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JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

LONDON, 7 April, 1897.

Present: LORD HERSCHELL, LORD WATSON, LORD MACNAGHTEN, LORD MORRIS and LORD SHAND.

LAROCQUE, appellant, v. BEAUCHEMIN ET AL., respondents.

Joint stock company—Subscription of stock—Payment in cash—Article 4722, R.S.Q.

Article 4722 of the Revised Statutes of Quebec provides that "the capital stock of all joint stock companies shall consist of that portion of the amount authorized by the charter, which shall have been bond fide subscribed for and allotted, and shall be paid in cash."

HELD (*affirming the judgment of the Court of Review, Montreal, Q. R., 9 S. C. 73*):—*Where there is no fraud or simulation, and the transaction is in good faith, anything which is in law equivalent to a payment, or which would be in law sufficient evidence to support a plea of payment, is a "payment in cash" within the meaning of this section.*

LORD MACNAGHTEN:—

The appellant is the liquidator of a company called "La Compagnie de Papier de Sorel," incorporated in 1886, under an Act of the Provincial Legislature of Quebec known as "The Joint Stock Companies Incorporation Act." The authorized capital stock of the Company was $100,000, divided into 1,000 shares of $100 each. The subscribed capital was $55,000, or 550 shares.

The respondents are some of them shareholders and the rest the representatives of deceased shareholders in the company.

The shareholders whose representatives are parties to the action, together with those of the respondents who were themselves shareholders, were the promoters of the company. From them the company bought the property upon which it carried on its business; and they held the whole of the subscribed stock with the exception of 50 shares belonging to Mr. Finlay, the manager.

The action was brought to recover from the respondents in their individual or representative capacities sums amounting in the aggregate to $25,000. The relief sought was based on fraud and nothing else. The declaration in the action stated that although the nominal and ostensible price of the property was $35,000, the real price actually paid was $10,000 only, and it charged that the property was in fact worth no more; the difference, according to the statement in the declaration, was accounted for in the books of the company by means of entries which the appellant as plaintiff alleged to be false and fictitious, making it appear that the promoters had paid up their shares in full while $25,000 still remained unpaid.

The facts are not in dispute. The property had belonged to a company called "The St. Lawrence Pulp and Paper Company" which failed almost immediately after it commenced operations. The liquidator put the property up for sale by auction in March, 1886. It was then bought by or on behalf of four persons interested in the old company for the sum of $9,000. The purchasers entered into communication with certain persons described by the respondent Beauchemin, who was one of their number, as "capitalists," with the view of forming a new company and re-establishing the business. M. Beauchemin was called as a witness by the plaintiff. He said that the four purchasers represented that the property which they had bought was worth $50,000 but that he would not take it at that price, and as the result of negotiations it was agreed that the property should be sold to the new company as soon as it was formed for $35,000, and that the difference between that sum and the auction price, which by the addition of interest and incidental expenses was brought up to $10,000, should be for the benefit of the promoters of the new company, that is for the four purchasers, and M. Beauchemin and his friends.

The evidence as to value was clear and uncontradicted. A. M. Pontbriand, a manufacturer living in Sorel, who was interested

in the old company, was called for the defence. His firm, he said, had made the machinery and put it up. He knew the property well. Including land, buildings and machinery, it had cost about $80,000, a sum which unfortunately exhausted the whole of the capital of the company. He valued the property at the time of the liquidation of the old company at $41,150. At the time of the sale the machinery was in perfect order, but the buildings required some slight repairs, which might cost $1,000 or so. For the purpose of a paper manufactory the property was, he considered, worth $40,000. It would have cost the new company from $50,000 to $55,000 to provide itself with similar works elsewhere.

On the 5th of May, 1886, the promoters and Mr. Finlay, who had then joined the enterprise, having subscribed between them $55,000 towards the joint stock of the proposed undertaking, held a provisional meeting as shareholders in the new company. The meeting appointed provisional directors and authorized them to make an immediate call on the capital subscribed, and to apply for incorporation. The directors accordingly met and made a call of 75 per cent. payable on the 20th of May.

On the 26th of June, 1886, a petition for incorporation was presented on behalf of the shareholders in the new company. The petition set forth the particulars required by the Act, including the names of the shareholders and the amounts subscribed by them respectively. Letters patent incorporating the new company were duly granted on the 5th of August.

On the 3rd of September a meeting of the shareholders was held; the minutes of the former meetings were read and adopted, and directors were appointed. At a meeting of the directors held on the same day, the President, M. Beauchemin, was authorised to sign in the name of the company the deed of sale of the property and to acquire it from the then owners for the price of $35,000, and a final call was made of 25 per cent. payable on the 16th of October.

In September, 1886, the promoters were credited in the books of the company with payment in full of their shares. The amounts so credited were paid half in cash and half by receipts given to the company by the vendors to the extent of $25,000 on account of the purchase price of the property.

After working for about two years and a half the company went into liquidation. In June, 1889, the appellant was

appointed liquidator, and in March, 1890, he was authorized to institute this action.

The action came on to be heard before the Superior Court on the 24th of November, 1894, when it was dismissed with costs. The Court held that the plaintiff had failed to prove the material allegations of his declaration. The judgment was affirmed on appeal by the Superior Court sitting in Review on the 31st of December, 1895.

It appears from the reasons given by the Honorable Mr. Justice Jetté that the only question argued before the Court of Review was whether the shares of the promoters were paid in full, having regard to the provisions of Article 4722 of the Revised Statutes of Quebec which formed part of the Statute under which the company was incorporated. That article so far as is material to the present question is as follows:—

(1.) The capital stock of all Joint Stock Companies shall consist of that portion of the amount authorized by the charter which shall have been *bonâ fide* subscribed for and allotted and shall be paid in cash.

.....

(5.) Every form and manner of fictitious capitalization of stock in any joint stock company or the issuing of stock which is not represented by a legitimate and necessary expenditure in the interest of such company, and not represented by an amount of cash paid into the treasury of the company, which has been expended for the promotion of the objects of the company, is prohibited, and all such stock shall be null and void.

Jetté, J., considered that par. 1 of article 4722 which was originally enacted as Sec. 1 of the Quebec Statute, 47 Vict., cap. 73, was a reproduction more or less exact of Sec. 25 of the Imperial Statute known as the Companies Act, 1867. Construing the expression "paid in cash" in Article 4722, par. 1, by the light of well known English authorities as to the meaning of the same words in Sec. 25 of the Imperial Statute of 1867, his Honour held that the shares of the promoters were fully paid.

Before their Lordships an attempt was made to re-open the charge of fraud which seems to have been abandoned in the Court of Review. It was urged that the price of the property was not fixed or considered by an independent Board of Directors and that in this respect the transaction was improper and fraudu-

lent. This argument seems to be based on a misconception of the decision in the *New Sombrero Phosphate Company* v. *Erlanger*, 3 App. C. 1218, where the facts were very different. In the present case it was not disputed that every single shareholder was perfectly aware of all the circumstances attending the formation of the company, and that nobody was or could have been deceived. Indeed their Lordships agree with the opinion of Jetté, J., who prefaced his judgment by observing that the promoters acted in perfect good faith and that the value of the property was proved to be $35,000 at the least.

The learned counsel for the appellant then contended that the understanding between the parties was that the property should be sold for so much in cash and so much in shares. It was admitted that if this had been the real arrangement it would be in contravention of the Statute. But the evidence is all the other way. According to the evidence there was an independent agreement on the part of the promoters to take so many shares presently payable in cash and an independent agreement by the Company to purchase the property for so much money down. There was not even an attempt in cross-examination to shake the testimony on this point.

The appellant's counsel were at last driven to question the authority of *Spargo's case*, (8 Ch. 407) and the long line of decisions in which that case has been approved and followed. They pointed out that on more than one occasion *Spargo's case* has been disapproved by the present Lord Chancellor (*Re Johannesburg Hotel Co.*, 1891, Ch. 119; *Ooregum Co.* v. *Roper*, 1892, A. C. 134), and they asked their Lordships not to follow it.

Their Lordships are not prepared to dissent from the decision in *Spargo's case*. It is a decision of the highest authority. It was pronounced by James and Mellish, LL. JJ., and the view which those eminent judges expressed had as appears from their judgments the approval of Selborne, L.C. Referring to *Fothergill's case* in which Sec. 25 of the Act of 1867 was considered and in which judgment had been delivered only the day before by the Lord Chancellor and the Lords Justices, James, L.J., made the following observations which are not inapplicable to the facts of the present case:—"It was said by the Lord Chancellor, and we "entirely concurred with him, that it could not be right to put "any construction upon that section which would lead to such

" an absurd and unjustifiable result as this, that an exchange of " cheques would not be payment in cash, or that an order upon a " banker to transfer money from the account of a man to the " account of a company would not be a payment in cash. In " truth it appeared to me that anything which amounted to what " would be in law sufficient evidence to support a plea of pay- " ment would be a payment in cash within the meaning of this " provision.....If a transaction resulted in this, that there was on " the one side a *bonâ fide* debt payable in money at once for the " purchase of property, and on the other side a *bonâ fide* liability " to pay money at once on shares, so that if bank notes had been " handed from one side of the table to the other in payment of " calls, they might legitimately have been handed back in pay- " ment for the property, it did appear to me in *Fothergill's case*, " and does appear to me now, that this Act of Parliament did " not make it necessary that the formality should be gone " through of the money being handed over and taken back " again; but that if the two demands are set off against each other, " the shares have been paid for in cash..... Supposing the trans- " action to be an honest transaction, it would in a Court of Law " be sufficient evidence in support of a plea of payment in cash, " and it appears to me that it is sufficient for this Court sitting " in a winding-up matter. Of course, one can easily conceive " that the thing might have been a mere sham or evasion or " trick, to get rid of the effect of the Act of Parliament, but any " suggestion of sham, or fraud, or deceit, seems to be entirely out " of the question in this case, because everybody in the company " knew of the transaction; every shareholder of the company " was present and was a party to the resolution; there was no " deceit practised on any creditor, nor was there any registration " of these shares, except as shares paid up. This seems to me to " dispose of the case." "It is a general rule of law," added Mellish, L.J., " that in every case where a transaction resolves " itself into paying money by A to B and then handing it back " again by B to A, if the parties meet together and agree to set " one demand against the other they need not go through the " form and ceremony of handing the money backwards and for- " wards." Even if this line of argument were less convincing than it appears to their Lordships to be, they would not be disposed to disturb an authority which has been accepted and acted on for more than 20 years.

It is to be observed that in the Quebec Statute the expression "paid in cash" occurs in one place and "paid in cash into the treasury of the company" in another, from which it may be inferred that "payment in cash" does not necessarily and in all cases mean payment "into the treasury of the company."

In the result their Lordships will humbly advise Her Majesty that the appeal ought to be dismissed. The appellants will pay the costs of the appeal.

It appears that during the pendency of the appeal proceedings were stayed against two of the respondents, against each of whom the claim was under the appealable limit. The order will include the dismissal of the appeal with the usual consequences as against those two respondents.

Hon. Edward Blake, Q.C. (of the Canadian Bar), for the appellant.

Cozens-Hardy, Q.C., Geoffrion, Q.C. (of the Canadian Bar), and *J. Austen Cartmell*, for the respondent.

COKE AND BACON—THE CONSERVATIVE LAWYER AND THE LAW REFORMER.

[Concluded from p. 143.]

In 1592, when Bacon was thirty-one years of age, he proposed in the House of Commons a plan to amend, consolidate and condense the whole body of English laws, to reduce them in bulk, to simplify them in form, and to render them consistent, leaving out all repetitions and whatever was obsolete.

Coke, who was nine years older than Bacon, and was also in Parliament at that time, was in the plenitude of his powers, and had almost reached the meridian of his fame. No proposition could have been made to which he would have been more averse. Coming from anyone it would have been odious; coming from Bacon it was detestable. Everything was a mystery in those days, even the making of shoes and hats; and it was due to the dignity of the law that it should be the greatest of all mysteries. In the good olden time its mystery had been properly guarded and preserved, because legal proceedings were recorded in law Latin which Cicero could not have read, or in law French which no living Frenchman of woman born could understand; but now,

in a less reverent and more iconoclastic age, such proceedings were required to be preserved in English, which was only rescued from vulgarity by many technical terms borrowed from other languages, and by a peculiar and antiquated phraseology. The proposition to deprive the law of the last vestige of clothing, and thus to expose it naked to the laughter of its enemies, was no less sacrilegious than indecent. The simplification of the law would be the undoing of it, since no one would respect what every one could understand. The English constitution would be overturned, life would lose its sweetness, chaos would come again, and death would be the only refuge. We may be sure that Coke said something about the rash presumption of inexperienced youth. He probably concluded by denouncing Bacon as an enemy of mankind and a traitor to his country.

In this contest the odds were greatly in favor of Coke, a fact which he knew full well. As a scholar in politics Bacon excited a certain amount of distrust, which was enhanced by the novelty of his proposition. As a politician Coke was immeasurably his superior. Long afterwards Bacon, looking back over his career, said of himself that he was better suited to hold a book than to play a part. In an extremely conservative age the precedents of centuries weighed heavily against him. Nothing of the sort had been tried since the compilation of the old Byzantine codes, of which but few legislators had ever heard. In this respect, as in many others, Bacon was very far ahead of his age. Had he succeeded, the evolution of our law would have been wholly changed; and English jurisprudence, instead of lagging behind the continental systems, would have led the van in the march of reform. In England his effort fell still-born; but it attracted marked attention abroad, and served to accelerate the development of the law in alien lands.

Bacon, great as he was, was in no sense a universal genius, as he has sometimes been pictured in imagination. Never, save in fancy, did the universal genius exist. Outside of the sphere of his genius, Bacon was shorn of his strength, and was like unto other men. Though he had the flight of an eagle, yet he always skimmed along close to the surface of the earth. He tried his power in architecture, both theoretically and practically; but the results were unqualified failures; and his metrical translations of the Psalms must always take rank along with the worst speci-

mens of poetry ever produced in our language. He had unbounded genius for whatever is practical; but farther his genius did not go. Curiously enough, the civilization which he projected, wonderful beyond conception, partakes largely of all of his defects. As the law is, or ought to be, above all things practical, it was strictly within his domain. He had not the marvellous technical knowledge of the common law that made of Coke an oracle in his profession; but he possessed a comprehensive insight into the spirit, adaptability and philosophy of jurisprudence which Coke could never have acquired.

So thoroughly conscious was Bacon of the necessity of the work for which he had endeavored to obtain the sanction of Parliament, that he afterwards resolved to carry it out as an individual enterprise. In his "Proposal for Amending the Laws of England," addressed to James I., he showed that he had thoroughly matured his scheme, and that he contemplated nothing revolutionary. "I dare not advise," he said, "to cast the law into a new mould. The work which I propound tendeth to pruning and grafting the law, and not to plowing it up and planting it again; for such a remove I should hold indeed for a perilous innovation."

This great work, which might have been the crowning glory of almost any lifetime, was never to be accomplished. Bacon spoke of it in his last years regretfully as a work that required assistance, and that he had been compelled to forego. The failure has been a loss irreparable; for no one that ever lived was better qualified for such a task than Bacon. It seems strange, that in his busy life, animated by such extensive designs, filled with so many vicissitudes, he should have formed this plan so early and should have brooded over it so long. Bacon's capacity for labor was something marvellous. During the four years that he was chancellor he cleared off the long arrears of Ellsmere, and passed judgment in 36,000 cases, though during that period he presided over the House of Lords, was active in all affairs of State, participated in all kinds of social functions, and added largely to his voluminous writings, most of which were translated into Latin, either by himself or by others under his supervision. From early manhood he was a frequent debater in Parliament, and until he ascended the bench he was engaged in an extensive practice in the courts; so that, although it might

seem that his printed writings would exhaust the labors of a lifetime, yet they represent but a small part of the work that he performed; hence it is only matter for surprise that he accomplished as much as he did.

Though the more important works of Bacon were published in Latin in order to render them everywhere current among scholars, yet they were very soon translated into several modern languages, so that they might be made accessible to a still larger circle of readers. They produced a profound impression, but their scope was not fully understood; and it cannot be said that they were received with much favor. Church and State remained attached to the old moorings; and the bar, always conservative save where a principle of public liberty is involved, adhered rigidly to the methods of Coke. The great majority of scholars were blindly, fanatically attached to the old order of things. Outside of a very small circle of personal friends, such as Sir Henry Wotton and Hobbes of Malmesbury, it is doubtful whether Bacon, up to the time of his death, had made a single convert; and the subsequent progress of his doctrine was slow, being achieved in spite of many obstructions. When Dr. Johnson, a little more than a hundred years ago, spoke of the study of science as being derogatory to the higher faculties of the mind, he echoed the sentiment of a great majority of his countrymen. Newman said that, even in his time, Oxford was a mediæval university.[1] It is only within the last twenty or thirty years that the Baconian philosophy can be said to have attained to a definite triumph; and even now a belated combatant occasionally fires a random shot at the advancing column; but no damage is done, and the incident is soon forgotten.

Bacon is the only great and radical reformer who was not at the same time an ardent propagandist. Judging from the effect of his teachings, the man that fired the Ephesian dome was but a timid conservative compared to him; but he promised no Utopia, and besought no man to enlist under his banner. Indeed so frequent and impressive was his advice against a rash acceptance of any novel doctrine, that it may almost be questioned whether he himself did not entertain misgivings as to the beneficial effects to be anticipated from the tremendous mine

[1] Apologia pro vita sua, p. 149.

that he was engaged in planting under the venerable bastions of antiquity. Convinced that everything is experimental, and that caution should preside where the issues are uncertain and are so immense as to affect the entire future of humanity, he said: "It were good therefore that men in their innovations would follow the example of time itself, which indeed innovateth greatly, but quietly, and by degrees scarce to be perceived;" and he recommended that "novelty, though it be not rejected, yet be held for a suspect." But it is difficult to believe that when he said in his last will, "For my name and memory I leave it to men's charitable speeches, and to foreign nations, and to the next age,"—he did not anticipate the final success of a revolution compared with which all other revolutions were only the dust of the balance.

It would require volumes to recount the triumphs of utilitarian science founded on the philosophy of Bacon, including all the inventions and discoveries of modern times, which constitute the theme of common declamation. Doubtless the debt we owe to him exceeds all of our powers of computation; but it is not possible to make a gain in one direction without a corresponding loss in some other. If Bacon really had any misgivings as to the ultimate effects of his teachings, events have proved that his fears were not wholly without foundation; for the countless victories of science have failed to bring to our race that spirit of peace and contentment, rarer even than happiness itself, which has been the dream of the wise and the good ever since the world began. While we boast of our increasing knowledge, we must confess that our progress has raised up social questions that seem to defy solution, and that threaten to overturn the framework of society; that the present age is in profound revolt against ills of life that seem to be incurable, and that were formerly borne almost without complaint; and that the constantly increasing complexities of modern life tend continually to make of existence a more deadly and desperate struggle.

If it would be difficult to count up the debt that we owe to Bacon, it is equally impossible to compute what we have lost. A hundred years ago one of the first judges of the Supreme Court of the United States spoke of the Scotch philosophy of Thomas Reid as being as great a discovery as the discoveries made by Sir Isaac Newton. But alas for the mutability of things, the

philosophy of Thomas Reid interests the present generation no more, while all the other systems of philosophy from Thales to Compte and Schöpenhauer are drifting out of sight. It is a subject worthy of reflection that these tremendous derelicts, embodying the speculations of many of the greatest minds that ever lived concerning the faculties, the surroundings, the origin and destiny of man, hardly produce a ripple in the current of modern thought.

If one should spend his life in counting, weighing and classifying grains of sand in a valley, he would, no doubt, in the course of time acquire a wonderful dexterity in that pursuit; but he would hardly possess a fit conception of the beauty and grandeur of the outline of the surrounding hills. "The business of the poet," said Imlac in Rasselas, "is to examine, not the individual, but the species; to remark general properties and large appearances; he does not number the streaks of the tulip, nor describe the different shades in the verdure of the forest."

No; he deals not with minute details and sundries; and in an age of details and sundries we have eliminated the poet. If Bacon planted the seeds of a revolution that overturned the work of Coke, he has rendered another Shakespeare impossible. Not by the aid of parliamentary grant or congressional appropriation, nor by the organization of gigantic corporations, can the sacred muse be wooed back to a world which she has deserted. The legitimate drama has been banished from the stage, or returns only after long intervals to revisit the scenes of her former triumphs. Barren as were the Middle Ages in most fields of thought and action, yet they brought forth new types of architecture that have been found worthy to take their place alongside of the immortal creations of Greece and Rome; while we, in the way of originality, only succeed in producing hideous sky-scraping structures that, as seen from the surface of the moon, cast their long, black, revolving shadows over the neighboring houses and streets. If at times we display great interest in the arts of painting and sculpture, it is mostly of the kind that is got up to order; but of that exquisite sense of the beautiful that made the illiterate Athenian multitude the finest art critics that the world has ever seen, we have not a trace; and in the absence of it we pin our faith to the guide-books. Our literature, made up now almost wholly of works of fiction, is nearly as ephemeral as

the publications of the amateur writers of stories in the daily papers. At intervals of a few months some novel is acclaimed as immortal, by enthusiasts that could not tell the name of it a year later.

The eloquence of the statesman has degenerated into the rant of the demogogue. Chrysostom and Savanarola, Bossuet and Massillon, Stillingfleet and Wesley and Whitfield, sleep in their hallowed tombs, and have left no successors. It would be a pleasant thing for us to have at the bar such men as Erskine and Curran and Webster and Pinkney; but the age does not produce them, and we get along the best we can without them. It was said long before Napoleon that there is but one step from the sublime to the ridiculous; but in an age in which we have become painfully conscious of the limitations of our powers, the ridiculous has gradually encroached on the sublime until there is only a fading line between them; and in deadly and constant fear of crossing it, we timidly take refuge in the commonplace. Music itself, heavenly maid, of all the fine arts the oldest, the most faithful and the tenderest friend of man, she who has soothed and comforted his sad heart in every time of sorrow ever since the morning stars sang together, is said by some to be undergoing a like eclipse.

This also was in our destiny. Wonderful as are the advantages that we have derived from the scheme of Bacon for the improvement of mankind, yet it cannot be denied that in some respects our adoption of it has been like the second eating of the forbidden fruit. This was the inevitable consequence of his teachings, the sum and substance of which was that we should put lead on our wings; that we should no more be led by sentiment, nor seek the inaccessible, nor dally with the vague and the undefined. And we have kept the faith; and are keeping it more and more strictly as the years go by, with more and more emphatic results. It is only the other day that Professor Goldwin Smith declared that if he lives a few years longer he expects to see the last poet, the last horse, and the last woman; three things that will certainly be missed. A little reflection would have convinced him that the last poet has already passed by.

These are things that we cannot help. Though we may sometimes look regretfully to the past, as Schiller looked back to the Gods of Greece, or as Mary of Scotland gazed on the receding

shores of France, yet our way is onward; and we shall never more be content to sit down by the deserted hearthstones of our ancestors. Perhaps hereafter some genius as original as Bacon, and equally unheralded, shall reveal to men some better way that is now hidden from our eyes.

If the law in its higher aspects has failed in its development in respect of harmony, or symmetry, or unity, or facility of being understood, that result has been reached through causes that Bacon distinctly pointed out and repeatedly warned us against. Although he recommended the closest, most analytical and most discriminating scrutiny of individual instances, thereby opening the door to infinite diversity, yet he urged, in the most impressive manner, that through this diversity, by means of arrangement, co-ordination and scientific classification, we should re-establish unity and harmony and symmetry, on larger, truer and more intelligible foundations; a process not applicable to poetry and the fine arts, which were not within his scheme, but one which is, above all things, applicable to the law.

No one was ever so great a destroyer as Bacon; but he did not destroy for the sake of destruction, but only for the purpose of building again with lasting materials on a more secure basis. Everywhere he inculcated the necessity of classifying and organizing all facts of external observation, not only with a view to the preservation of knowledge, but also with a view to facilitate the making of new discoveries, looking also possibly to that unification of knowledge, which, up to this time, remains no more than a pleasing dream.

It might have been supposed that the law, being largely experimental, and naturally adjusting itself easily to comprehensive rules, would have offered the most obvious and inviting field for the exhibition of the theories of Bacon; but his teachings have had perhaps less effect on English law than on any other science. The practice of reporting individual cases, which he found established, was an anticipation, to some extent, of his methods of critical inquiry as to individual instances; but the legal profession rejected his doctrine of careful classification and constant and scrupulous revision upon every new accession of knowledge. It is, however, a safe prediction that his doctrines, triumphant in all other fields of inquiry, must eventually prevail in English and American law also, the most intractable of all materials yet encountered.

With his greater singleness of purpose, Coke was enabled to accomplish, though in a very different way, a task that Bacon was compelled to forego. Though not the author of the English system of reporting, he brought the art to a degree of perfection never before attained, and rarely reached in latter times; he gave to the office of reporter a new dignity and importance; while in his commentaries upon Littleton he covered the whole field of English law as it then existed. His reverence for antiquity prevented him from discriminating between things in full force and things obsolescent and things obsolete; and hence he devoutly preserved every technicality that was anywhere imbedded in the law; thus hampering legal development along the lines of natural justice and equity, and raising up that large and influential body of lawyers, who, adhering always to the strictest letter of the law, made a fetish of every conceivable technicality; lawyers who rendered perpetual homage to the deified Quibble; who shuddered at the thought of an erasure in a deed; who were ready to go into convulsions at a suggestion to amend a pleading; and who seemed really to believe that the universe would some day be derailed and destroyed by a misplaced comma.

There is no doubt but that Coke's work was and remains a colossal monument of labor and industry. He was the Moses that led the profession out of the wilderness of the year-books, the abridgments, the unwritten, the confused and undefined customs. Before this, the law was but poorly understood, or was not understood at all; but Coke flattered himself that, with his commentaries, which offered a short road to knowledge, a man might hope to attain to some acquaintance with the common law after the lucubrations of twenty years; a saying that must have filled the hearts of the students of the Inner Temple with exceeding joy.

When the crowning edifice of the common law was thus made complete, Bacon had already set at work the forces that were to effect its demolition. The common law established a lay and ecclesiastical hierarchy reaching from the serf to the throne. The political fabric was mortised and riveted together in every possible way. The penal laws were hardly less bloody than those of Draco. The feudal system of land laws, with its fantastic complications, its oppressive exactions, afforded a striking

example of the culmination of aristocratic misrule. Though the institution of chivalry, now an object of universal derision, had struck the first blow in her interest, woman, by the common law, remained a slave from her cradle to her grave. In short, there was some reason for saying that the law, as it then existed, was "the result of the blundering and chicanery of several generations that in legal language is called the wisdom of the age."

The common law possessed, however, one virtue that redeemed many sins. It was instinct with that political liberty that was born and nurtured among the tribes that lived in the shadows of the great oaks of Germany for ages before Tacitus placed their simple customs in contrast with the meretricious manners of Imperial Rome.

But whatever its virtues or faults may have been, it was not endowed with the permanence which the rigidity of its structure gave to it in the eyes of Coke. The chancellor was already engaged in smuggling into the country the equitable principles of the civil law, which were at a later day to filter into the common law courts until the whole lump should be leavened; and the new civilization, starting into life at the voice of Bacon, was to render the affairs of life so varied and complex as to make the common law system wholly inadequate to the wants of men.

What Bacon desired was that Parliament should enter upon a career of cautious, prudent and enlightened law reform. The work of Coke was conceived in a different spirit; but his name as a jurist was so great, his accuracy so surprising, that his summing up of existing law acquired an authority almost as absolute as that of a legislative enactment. They were both great men, and great lawyers; but their methods were essentially different. Coke had all the qualities of a great judge, and Bacon had all the qualities of a great judge except the indispensable virtues; one was the greatest of reformers, the other belonged to the ranks of the most extreme conservatism.

CIRCUMVENTING THE MICROBES.—How a witness may kiss the Testament without incurring the dangers that lurk in the ceremony is a problem that has been ingeniously solved in the Northampton County Court, where a witness, at the instance of his Honour Judge Snagge, was sworn on a Testament wrapped in clean paper. If the intervention of paper between the book and the lips does not detract from the sanctity of the oath, the practice that prevails among certain witnesses of kissing their thumbs will not possess the effect which they now fondly believe it to have.—*Law Journal.*