by ballot to the expulsion of such member, his name should be erased from the list, and he should forfeit all right or claim upon the property of the club. D., a member of the club, sent a

pamphlet which reflected on the conduct of S., also a member of the club, to S. at his official address, such pamphlet being inclosed in a cover on which was printed "Dishonorable conduct of S." This being brought to the attention of the committee, they called upon D. to resign, being of opinion that his conduct was injurious to the character and interests of the club. D. not having resigned, a general meeting was duly called, at which the requisite majority voted in favor of his expulsion. On an action by D. to restrain the committee from excluding him from the club, *held*, that the court had no right to interfere with the decisions of clubs with regard to their members except in the following cases: first, if the decision arrived at was contrary to natural justice, such as the member complained of not having an opportunity of explaining his conduct; secondly, if the rules of the club had not been observed; thirdly, if the action of the club was malicious and not *bona fide*. The plaintiff having had an opportunity of explanation, the rules having been duly observed, and the action of the club having been exercised *bona fide* and without malice, the judgment of Jessel, M. R., dismissing the action (41 L. T. Rep. [N. S.] 490) was affirmed. *Semble*, that even if the decision of the club had been erroneous, but given *bona fide* and in accordance with the rules, the court would not have interfered. Cases cited, Labouchere v. Earl of Wharncliffe, 13 Ch. Div. 346; Induwick v. Snell, 2 Mac. & G. 216, 221. Ct. of App., Feb. 1, 1881. *Dawkins* v. *Antrobus*. Opinions by James, Brett and Cotton, L. JJ., 44 L. T. Rep. (N. S.) 557.

Will—Mutilation—Presumption of revocation.—Will found after death with signature and attestation clause cut off and folded inside the will. No other evidence of intention. *Held*, that this was a sufficient evidence of an *animus revocandi*. Bell v. Fothergill, L. R., 2 P. & D. 148, followed with reluctance. Probate, etc., Div., March 23, 1881. *Magnesi* v. *Hazelton*. Opinion by Sir Jas. Hannen, 44 L. T. Rep. (N. S.) 586.

Conditional Sale — Sale of horse on trial —Death of horse before trial.—The plaintiff sold a horse to the defendant upon a condition that the horse should be tried by the defendant for eight days, and returned by him at the end of that time if he did not think it suitable for his purposes. The horse died within such eight days without fault of either party. *Held* (by Denman, J.), that there was no absolute sale at the time of the horse's death, and therefore that the plaintiff could not recover the price.—*Elphick* v. *Barnes*, 49 L. J. Rep. Q. B. 698.

Insurance—Fire Policy—Loss occasioned by the felonious act of the wife of the assured—Rights of the insurer.—An insurance company granted a fire policy to S., and during the currency of the policy S 's wife feloniously burnt the property insured. The company, not admitting any claim on the policy, brought an action against S. and his wife for the damage done by the act of the wife. *Held*, first, that the action could not be maintained, as the insurer has no rights other than those of his assured, and can enforce those only in his name and after admitting the claim on the policy. Secondly, that the action for the felony if it were maintainable was maintainable without showing that the felon had been prosecuted. *Semble*, that a felonious burning by the wife of the assured, without his privity, is covered by the ordinary fire policy. Cases referred to, Simpson v. Burrill, L. R., 3 App. Cas. 276; Randall v. Cockran, 1 Ves. Sen. 98; North of England Ins. As. v. Armstrong, L. R., 5 Q.B. 244; Stewart v. Greenock Mar. Ins. Co. L. R., 2 H. L. Cas. 157; Davidson v. Case, 8 Price, 542; Mason v. Sainsbury, 3 Doug. 61; Yates v. Whyte, 4 Bing. N. C. 272; Higgins v. Butcher, Yelv. 89; S. C., Noy. 82; Markham v. Cobbe, Sir W. Jones, 147; S. C., Noy. 82; Dawkes v. Coveneigh, Sty. 346; 1 Hale's P. C. 546; Hudson v. Lee, Rep. 43*a*; Crosby v. Leng, 12 East, 409; Lutterell v. Reynell, 1 Mod. 282; Gimson v. Woodfull, 2 C. & P. 41; White v. Spettigue, 13 M. & W. 603; Stone v. Marsh, 6 B. & C. 551; Wellock v. Constantine, 2 H. & C. 146; Wells v. Abrahams, L. R., 7 Q. B. 554; *Ex parte* Ball, L.R., 10 Ch. D. 667. Q. B. Div., March 23, 1881. *Midland Insurance Co.* v. *Smith*. Opinion by Watkin Williams, J., L.R., 6 Q. B. D. 561.

GENERAL NOTES.

By an act approved recently, the salary of the Chief Justice of the Supreme Court of Pennsylvania was fixed at $8,500 per annum, and that of each of the associate judges at $8,000.