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TRIAL BY JURY.

Mr. Percy Greg, in his able work, the "Devil's Advocate," makes one of his debaters say: "I am not a representative Tory. But, speaking for myself alone, the idiocy of verdicts has taught me a profound contempt for that palladium of English liberty—trial by jury." This remark, although of course couched in flippant and extravagant terms, represents the opinion of a not inconsiderate class of laymen on the value of verdicts, and the policy of retaining trial by jury. But, like all sweeping condemnations, it has the supreme defect of a general conclusion drawn from partial knowledge and partial observation. The mere conjunction of the expression "palladium of English liberty" with "idiocy of verdicts" at once betrays ignorance or want of recognition of the diverse character and object of trial by jury. When this mode of reaching a judicial decision is belauded as the palladium of English liberty, trial by jury in a limited class of criminal prosecutions, and possibly one class of civil actions, is really regarded. Thus, in trials for treason, sedition, seditious or blasphemous libels, ordinary libels, *scandalum magnatum*, and in cases under the Foreign Enlistment Act—in short, where the Crown is not only in name but in substance the prosecutor, and perhaps, also, in civil libels—trial by jury may fairly be spoken of as a palladium of liberty. So that, in order to justify the debater's opinion, it must be shown that juries display idiocy in the very limited class of cases above named. But this is manifestly not so; for the instances in which juries are called upon to act in this class are very rare indeed; and, possibly, the only fault to be found with their verdict in modern times has been their bias against the Crown. If in any other cases juries have shown idiocy, then those have been cases in which trial by jury has been in no sense the palladium of liberty.

But, apart from criticism of Mr. Greg's debater, there is to be found in the present day a scepticism, and perhaps a growing scepticism, as to the expediency of retaining trial by jury. In order to appraise this disbelief at its proper value, we must endeavor to distinguish between the various kinds of trial by jury; for otherwise we shall be doing exactly what we have already said ought not to be done—that is to say, we should be indulging in sweeping condemnation through partial observation. Roughly speaking, there are four classes of juries, or rather jurors, in this country. We have the special jurors and the common jurors of agricultural districts, and the special jurors and the common jurors of the metropolis and of large cities. Now for dealing with the class of cases coming before them, such as rights to and in land, and disputes involving character, the special jurors of the agricultural districts are most competent, and we should think that no one would call their verdicts idiotic; and no suitor, having a genuine belief in his cause, would desire any other tribunal. So, also, before the *amendment* of the Jury Acts, special jurors in the metropolis formed admirable tribunals. They were men of great intelligence, great experience, and great integrity. At Guildhall the experience was "commercial," and at Westminster it was "civil and social." In both places the special juries commanded the unfeigned respect of judges, counsel, and suitors; and there is no reason to suppose but that in Liverpool, Manchester, Leeds, Bristol, and other great cities and towns, the faith in special jurors was equally general and well founded.

So also in the metropolis, and large cities and towns, the common jurors exhibit sagacity and fair knowledge of business of the inferior class; but the fault of them was, and is, that they are apt to be swayed by prejudice, local, personal, and commercial; that their knowledge of social life is too narrow; and that their conception of human motives and tendencies is incomplete. The mischief which might have arisen from the imperfect education and limited observation of the common jurors of cities and towns was obviated, for the most part, by the use of special jurors in all cases where danger might have been apprehended from the employment of common jurors.

There remain the common jurors of the agricultural districts; and these are the persons whose bewilderments and inconsequential ver-

dicts have supplied matter for the ridicule and contempt of trial by jury. In civil causes it is almost painful to see counsel and judges trying to make small farmers understand a commercial transaction of complexity. Even the expressions commonly used by lawyers are enigmas to these jurors, and the verdict is often a leap in the dark; at the same time, on their own ground, these jurors are admirable, and know how to deal with a matter of parochial law, of disputed boundary, of warranty in animals, and a variety of other rural cases. Thus we see that in trials at *nisi prius*, if we may still use that expression, there was little room for dissatisfaction with the conduct of jurors.

In criminal cases it is not quite so easy to know the evil from the good in juries. Every reader of a newspaper deems himself competent to find a true verdict in a prosecution, and thereby every one instinctively affirms the value of trial by jury. That country juries and town juries both make tremendous blunders now and then in criminal trials is certain. But our law is in no small degree responsible for this. We close the prisoner's mouth; and we also, in practice, prevent him from calling witnesses, so that not much more than half the case is put to the jury. When it is said that a prisoner is prevented by our practice from calling witnesses, it is meant that, whereas in a civil case it is very rarely wise to go to the jury on the plaintiff's case, in criminal cases it is very rarely wise to call witnesses for the defence. Thus, in civil cases, both sides are fully heard, because, if the defendant and his witnesses are not called, the jury is asked to draw a clear inference. But in criminal cases no such inference can be drawn, and, instead of the whole story being brought forward, only part of it is heard; and at the close of that, an astute and eloquent counsel does his utmost to confuse, confound, and mislead the jury. So, also, in civil cases there is such a thing as "discovery;" but in criminal cases every one combines to advise the prisoner to hold his tongue, and burn his correspondence. Giving credit, however, to all these incidents of criminal trials, we must admit that provincial juries, and even town juries, do not grapple with criminal cases as they ought. But it by no means follows that trial by jury in such cases should be abolished, for a remedy can be found in the substitution of a higher class of persons as jurors; yet, as one great virtue of justice is to seem just, prisoners might reasonably object to being tried in certain cases by men much higher in the social scale than themselves.

We have spoken of the past rather than the present in connection with the metropolitan special jurors. The present is by no means equally excellent. Instead of a system of selection by a competent officer acting for the sheriff, we have now a mere rating test of pounds, shillings and pence for special jurors; and a grosser blunder in legislation was never known. The change arose partly from a desire to increase the number of special jurors as the work became rather onerous to the selected persons, and partly from a concession to democratic notions. The result unquestionably is, that the special jurors in the metropolis have sunk very much indeed in the esteem of the bench and the bar; and this fall has induced the bench not only to treat verdicts with less respect than was formerly shown, but also to usurp the functions of the jury by giving indications, far too plain to be mistaken, as to which way the verdict ought to go. There are judges, not the least certainly among their brethren, who deal with their cases in a spirit of absolute loyalty to the constitutional theory, and who endeavor to assist without controlling the jury. But there are judges who seem to be just as eager to get verdicts on the bench as they were at the bar—in this sense, that, when they have arrived at a definite conclusion upon the evidence, they exert their immense powers to bring about the desired result by the verdict of the jury. So, also, rules *nisi* to set aside verdicts are granted somewhat freely, and judges are very prone to make such rules absolute where they run counter to the opinion of the judge who tried the cause. The new order that all rules *nisi* for new trials shall be moved in the division in which the judge who tried the action sits, is also indicative of the tendency of the bench to increase its control over verdicts; for it is manifest that the task of counsel in upholding or upsetting a verdict is enormously increased by the presence in court of a judge who at the trial has made up his mind as to the true verdict, and who seeks to guide the court to the result which he believes to be right.—*Law Journal* (London).

NOTES OF CASES.

SUPERIOR COURT.

DISTRICT OF TERREBONNE, March 24, 1879.

DE BELLEFEUILLE et al. v. PICHÉ.

Seigniory—Censitaire holding more land than set down in the cadastre—Survey to be made before suit.

The plaintiffs alleged that by error the defendant's property within their seigniory was set down in the *cadastre* of the seigniory as containing 335 arpents, 8 perches, whereas it really contained 1084 arpents, 35 perches. They claimed $159.20 for five years' arrears of *rente* on the excess of land on which nothing had been paid. They also claimed $100 for another cause.

The defendant pleaded to the demand for *rente* that the plaintiffs could not claim *rente* for more than was entered in the seigniorial schedule, the *cadastre* being a final title between the parties.

BELANGER, J. The question raised by the plea is whether the plaintiffs are entitled to more *rentes constituées* than for the extent of land set down in the *cadastre* of the seigniory, and if so, on what conditions. The defendant invokes the preamble and Sect. 1 of 32 Vict., c. 30 (Que.) That Act was passed to avoid the necessity of renewal deeds in certain cases, and to give a personal action against the holders of the lands. It does not affect or amend in any respect the Act, 29-30 Vict., c. 30, which was passed to provide for the correction of errors in the schedule of a seigniory. The plaintiffs are, therefore, entitled to avail themselves of the last mentioned Act, and the case comes under Sect. 2: "Any *censitaire* whose name shall have been inscribed on the schedule as holding an extent of land less than that which he actually possesses, shall nevertheless be bound to pay the *rente* for the whole extent of land which he possesses; and the seignior, after he has caused a survey to be made establishing the extent of the land in question, may claim from the *censitaire* payment of the *rente* due on such land, at the rate fixed for that part thereof which has been set down in the schedule."

According to the clause cited above, a survey should have been made establishing the extent of the land, before the institution of the action, and notice thereof should have been given to the *censitaire*. Here, there was no survey until long after the action was taken out, and notice was not given, for I cannot consider that the bailiff's certificate on the back of the surveyor's notice makes proof of the service of the notice. Bailiffs are officers of the Superior Court for judicial matters, and outside of such matters their certificate proves nothing. The *exception en droit* of the defendant is, therefore, maintained, and the part of the demand asking for $159.20 is dismissed. The other portion of plaintiff's demand is not proved.

Action dismissed.

C. L. Champagne, for plaintiffs.
De Montigny & Co. for defendant.

MONTREAL, March 31, 1879.

DUHARME v. THE MUTUAL FIRE INS. CO. OF THE COUNTIES OF CHAMBLY, LAVAL AND JACQUES CARTIER.

Fire Insurance—Misrepresentation as to encumbrances—Delay to file claim—Waiver.

The plaintiff sued for $1,000, amount of insurance on a house, furniture, &c. The Company pleaded, *inter alia*, that by his application, which formed the basis of the insurance, plaintiff had falsely declared that there was no encumbrance on the property, whereas there was a hypothec exceeding $107; and also, that he could not recover because he did not file his claim within 20 days, as provided by the policy and C. S. L. C., chap. 68, sec. 13.

In the application the 12th question reads:—"What encumbrance, if any, is now on said property?" And the answer, "Not any." Plaintiff, examined as a witness, admitted that the last $100 of the purchase money, with interest, was only paid on the 26th of August, 1878, the fire having taken place on the 3rd of January, 1878. He subsequently sold the land for $232.

JETTÉ, J., gave judgment for $730, property of the value of $270 having been saved. His Honor held that the Company had waived its right to object on account of the delay, as the Board, by its resolution of March 26th, 1878, had resisted the claim on other grounds alone. He also held that as the mortgage on the property did not affect the risk, and as

there was no proof of bad faith on the part of plaintiff, this plea, also, must be dismissed.

Judgment for plaintiff.

Archibald & McCormick for plaintiff.

Duhamel, Pagnuelo & Rainville for defendants.

COURT OF REVIEW.

MONTREAL, March 31, 1879.

JOHNSON, MACKAY, PAPINEAU, JJ.

GAGNON v. SOREL GAS CO. et al., and Fulton, Assignee, opposant.

[From C. C., Richelieu.

Opposition by Assignee to sale of insolvent's real estate—Formalities to be observed.

JOHNSON, J. The assignee's opposition in this case was dismissed on motion made by the plaintiff.

The 97th section of the Insolvent Law enacts that if at the time of the issue of an attachment, or the execution of a deed of assignment, any property of an insolvent is under seizure, by execution, the sale shall be proceeded with, unless stayed by order of the Judge, upon application by the assignee, upon special cause shown, and after notice to the plaintiff; and in such case the party prosecuting the sale has a privilege for his costs of execution, and the money is to be returned into Court for distribution among the creditors. That was the position of the assignee here: the execution had issued, the property was shortly to be brought to sale, and he got an order from the Judge, but *not after notice to the plaintiff.* The opposant contended here that he had not taken this proceeding under section 97 of the Insolvent law: but his opposition is made in his capacity of assignee; and the article 651 of the Code of Procedure, on which he relies, gives no right whatever to any opposant under any circumstances; but merely denies the right of the Sheriff to stop a sale in ordinary cases of oppositions unaccompanied by certain stated formalities. We all think that the order of the Judge to be effective required the observance by the opposant of the provisions of the 97th section: that is to say, that there ought to have been special cause shown, and notice given to the other party; and, therefore, the judgment dismissing this opposition is correct, and it is confirmed.

Keudler for opposant.

Mathieu & Co. for plaintiff contesting.

JOHNSON, MACKAY, PAPINEAU, JJ.

VALADE v. BELLEHUMEUR.

[From S. C., Montreal.

Capias—Evidence showing intention to leave the country with intent to defraud.

JOHNSON, J. The defendant's petition to be liberated, and to set aside a writ of *capias*, was granted (Rainville, J.); and the plaintiff now inscribes that judgment for review. The defendant's petition set out that the allegations of the plaintiff's affidavit, on which the writ issued, were false. These allegations were, after setting out the debt, that the deponent verily believed and had been informed by two persons, namely, Antoine and Isidore Champagne, that the defendant was immediately about to leave the country. The intent to defraud, and the possible loss of his remedy, were also sworn to. The evidence brought up by the defendant in support of his petition, to show that these allegations of the affidavit were untrue, were his landlord and two of his friends, who certainly proved nothing of the kind. Their evidence was altogether of that slight and negative kind that consists in saying that the witnesses were not aware of any intention on his part to leave the country: but that was little to the purpose; the point was whether the plaintiff had been credibly informed, and whether the information was true; and if the case had stopped there, it would not be contended, I should think, that the defendant had set aside the main allegations of this affidavit. But the plaintiff, in his turn, brought up Isidore Champagne, who proved positively that the defendant had told him that Dr. Valade might go to the devil (*que le docteur pouvait aller se faire sacre*); that he would never pay him a cent, but would go off to Montana, and his family would follow. This evidence is untouched except in one particular: that is, it appears that Isidore was not the person who communicated this information to the plaintiff. He got the information from the defendant himself, who cannot, therefore, pretend that it is untrue, unless he can set aside Isidore Champagne's evidence, which is

not attempted. Therefore the fact remains that, by his own confession, he was going to leave the country with the clear intent charged in the affidavit. In my opinion it matters little whether the channel through which this information reached the plaintiff was Isidore or the other. It appears it was the other Champagne and one Lapierre who reported this to the plaintiff; but they were all present in the railway carriage when it was said. It does not appear to me that the affidavit is even incorrect in saying that the plaintiff was informed by the two persons named Isidore and Antoine Champagne. Isidore was the one who from his position in the carriage heard it best, and he reported it to Antoine, who reported it to the plaintiff; and the latter might reasonably say that the information came from both, though only one was the medium of communication. Besides, I am not prepared to say that with the fact of the *meditatio fugæ*, and the intent both clearly proved, a misstatement of the name of the person who informed the plaintiff would entitle the defendant to get the writ quashed.

The judgment of the Court is to reverse that part of the judgment which quashed the writ; and to declare the *capias* valid, and costs in both Courts.

Judgment :—"The Court, etc.

"Considering that the evidence adduced by the petitioner in support of his petition is not sufficient to support the same, and that the evidence of Isidore Champagne, a witness for the plaintiff contesting the said petition, conclusively establishes the truth of the allegations of the affidavit on which the writ of *capias* in this cause was issued, doth reform the said judgment by reversing that part of the same which granted the prayer of the said petition, and doth dismiss the said petition, and doth maintain the said capias as good and valid."

Roy & Boutillier for plaintiff.

Duhamel, Pagnuelo & Rainville for defendant.

JOHNSON, MACKAY, PAPINEAU, JJ.

FLETCHER v. SMITH; Smith, opposant, and plaintiff contesting.

[From S. C., St. Francis.

Execution—C. P. 589—Writ lapsing by failure to proceed with sale before return day.

JOHNSON, J. Smith, the opposant and defendant in the case, made his opposition *afin d'annuler* to a seizure under a writ of *venditioni exponas*, and this opposition was maintained by the Court at Sherbrooke; and the plaintiff who contested it now inscribes for review. I am of opinion that the judgment is right. The first seizure in the case was made under a *fieri facias de bonis*, issued on the 16th of April, 1878, and returnable on the 31st of May. On the 18th of April the seizure was made, and three oppositions were filed by third parties *afin de distraire*. On the 13th of May all these oppositions were dismissed on motion for informality in respect of the want of stamps. On the 17th of July the plaintiff issued his *venditioni exponas*, which was contested by the opposition, whose validity is now in question here. The return day of the first writ had expired, and more than two months had elapsed between the return day and the date of the *venditioni exponas*. The opposition, then, is founded, and apparently well founded, on article 589 *Code de Procédure*. That article says, if there is no obstacle to the sale, it must take place according to the notice given of it, excepting in the case of article 578, which provides for a first seizing creditor not being able to retard a second one, if he does not proceed with diligence. In all such cases, if the seizing party does not proceed before the return day, the writ lapses unless it is prolonged by the Judge's order. No such order was given, and no case for getting such an order ever arose. It is clear, therefore, that when the *venditioni exponas* issued, there was no seizure subsisting, and that the Sheriff could not proceed to the sale without seizing over again.

Judgment confirmed with costs.

Bélanger for defendant and opposant.

Ives & Co. for plaintiff contesting.

JOHNSON, MACKAY, PAPINEAU, JJ.

BATES et al. v. LAUZON, and PERKINS, Assignee, intervening.

[From S. C., Ottawa.

Action to enforce judgment obtained in Ontario—Defence where service was personal.

JOHNSON, J. The plaintiff in this case obtained judgment against the defendant in the Court of Common Pleas, in the Province of Ontario, on the 22nd September, 1877, for $255.25, for debt and costs, and on the 17th of October

of the same year he brought his action in Lower Canada, in the District of Ottawa, upon that judgment. The defendant appeared and pleaded: 1st, a demurrer, which was dismissed; 2nd, the benefit of the Insolvent Act, and of a deed of composition effected under it; the defendant alleging that he had become insolvent, and on the 14th of March, 1877, had assigned to Coutlee, and afterwards, on the 9th of April, Perkins had been appointed official assignee; and that the terms of this deed of composition had been complied with by the defendant. The plaintiffs among other answers, replied specially that there had been on the defendant's behalf no compliance with the requirements of the Insolvent law, or with the terms of the deed of composition; and that he was not bound by either of them. The issues being completed, and the demurrer dismissed, the plaintiff inscribed for proof and final hearing, and after he had closed *enquête*, an intervention was filed by Perkins as assignee to the defendant's insolvent estate, with a view of contesting, on the defendant's behalf, the validity of the judgment rendered in Ontario, and also the fact of the defendant's indebtedness. This intervention was allowed by the Court, and revived much the same issues as had existed between the plaintiffs and the defendant; but with the addition of an answer by the plaintiff, founded on our Provincial statute, respecting judgments rendered out of the Province, and averring a personal service on the defendant in the original case in Ontario, and that he had appeared and pleaded to that action, and the judgment was conclusive. There was an admission that the evidence given under the first issue should serve under the second, and the defendant was also examined. The final judgment dismissed the intervention, and the defence set up by the defendant, and maintained that the judgment in Upper Canada was conclusive. This judgment appears to us perfectly correct in all respects. Chapter 14 of the Quebec Statutes of 1876 provides both for judgments rendered beyond the limits of Canada and for those rendered in other provinces of Canada. The case in hand is of the latter description, and in such cases the law says that where a defendant has been served personally (of which there is clear proof in the present case), or even where he is not so served, if he appears (which he also did here) he cannot be allowed to repeat, in the Province in which an action is brought to enforce such a judgment, what he might have pleaded to the first action. The defendant's pleas, therefore, to the action brought in this Province upon the Upper Canada judgment, and the intervention also, were bad except as regards the allegation made in the latter that the Upper Canada judgment has been got collusively. On that part of the case there is no proof except one that would tend very strongly to rebut such a pretension; for the proceedings in the Upper Canada Court were stoutly resisted by the defendant.

O. B. Devlin for plaintiffs.

McIver for intervenant.

RECENT UNITED STATES DECISIONS.

Fixture.—Plaintiffs sold water-wheels for use in a mill, on condition that the property should not pass till the price was paid. The buyer set up the wheels in his mill, and afterwards sold the mill to defendant, who had no notice of the agreement as to the wheels. *Held*, that he could hold them against plaintiffs.—*Knowlton* v. *Johnson*, 37 Mich., 47.

Frauds, Statute of.—1. Plaintiff agreed to serve, and did serve, defendant for a term of six years; and defendant promised at the end of that time to pay plaintiff the reasonable value of his services. *Held*, that plaintiff, having performed his part of the contract, might recover on defendant's promise, though the contract was within the statute.—*Towsley* v. *Moore*, 30 Ohio St., 184.

2. A promise was made to pay a sum in four yearly instalments. Two were paid. *Held*, that no action lay for the others. *Parks* v. *Francis*, 50 Vt. 626.

Gaming.—Betting on the result of an election is gaming.—*Frazer* v. *The State*, 58 Ind. 8.

Gift.—The drawer of a check handed it to the payee, intending to make a gift of the money for which it was drawn. Before the check was presented, the drawer died. *Held*, that the gift was revoked.—*Simmons* v. *Cincinnati Savings Society*, 31 Ohio St., 457.

Grand Jury.—Indictment for the murder of J. S. Plea, that one of the Grand Jury who found the indictment was a nephew of J. S. *Held*, bad.—*State* v. *Easter*, 30 Ohio St. 542.

Illegal Contract.—A agreed, in consideration of $250, to purchase of B, at any time within six months, $2,500 in gold coin, at a premium of 95 cents on the dollar, B having the option to deliver or not. *Held*, that the contract was not void on its face as a gaming contract.—*Bigelow* v. *Benedict*, 70 N.Y. 202.

Indictment.—Indictment for obtaining, by false pretences, "divers United States treasury notes and divers National Bank notes, the denomination of which is to the jurors unknown, amounting in the whole to the sum of $158, and of the value of $158, the property of C." *Held*, sufficient.—*State* v. *Hurst*, 11 W. Va., 54.

Insurance (Fire.)—An application for insurance, containing a warranty that its statements were true, was signed by the applicant without reading it, he having truly stated the facts to the insurers' agent, who had by mistake written them untruly in filling up the application. *Held*, that the insurers were estopped to take advantage of the mistake.—*Home Ins. Co.* v. *Lewis*, 48 Tex. 622.

RECENT ENGLISH DECISIONS.

Master and Servant.—1. The defendants had a wharf on the Thames, where coal was brought in barges, to be used in their business of brewers. A gang of men unloaded the barges at 1*s.* 9*d.* a ton, paid by the defendants. One A., a servant of the defendants, hired the plaintiff to work in the gang. A. was charged with getting the barges discharged, and either he or some other of the gang received the money in the lump from the defendants, and distributed it to the men who did the work. He hired the men; but they could not be dismissed without reference to the defendants. In the course of his work, the plaintiff was injured by a barrel negligently let fall upon him by another servant of defendants engaged in moving barrels at a point where the plaintiff had often been, and knew what was going on. *Held*, that the defendants were not liable. The plaintiff was their servant, and not A.'s., and though not engaged in the same work, he and the servant whose negligence caused the injury were fellow-servants. A. was a foreman, not a sub-contractor.—*Charles* v. *Taylor*, 3 C. P. D. 492.

2. At L. there are two railway stations, that of the N. Railway, and that of the defendant, abutting on each other and having parallel lines of rails, with signals and points governing the entrance of trains, worked by signal-men whose duty is common to both stations. S., a signal-man, was hired and paid by the N. railway and wore its uniform. His duties were, however, common to the two railways, though he did not know that fact when he was appointed. In the discharge of his duty, S. signalled an engine of defendant coming towards the station on the N. company's arrival rails, with an N. company truck, to go on the defendant's departure rails. The driver did so, and ran in, and then reversed and ran out on the other track, and negligently struck and killed S., without any negligence on the part of S. *Held*, that the defendant company was liable.—*Swainson* v. *The North Eastern Railway Co.*, 3 Ex. D. 341.

Mortgage.—A. W. bequeathed her residuary personal estate, consisting of a mortgage on real estate of £3,000, to trustees for the benefit of several persons, and in reversion for W. H. The trustees continued to let the property lie in the mortgage. In 1861, W. H. mortgaged his reversionary interest, to secure a debt and interest. In 1871, he died, having paid no interest on the debt, and without other property than the reversion. In 1877, the reversion fell in. *Held*, that the mortgagee was entitled to interest from the date of the loan, out of the fund. W. H.'s mortgage was not a charge on real estate within the Statute of Limitations, 3 & 4 Will. IV., c. 27.—*Smith* v. *Hill*, 9 Ch. D. 143.

Negligence.—1. A dock company, required, by act of Parliament, to maintain an embankment at a certain height, failed to do so. An extraordinary high tide came, and the water flowed over the embankment several inches above the height at which the company was required to keep the embankment, and injured the plaintiff's property. *Held*, that the company was liable, but it might show that the damage caused by its negligence and that caused by the overflow above the prescribed height of the embankment could be divided.—*Nitro-Phosphate & Odam's Chemical Manure Co.* v. *London & St. Katharine Dock Co.*, 9 Ch. D. 503.

2. Sewer and highway authorities made a contract for laying a sewer along a highway. The contractor dug a trench ten feet deep, which

was filled up after the sewer was laid, and, on inspection by the surveyor of the said authorities, pronounced satisfactory. Some months afterwards, the plaintiff's horse, passing over the highway, broke through into a hole about a foot deep, and was injured. No cause could be seen for the subsidence, and a few hours before the accident the surface of the road was intact. *Held*, that there was evidence that the work was not properly done, and the authorities were liable as for misfeasance.—*Smith* v. *West Derby Local Board*, 3 C. P. D. 423.

Partnership.—Under a partnership made in March, it was agreed that the accounts should be made up on March 25 and September 29 of each year, and, in case of withdrawal or death of a partner, his interest should be reckoned as of the last previous account-day so fixed. On the following September 29, the accounts were so made up, and it was then agreed that thereafter the accounts should be made up only once a year and on that day. The next May a partner died. *Held*, that his interest should be computed as of the date of March 25 preceding and not of September 29.—*Lawes* v. *Lawes*, 9 Ch. D. 98.

Party-wall.—At common law, no action lies by one co-owner of a party-wall against the other, for digging out the foundation for the sake of replacing it by a new and better one, provided the proceeding is *bona fide* for improving the property, and no danger or damage attends it.—*Standard Bank of British South America* v. *Stokes*, 9 Ch. D. 68.

Patent.—1. Action for infringement of a patent for "improvements in screws and screw-drivers, and in machinery for the manufacture of screws." The question what constitutes a valid patent in point of novelty, and what constitutes an infringement, discussed.—*Frearson* v. *Loe*, 9 Ch. D. 48.

2. Discrepancy between provisional and complete specifications. The first claimed for the use of a solution of gelatine and bisulphide of lime for preserving meat. The latter mentioned only the use of bisulphide of lime without more. By a prior patent, this substance had been used. *Held*, that, considering the evidence, the next patentees might possibly claim for the process described in the provisional specification, but that that claimed in the complete specification was not novel.—*Bailey* v. *Robertson*, 3 App. Cas. 1055.

Profit à Prendre.—A right of *profit à prendre* in the inhabitants of a parish, to take fagots from the common of the lord of the manor, cannot exist by custom, prescription, or grant, unless by a Crown grant, the inhabitants had been incorporated. Such a grant of incorporation will not be presumed when there is no trace of its existence, especially if the user of the inhabitants claimed is inconsistent with its existence.—*Lord Rivers* v. *Adams; Same* v. *Isaacs; Same* v. *Ferrett*, 3 Ex. D. 361.

Railway.—1. A railway acquires the fee-simple in lands taken for its purposes; but the land must be used for those purposes. A railway cannot obstruct the windows of a building adjoining the railway, so as to prevent the owner from acquiring an adverse right to look across the railway. An adjoining owner may acquire land left outside the fence enclosing the railway land, by adverse possession, on the presumption that the railway has abandoned it. —*Norton* v. *London & North-Western Railway Co.*, 9 Ch. D. 623.

2. By the Railway and Canal Traffic Act (17 & 18 Vict. c. 31, § 2), railway companies are forbidden to "give any undue or unreasonable preference or advantage to, or in favor of, any particular person or company," in the matter of carrying and forwarding freight. Respondent had a brewery at B. where there were three other breweries. The latter were connected with the M. railway. Respondent's was not. In order to get some of the freight from the three breweries away from the M. railway, the appellant railway carted their goods from the breweries to its freight depot, free of charge, and still made a profit on the whole transportation. The appellant made a charge to the respondent and all others for the same service. *Held*, that this was an "undue preference" within the act, and the respondent could recover in an action for money had and received, what he had paid under protest for such cartage.—*The London & North-Western Railway Co.* v. *Evershed*, 3 App. Cas. 1029; s. c. 2 Q. B. D. 254; 3 Q. B. D. 134.