The Legal News.

Vol. XI. JULY 28, 1888. No. 30.

On another page will be found the text of the bill to constitute a special commission in the matter of the charges against Parnellites. The precedent is of considerable interest, and will probably be of importance hereafter. The *Law Journal* (London), which takes exception to the method of inquiry, says: "The Special Commission Bill now before Parliament proposes a proceeding not only unprecedented, but unjustified on constitutional principles. On occasions of extraordinary emergency, the special remedies allowed by the Constitution are a bill of attainder or an impeachment. Both assume a charge of a high crime or misdemeanour, but the first is the joint act of both Houses of Parliament pronouncing on the charge in its legislative capacity, while in the second the House of Commons is the accuser and the House of Lords acts as the judge. Neither has effect unless the charge is proved to the satisfaction of the tribunal invoked, and both result in heavy penalties if the charge be sustained. In no one of these essential respects does the bill in question answer the constitutional test. For a charge of a crime in law, by a constitutionally responsible person, are substituted "charges and allegations" made by the defendants in the course of proceedings in an action against a newspaper proprietor and printer sued for libel. Was there ever so vague a prelude to a penal proceeding? The commissioners are to "inquire and report." They will first have to inquire what to inquire by a careful extraction from the short-hand notes of the trial of *O'Donnell* v. *Walter* of every conceivable charge by the defendants contained in it against every single person mentioned. Having achieved this task, which will not be the lighter by the encouragement which the conspicuous figure of Mr. O'Donnell in the proceedings gives to all the associates, past or present, of those accused to clear their character, the commissioners will have to "report." What are they to report, and to whom? Assuming that they report to a Secretary of State, they must report on every charge brought and on every person accused or who thinks himself accused. Suppose they report some one of being accessory to a murder, what follows? Nothing. If he has made a clean breast of it he is indemnified absolutely from further proceedings. If he has not he must be tried over again by a jury which will either pay so much deference to the judges' report that there will be no trial at all or will overrule the decision of three of the Queen's judges. The bill, in fact, fails from attempting to adapt a procedure useful for the conviction of peccant boroughs who can be punished by disfranchisement, but totally out of place as machinery for a State trial." The same journal further observes that the imposition on judges not in the course of their ordinary duties of the burden of a trial without a cause of action, without pleadings, without parties, and, above all, on a matter that acutely concerns partisan politics, is not the least inexpedient part of this bill. The late Chief Justice Cockburn protested against the judges being employed to try election petitions. The late Chief Justice Waite declined to take part in the Tilden Hayes Commission of 1876. It is no part of the business of judges to try persons they cannot sentence, or to do for Parliament and the Government the work which belongs to a criminal investigation department. To call three judges away from their ordinary duties for an indefinite period under this bill gives a prospect of serious delay in the Courts of Justice, especially when we read the clause that "any person examined as a witness may be cross-examined on behalf of any other person appearing before the commissioners."

An interesting question of accident insurance was presented in the case of *Travellers' Insurance Co.* v. *McConkey*, before the United States Supreme Court, May 14. A policy of accident insurance provided that it should not extend to any case of death or personal injury, unless it was established by direct and positive evidence that such death or personal injury was caused by external violence and accidental means. The insured was found dead with a pistol bullet through

his heart. It was held, first, that the Court did not err in instructing the jury that the law would presume that the death was not caused by suicide, but would, on the contrary, presume that it was unintentional on the part of the insured, within the meaning of the policy; and that plaintiff, in the absence of rebutting evidence, was entitled to the benefit of such presumption. The policy provided that no claim should be made under it, where the death of the insured was caused by "intentional injuries inflicted by the insured or any other person." On this point it was held that the court erred in instructing the jury that if the insured was murdered, the means used were "accidental" as to him, and plaintiff would be entitled to recover. The Court came to the conclusion that no valid claim could be made under the policy if the insured, either intentionally or when insane, inflicted upon himself the injuries which caused his death, or if his death was caused by intentional injuries inflicted upon him by some other person.

SUPERIOR COURT.

AYLMER (District of Ottawa),
Sept. 26, 1887.

Before WURTELE, J.

CAMERON v. STEELE.

Seduction—Damages—When recoverable—Evidence of promise of marriage.

HELD:—*That damages for seduction can be demanded and recovered only when the seducer has accomplished his end by means of a promise of marriage, or by means of artifices or deceitful manœuvres.*

2. *That a writing or a commencement of proof in writing is necessary to establish a promise of marriage.*

PER CURIAM. The plaintiff sues as the tutor of his minor daughter, and the action is in declaration of paternity and for the maintenance of the child, joined with an action of damages for the mother resulting from her seduction.

The proof establishes that the defendant is the father of the child; and the Court by its judgment will declare that he is, and will condemn him, under Article 240 of the Civil Code, to provide for the child's maintenance until she attains sixteen years of age, being the age until which children, by our laws respecting public instruction, have the right to attend public schools, and until which the expenses of her education should be provided for. As maintenance is granted in proportion to the wants of the person entitled to it, and as the cost of the child's support and education will increase as she grows older, the judgment will provide for an increase from time to time of the alimentary pension, commencing at $6 and finishing at $12 a month. Then, as the child may not be in a position when she has attained sixteen years of age to support herself, the judgment will reserve to her the right of then claiming a further alimentary provision should it be needed. In fixing the amount of the alimentary pension, the Court has been guided by the social position of the parties and the means of the defendant.

I now arrive at the claim of damages for the seduction of the mother.

By the criminal law, anyone who has illicit connection with a girl of chaste character between the age of twelve and sixteen years, and anyone above the age of twenty-one who, under promise of marriage, seduces an unmarried female under twenty-one years of age of chaste character, is guilty of a misdemeanor and liable to two years' imprisonment; but in the case of the seduction of a girl over sixteen years of age, without a promise of marriage, no punishment is decreed. By the civil law, an action does not accrue to a woman who has been seduced by the mere fact of the seduction; for her to have the right to claim damages, the seduction must have taken place under a promise of marriage, or by an abuse of authority, artifices or deceptive manœuvres. When a woman yields of her own accord, she can only complain of the weakness of her virtue; the fault is common to the man and the woman, and it would not be right to indemnify the one at the expense of the other, to reward one and punish the other, and the woman has therefore in such a case no action for damages. On the other hand, when the seducer has accomplished his end under a promise of marriage, he has not

kept faith with the woman, and is guilty of a breach of contract, which renders him liable in damages under Article 1065 of the Civil Code; and when he does so by artifices, deceit or other illicit means, he commits an offence which makes him responsible in damages under Article 1053.

In support of this statement of the law, I refer to the following quotations:—

Fournel, Traité de la Séduction, page 7: "Pour que la séduction fût réputée un délit privé propre à ouvrir une action en réparation, il faudrait qu'elle eût été accompagnée de fraude, de dol, de superchérie, etc.; mais lorsque le succès du séducteur n'est dû qu'à l'abandon volontaire de la fille, qu'il est l'effet de son plein consentement, elle ne doit se plaindre que d'elle-même et de l'insuffisance de sa vertu." Page 9: "C'est de cette promesse (de mariage) que résulte l'action civile accordée à la fille.... Lorsque la fille, devenue enceinte, ne trouve point son séducteur disposé à remplir la condition sous laquelle elle a eu la faiblesse de se livrer à lui, elle n'a point d'action pour le contraindre au mariage,.... mais au moins elle a une action en dommages et intérêts pour l'inexécution de sa promesse."

Merlin, Répertoire, verbo Fornication, sect. 2, *in fine*. "Il ne peut être exigé de dommages-intérêts qu'à raison, ou de l'inexécution d'un contrat, ou d'un délit, ou d'un quasi-délit..... Mais n'y a-t-il eu ni promesse de mariage, ni violence, et la femme n'allègue-t-elle qu'une vaine séduction? Dans cette hypothèse, qui est la plus ordinaire, point de dédommagement. Il n'y a point alors de délit caractérisé par les lois; si l'on peut dire qu'il y a un quasi-délit, on peut dire aussi que la faute qui le constitue, existe de la part de la femme tout aussi bien que de la part de l'homme; qu'il est contre l'équité naturelle, contre la saine raison, que, pour une faute commise par deux personnes, on indemnise l'un des coupables aux dépens de l'autre."

6 Aubry et Rau, No. 569: "La mère d'un enfant naturel ne pourrait, en se fondant sur la prétendue paternité de l'homme qu'elle accuserait de l'avoir séduite, former, contre ce dernier, une action en dommages-intérêts. Toutefois, si pour arriver à ses fins, le séducteur avait employé des moyens en eux-mêmes illicites, et que la séduction, suivie de grossesse, eut été le résultat, par exemple, d'une promesse fallacieuse de mariage, d'un abus d'autorité, ou de manœuvres dolosives, le préjudice ainsi causé à la femme séduite l'autoriserait à exercer, en vertu de l'article 1382,.... une action en dommages-intérêts contre son séducteur."

In the present case, a promise of marriage is alleged, and some testimony was adduced to prove it; but no promise in writing has been produced, nor has any commencement of proof in writing been made. Can the Court accept the proof by oral evidence of a promise of marriage? Certainly not, as a promise of marriage is a contract, and is productive of obligations, and falls consequently under the effect of Article 1233 of the Civil Code, which requires that contracts should be proved either by a writing or by the oath of the adverse party, and only admits testimony to establish a contract when there is a commencement of proof in writing. I have now under my hand two quotations which maintain this holding:—

Merlin, Répertoire, verbo Fiançailles, No. 8: "Quand l'un des contractants a fait assigner l'autre pour l'inexécution des promesses de mariage, et que la partie assignée disconvient de ces promesses, l'official ne peut en admettre la preuve que conformément à ce qui est prescrit par la déclaration du 26 novembre 1639. Cette loi défend de recevoir la preuve par témoins des promesses de mariage.... Il est à remarquer que cette déclaration n'a point établi un droit nouveau; elle n'a fait que confirmer l'ordonnance de Moulins, en ce qu'elle a défendu d'admettre la preuve testimoniale de choses qui excèderaient la valeur de cent livres et dont les parties auraient pu se procurer des preuves par écrit: aussi par arrêt antérieur à la déclaration, le parlement de Paris jugea qu'il y avait abus dans une sentence de l'official du Mans qui avait permis une preuve testimoniale de promesse de mariage."

2 Laurent, No. 310: "Rien de plus possible que de se procurer une preuve littérale d'une promesse de mariage; donc il

" n'y a pas lieu à l'exception, la preuve testi-
" moniale n'est pas admise."

I follow the ruling of *Asselin & Belleau* (1 Revue de Législation, 46,) and I reject the testimony respecting a promise of marriage. There being no legal proof of a promise of marriage, and artifices or deceit having been neither proved nor alleged, the Court cannot allow any damages for the seduction of the plaintiff's daughter by the defendant; it can only allow the expenses of childbirth, which are assessed at $30.

The judgment will be recorded as follows:

"The Court, etc....

"Seeing that it is established by the proof that the defendant is the father of the female child of whom Elizabeth Jane Cameron, the minor daughter of the plaintiff, was delivered on the 13th day of April last (although erroneously stated in the act of birth as on the 20th day of April last, 1887,) and who was christened Williamina Elizabeth;

"Seeing that there is no commencement of proof in writing of a promise of marriage, and that it is not therefore legally proved that a promise of marriage existed when the said Elizabeth Jane Cameron yielded to the desire of the defendant;

"Seeing that it is not proved that the defendant accomplished his end by artifices and manœuvres against which a young and inexperienced girl could not resist;

"Considering that the said Elizabeth Jane Cameron is not entitled to damages for seduction, but that she is entitled to the expenses of childbirth and to maintenance for the child;

"Doth declare the defendant to be the father of the female child of whom the said Elizabeth Jane Cameron was delivered in the Township of Hull on the 13th day of April last, 1887, and who was baptized by the name of Williamina Elizabeth; doth condemn the defendant to pay to the plaintiff, in his capacity of tutor to the said Elizabeth Jane Cameron, the sum of $30 for the expenses of childbirth, and doth adjudge and condemn the defendant to pay, for the maintenance and education of the said child, to the plaintiff, in his said capacity, until the said Elizabeth Jane Cameron attains the age of majority and afterwards to the said Elizabeth Jane Cameron herself, the yearly sum of $72 from the birth of the said child until she attains the age of five years, afterwards the yearly sum of $84 until she attains the age of seven years, then the yearly sum of $96 until she attains the age of fourteen years, and lastly the yearly sum of $144 from the time she attains the age of fourteen years until she attains the age of sixteen years, such sums to be paid in monthly instalments in advance of $6, $7, $8 and $12, according to the age of the child, and to run from the date of her birth, reserving to whomsoever it may appertain the right to sue for an alimentary allowance for the said child after she attains the age of sixteen years, should there be need thereof.

"And the Court doth condemn the defendant to pay presently to the plaintiff, in his said capacity, the sum of $36 for the six monthly instalments for the period from the birth of the child up to the 12th day of October next, 1887, inclusively, with interest thereon and on the sum of $30 allowed for the expenses of childbirth from this day, and doth further condemn the defendant to pay the costs of suit."

Rochon & Champagne for plaintiff.

Default by defendant.

MEMBERS OF PARLIAMENT (CHARGES AND ALLEGATIONS) BILL.

THE following is the bill to constitute a Special Commission to inquire into the charges and allegations made against certain members of parliament and other persons by the defendants in the recent trial of an action entitled *O'Donnell* v. *Walter and another*, prepared and brought in by Mr. William Henry Smith, Mr. Secretary Matthews, and Mr. Solicitor-General:—

Whereas charges and allegations have been made against certain members of Parliament and other persons by the defendants in the course of the proceedings in an action entitled *O'Donnell* v. *Walter and another*, and it is expedient that a special commission should be appointed to inquire into the truth of those charges and allegations, and should have such powers as may be necessary for the effectual conducting of the inquiry:

Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

1. (1) The three persons hereinafter mentioned, namely, and are hereby appointed commissioners for the purposes of this Act, and are in this Act referred to as the commissioners.

(2) The commissioners shall inquire into and report upon the charges and allegations made against certain members of Parliament and other persons in the course of the proceedings in an action entitled *O'Donnell* v. *Walter and another*.

2. (1) The commissioners shall, for the purposes of the inquiry under this Act, have all such powers, rights, and privileges as are vested in Her Majesty's High Court of Justice, or in any judge thereof, on the occasion of any action, including all powers, rights, and privileges in respect of the following matters :—

(i.) the enforcing the attendance of witnesses and examining them on oath, affirmation, or otherwise ; and

(ii.) the compelling the production of documents ; and

(iii.) the punishing persons guilty of contempt ; and

(iv.) the issue of a commission or request to examine witnesses abroad ;

and a summons signed by one or more of the commissioners may be substituted for, and shall be equivalent to, any formal process capable of being issued in any action for enforcing the attendance of witnesses or compelling the production of documents.

(2) A warrant of committal to prison issued for the purpose of enforcing the powers conferred by this section shall be signed by one or more of the commissioners, and shall specify the prison to which the offender is to be committed.

3. The persons implicated in the said charges and allegations, the parties to the said action, and any person authorised by the commissioners, may appear at the inquiry, and any person so appearing may be represented by counsel or solicitor.

4. Every person who, on examination on oath or affirmation under this Act, wilfully gives false evidence, shall be liable to the penalties for perjury.

5. Any person examined as a witness under this Act may be cross-examined on behalf of any other person appearing before the commissioners. A witness examined under this Act shall not be excused from answering any question put to him on the ground of any privilege or on the ground that the answer thereto may criminate or tend to criminate himself : Provided that no evidence taken under this Act shall be admissible against any person in any civil or criminal proceeding, except in the case of a witness accused of having given false evidence in an inquiry under this Act.

6. (1) Every person examined as a witness under this Act who, in the opinion of the commissioners, makes a full and true disclosure touching all the matters in respect of which he is examined, shall be entitled to receive a certificate signed by the commissioners, stating that the witness has, on his examination, made a full and true disclosure as aforesaid.

(2) If any civil or criminal proceeding is at any time thereafter instituted against any such witness in respect of any matter touching which he has been so examined, the Court having cognisance of the case shall, on proof of the certificate, stay the proceeding, and may in its discretion award to the witness such costs as he may be put to in or by reason of the proceeding.

7. This Act may be cited as the Special Commission Act, 1888.

BARRISTERS ADVISING DIRECT.

The following is the correspondence referred to in our last issue :—

Dear Mr. Attorney-General,—As a member of the bar, I appeal to you as its titular head for a definite opinion as to the rule of etiquette which regulates the intercourse of the profession with the general public.

May a barrister advise and otherwise act for the outside client, and receive a fee direct, without the intervention of a solicitor ? To

what extent, if at all, is this right limited after a writ has been issued?

Is there any *minimum* limit to the fee which a counsel may charge in non-contentious business?

As the subject of fusion has lately been brought into prominence, it seems eminently desirable that the bar should know what its real position is before being called upon to decide so momentous a question.

I propose to publish this letter and your reply for the benefit of the profession.

Yours faithfully,

ROBERT YERBURGH.

Dear Mr. Yerburgh,—....The matters to which you refer are not governed by any written rule, but by the practice and tradition of the profession, which have, I believe, been recognised from time immemorial.

It is essential to keep in view throughout the distinction between contentious and non-contentious business.

With reference to contentious business, in my opinion neither before nor after litigation is commenced should a barrister act or advise without the intervention of a solicitor. One very grave reason for this rule is obvious. In contentious business, which frequently affects the rights of other persons, it is most important that the facts should be as far as possible accurately ascertained before advice is given. For this purpose, as a barrister cannot himself make proper inquiry as to the actual facts, it is essential that he should be able to rely on the responsibility of a solicitor as to the statement of facts put before him.

As regards non-contentious business the case is, in my opinion, somewhat different. It is scarcely possible to state the rule in a way which will be absolutely accurate under all circumstances, but, speaking generally, there is, in my opinion, no objection to a barrister seeing and advising a lay client, without the intervention of a solicitor, upon points relating to the lay client's own personal conduct or guidance, or the management or disposition of his own affairs or transactions. I only desire to add that great care should be exercised by members of the bar who do advise lay clients, to abstain from advising upon matters which are, in effect, of a contentious character.

As regards the fee in cases in which counsel are willing to advise a lay client under the circumstances to which I have referred, I know of no rule beyond this — that no junior should accept a fee of less than 1*l.* 3*s.* 6*d.*, and no leader of less than 2*l.* 4*s.* 6*d.*

I am yours very faithfully,

RICHARD E. WEBSTER.

Robert Yerburgh, Esq., M.P.

BETWEEN CAB AND TRAIN.

Man in the nineteenth century may well take rank, if not as a migratory, as a travelling animal, and all over the world where English is read—that is almost everywhere—the views of his constitutional rights as pronounced upon by the highest Court of the most ardent of the travelling nations will be read with the deepest interest. There are few persons old enough to walk who will not appreciate the tale told in *The Great Western Railway Company* v. *Bunch*, 57 Law J. Rep. Q. B. 36, as reported in the House of Lords in the July number of the *Law Journal Reports*. On the afternoon of December 24, 1884, Mr. and Mrs. Bunch were bent on making the journey from London to Bath, so as to spend Christmas Eve with their friends in the country. It could be done by catching the five o'clock train, and, like a prudent wife, Mrs. Bunch arrived at Paddington forty minutes before with what must be admitted very moderate luggage for two—a portmanteau, a Gladstone bag, and the inevitable hamper. The portmanteau and hamper were labelled and put on a trolly. The Gladstone bag she directed the porter to put into the carriage with her, and thereupon, to use the graphic rendering of what passed by Lord Bramwell, the following colloquy took place between Mrs. Bunch and the porter: "Will it be safe?" "Oh, yes, I will look after it." On this assurance Mrs. Bunch went to find her husband, who arrived about the same time and had meanwhile contributed his full share to the starting of the expedition, for he had taken a through ticket from Moorgate Street to Bath for himself and a ticket from Paddington for

his wife. They returned to the spot where the wife had left the porter standing by the luggage. The portmanteau and hamper had been put in the van, but the porter and the bag were not to be found. The County Court judge at Marylebone gave judgment for the plaintiffs, and since then the case has produced a variety of opinion on the bench. In the Queen's Bench Mr. Justice Day was in favour of the defendants, Mr. Justice Smith in favour of the plaintiffs. In the Court of Appeal Lord Esher and Lord Justice Lindley were in favour of the plaintiffs, and Lord Justice Lopes against them. In the House of Lords the Lord Chancellor and Lords Watson, Herschell, and Macnaghten were in favour of the plaintiffs, but Lord Bramwell against them.

The case concerns not only travellers by rail in England, but all the world over, as the bag that goes in the carriage is a universal institution. In the United States and on the Continent the system of registering, adopted hardly at all in England, is not applied to handbags, and in countries like Italy, where a high charge is made for luggage, the handbag assumes abnormal dimensions. The judgments are the better reading because they were not unanimous, for judgments, like matrimony, are the better for a little aversion, which, if the majority were too sympathetic, was admirably supplied by Lord Bramwell's judgment. Besides the decision of the very common incident of the platform before the House, contributions were made to the law and philosophy of railway travelling in general; and a point highly interesting to English lawyers, whether the companies are common carriers of personal luggage, was touched upon in a way which considerably disturbs the opinion in the negative which obtains now by a decision of of the highest Court but one. Lord Bramwell does not deal with this question on the present occasion; but he was party to the decision of *Bergheim* v. *The Great Eastern Railway Company*, 47 Law J. Rep. Q. B. 318, which is the decision referred to in which judgment was delivered by Lord Justice Cotton and concurred in by Lord Justice Brett. In regard to this case the Lord Chancellor said: "I must express my opinion that the views expressed by Lord Truro, Chief Justice Jervis, Mr. Justice Williams, Mr. Justice Crowder, Mr. Justice Willes, Mr. Justice Keating, and Mr. Justice Montagu Smith do not appear to have had sufficient weight given to them (see *Richards* v. *The London, Brighton, and South Coast Railway Company*, 18 Law J. Rep. C. P. 251; *Talley* v. *The Great Western Railway Company*, 40 Law J. Rep. C. P. 9; and *Butcher* v. *The South-Western Railway Company*, 24 Law J. Rep. C. P. 137)." Lord Watson's view is still more decided, for he adds: "I think the contract ought to be regarded as one of common carriage, subject to this modification—that, in respect of the passenger's interference with their exclusive control of his luggage, the company are not liable for any loss or injury occurring during its transit to which the act or default of the passenger has been contributory." This view is accepted by the Lord Chancellor as the result of the cases previous to *Bergheim's Case*. Lord Herschell is disposed to agree with it; and Lord Macnaghten, perhaps, goes further than all of the consentient lords when he says that, if the reasoning in that case "seems to lead to a different conclusion, with all deference I am unable to concur in it, and I prefer the view expressed by Mr. Justice Willes in *Talley* v. *The Great Western Railway Company*, 40 Law J. Rep. C. P. 9." The facts in *Bergheim's Case* are hardly distinguishable from the present. The same colloquy took place between the porter and the passenger, but the bag was placed in the passenger's carriage instead of being left on the platform. Lord Macnaghten makes some weighty observations on the anomaly and inconvenience of the distinction created by that case when he says that "it was contended by the appellants that in receiving a passenger's luggage, railway porters, though in the service of the company, and forbidden to accept any payment from the public, must be taken to be acting on behalf of the passenger and as his agents, and that this relation continues as regards van-luggage until it is labelled for the journey, and as regards hand-luggage until it is placed in the carriage in which the passenger intends to travel. Further, it was contended that the contract as regards van-luggage is

altogether distinct and different from the contract as regards hand-luggage; that, in fact, there are two separate contracts, and that, whatever may be the case as regards van-luggage, the railway company comes under no liability of any sort as regards hand-luggage until it is placed in the passenger's carriage." The jury in *Bergheim's Case* found that the defendants were not guilty of negligence, and the principle of Lord Justice Cotton's judgment is that such a finding is conclusive. If the jury had found that the act of the plaintiff amounted to taking the bag out of the control of the company's servants, the decision might be supported consistently with the principles now laid down, but not otherwise.

The question now actually decided was that it is within the scope of the duty of railway porters to carry hand-baggage to and from the carriages, and it met with a vigorous opposition and direct denial from Lord Bramwell. Lord Chief Justice Lindley had expressed the matter in the form that the porter was acting within the scope of his employment in taking the luggage in the way he did from the cab to the train, but Lord Bramwell said: "Now this is precisely what he did not do. He did not take it from the cab to the train. He put it down and said he would guard it, and did not." This view of the learned lord is otherwise expressed when he says that Mrs. Bunch was asking for a favour, and when he lays down that the responsibility of the company does not begin until the train has arrived at the platform; and he applies this equally to luggage in the van unless it has actually been labelled. This view of the contract would seem more suitable to the simplicity of the coaching days than to the complication of arrival and departure of railway trains at stations. On the other hand, Lord Watson well leads up to the contrary opinion by quoting from Chief Justice Jervis in *Butcher* v. *The London & South-Western Railway Co.*, "that, though not in express terms engrafted into it, it is a part of the contract of a railway company with its passengers that their luggage shall be delivered at the end of the journey, by the porters or servants of the company, into the carriages or other means of conveyance of the passengers from the station." He adds that "what was thus said of the terminus is equally true of the commencement of a railway journey. A hint is conveyed to railway travellers not to presume too much on this view in the words: "It may be that railway porters do sometimes undertake the charge of luggage which is merely intended for future transit; when they do so, they exceed the limits of their implied authority, and, in that case, their possession cannot be regarded as the possession of their employers." It is obvious that if Lord Bramwell's view be right, the railway porter is entitled to the twopence for which he looks when he carries a bag to or from the train. If so, the porter is using his employer's time to make money for himself, and the company are paying him for nothing but carrying luggage to the van. Seeing that the companies could not carry on their business without the porters rendering these services, it is difficult to agree that the decision is one of those cases which Lord Bramwell describes as "showing a generous struggle to make powerful companies liable to individuals," or that the view of the minority is "an effort for law and justice."—*Law Journal.*

GENERAL NOTES.

A remarkable point with reference to unclaimed dividends arose lately in the Manchester Court of Bankruptcy in the matter of a former director of the Guardian Building Society. In consequence of the failure of this society, and the heavy liabilities which the director had incurred, he was compelled in 1881 to file his petition. The creditors passed a resolution accepting a cash composition, and upon this being confirmed the money was paid over to the trustee, and he subsequently sent notice to each creditor to claim the amount due to him. Several of the creditors, however, never applied for payment, and in consequence a portion of the money was still in the hands of the trustee. The Guardian Society had been wound up, and its final dividend paid; the Statute of Limitations, too, had come into operation, and now the trustee knew not what to do with the money, nor of any Act of Parliament which would assist him in the case. The bankrupt, under the circumstances, considered he had a claim on the money as unclaimed composition. It was finally decided that notice should be given by the trustee to each creditor who had not proved his claim, and that should no proof be sent in within a fortnight the money was to be paid over to the debtor, who, however, must give an undertaking to pay the composition to any creditor subsequently applying for it. No order was to be drawn for three weeks, to enable the Board of Trade, if it wished to object, to move the Court for a rescission of the order.—*Law Journal* (London).