THE

# LEGAL NEWS.

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## JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

LONDON, 11th December, 1895.

*Present:*—LORD HERSCHELL, LORD WATSON, LORD DAVEY.

THE EASTERN TOWNSHIPS BANK, Appellant, and

ROUGH *et al.*, Respondents.

*Sale—Mandate—Agreement to re-sell—Warranty.*

HELD:—*Where an agreement was entered into between two parties that in the event of one of them becoming the purchaser of a certain property at Sheriff's sale, the other might exercise within ten days the option of buying the same from the first party on certain terms stated, that the purchaser at the sale did not act as mandatory for the other, but became the actual proprietor. Therefore, where the Sheriff's sale was subsequently set aside, after the purchaser at the sale had transferred the property to the other and received part of the price, it was held that, as his warranty as vendor was not fulfilled, he was bound to reimburse to the other the amount paid in respect of the sale.*

The appeal was from a judgment of the Court of Queen's Bench, delivered at Montreal, in the consolidated cases of the Eastern Townships Bank *v.* Rough, McDougall and Beard, and the Eastern Townships Bank *v.* Rough.

LORD HERSCHELL:—

Although the facts of this case are somewhat complicated, the

questions of law involved do not in their lordships' opinion present any difficulty.

The Eastern Townships Bank carry on the business of bankers in Canada, having their head office at Sherbrooke, in the Province of Quebec, with a branch office at Coaticooke. Amongst the persons banking with the Eastern Townships Bank were the Pioneer Beetroot Sugar Company. In February, 1882, this company was indebted to the Bank in a considerable amount. As security for $15,000, a part of this indebtedness, the Bank held mortgages of the real estate of the company. In respect of a further sum of $23,000 the Bank obtained a judgment by default against the company on the 25th February, 1882, and registered it against the real property of the company on the same day.

On the 21st October, 1882, Fairbanks & Co., creditors of the Sugar company, attached under execution of a judgment all the real property of the company, which the sheriff of the district advertised for sale on the 12th January, 1883. The respondent Beard, who had leased the factory of the Sugar company on favourable terms, was anxious to prevent a sale, and with this object he paid off Fairbanks & Co.'s debt and took a transfer of their rights. Having done so he enquired of the sheriff whether he would stop the sale. The sheriff, however, was not in a position to take this course inasmuch as writs had been noted in respect of other judgments which rendered it obligatory on him to proceed with the sale. Under these circumstances Beard entered into negotiations with the Bank with a view to obtaining the property which was to be sold. The nature of these negotiations sufficiently appears from the letter which, as their result, Mr. Farwell the manager of the Bank, on the 6th of January, 1883, addressed to Messrs. Beard and McDougall.

The letter was in the following terms:—

"In the event of the Bank becoming the purchaser of the "Pioneer Beet Sugar Company property now advertised to be "sold at sheriff's sale on the 12th inst., we hereby agree to sell "the same to you jointly and severally within ten days there- "after at such sum as will pay our claim and all expenses "connected with the sale upon the following terms and con- "ditions, viz.: a cash payment of a sufficient amount to reduce "our whole debt to $40,000, a further sum in cash with what

" we may succeed in realizing from Ellenhausen notes now in " suit to amount of ten thousand dollars more within six months, " with interest at 7 per cent. per annum on whole amount un- " paid, five thousand dollars within 12 months, and five thousand " dollars annually thereafter until fully paid with interest semi- " annually at the rate of seven per cent. per annum, the property " to be mortgaged to the Bank as security for due payment of " above sums, and to be kept insured in good companies to the " satisfaction of the Bank to full amount of their claim, on the " execution of the deeds, the cash already realized from collateral " to be applied in reduction of our claim, and the cordwood, bone " black and ground bones, now in possession of the Bank, to be " transferred to you, all notes and acceptances of the company " and of other parties endorsed by the company forming our " claim to be cancelled if practicable to be delivered over to " you."

On the 8th of January the following further letter was written:—

" Referring to that part of my letter of Saturday last address " ed to you respecting the Pioneer Beet Root Sugar Company " property, in which I agreed in the event of your purchasing the " property from us should it come into our hands at sheriff's on " the 12th inst. to transfer the cord wood, bone black, and " ground bones to you. I find it is questionable whether we " should legally be able to do this, as some of the notes for " which this is held as collateral are included in our judgment, " and application of a portion of proceeds of the sale could be " demanded to apply on those notes. I must therefore withdraw " that portion of my letter, and can only undertake to subrogate " you in respect to those collaterals in such rights as we have, " that have not been extinguished by the sheriff's sale. In other " respects my letter to remain in force and the property held by " us for ten days from date of sale, subject to your acceptance on " the terms and conditions therein stated. Please acknowledge " receipt of this and state if satisfactory.

" P.S.—It is understood our whole debt with interest and costs " is to be paid, and we should deed without any warranty."

The letter which Mr. McDougall on the 9th of January wrote in reply has in some unexplained manner disappeared from the record, but it appears clear that he expressed himself satisfied with the proposals made by Mr. Farwell.

On the 12th of January the real estate of the Sugar Company was sold by the sheriff, and the Bank were adjudged the purchasers at the price of $1,400. On the 13th of January McDougall and Beard requested the Bank manager to get the deed of sale from the sheriff, so that the deed of sale from the Bank to McDougall and Beard, subject to the conditions and terms of the manager, might be at once prepared.

On the 19th of January, 1883, the Bank executed a conveyance of the property to Rough. This was done at the request of McDougall and Beard for reasons into which it is not necessary to enter. The conveyance was made by the Bank "with warranty as regards their own acts only." The consideration was $49,439 of which $9,439 were acknowledged as already received, leaving $40,000 still due.

On the 28th April, 1883, the Hochelaga Bank, who were creditors of the Pioneer company, gave notice to the appellant Bank of their intention to take proceedings to set aside the sheriff's sale. On the 25th of June following, such proceedings were initiated by a petition. The appellant Bank appeared as defendants. The respondents Rough, McDougall and Beard were all *mis-en-cause* as being in possession of the property. They did not defend the proceedings, but submitted themselves to the judgment of the Court.

On the 18th of May, 1884, the appellant Bank commenced an action to recover the sums due under the provisions of the deed of sale. In the month of September following, Rough instituted an action to set aside that deed and to recover the sums paid in respect of the sale. The cross action and the petition of the Hochelaga Bank were consolidated by orders of the Court, and by consent the evidence taken on the petition was made evidence in the actions.

On the 20th February, 1890, Mr. Justice Taschereau gave judgment in favour of the Hochelaga Bank on their petition, annulling the sheriff's sale and all proceedings thereunder. On the 10th of March following he gave judgment in the cross actions in favour of the Eastern Townships Bank, with the result that whilst the purchasers were deprived of the subject matter of the sale they were held still liable to pay the price agreed upon. The ground upon which this decision proceeded was mainly that the purchase from the sheriff was made by the

appellant Bank as mandatory only for McDougall and Beard of whom Rough was the *prête-nom*. Their lordships agree with the Court of Queen's Bench which on appeal rejected this view of the facts as inadmissible.

The circumstances under which the appellant Bank purchased and subsequently conveyed to Rough, appear from the letters written in January 1883, there is no trace of any other agreement or arrangement than that which these letters disclose. In their lordships' opinion they are inconsistent with the view that the Bank in purchasing acted as mandatory for Beard and McDougall. The letter of the 6th of January contains an agreement by the Bank, in case they should purchase the property at the sheriff's sale, to sell it to Beard and McDougall. There is no indication of an arrangement that the Bank should act for McDougall and Beard in making the purchase, indeed the terms on which they were to acquire the property, the price they were to pay the Bank, appear quite inconsistent with any such idea. Although the letter probably constituted what is termed a firm offer on the part of the Bank to sell at the price and on the conditions named, that is to say they were bound to sell on those terms if within the time limited Beard and McDougall elected to buy, no obligation was imposed on the latter to do so. Even if the Bank obtained the property at the sheriff's sale, Beard and McDougall might have refused to become the purchasers, and unless they exercised their option within the ten days limited by the letter they could not have insisted upon becoming the purchasers. This is made quite clear by Mr. Farwell's letter of the 8th of January already quoted. He speaks of his having agreed in the previous letter "in the event of your purchasing "the property from us should it come into our hands at the "sheriff's" and concludes—"In other respects my letter to "remain in force and the property held by us for ten days from "date of sale subject to your acceptance on the terms and con-"ditions therein stated."

It was argued for the appellant Bank that even assuming that the sale was made with a warranty as regards their own acts, this afforded no answer to their claim to be paid the purchase money and no ground for setting aside the sale, inasmuch as it was not by reason of any act of theirs that the sale was declared void. After the judgment on the petition of the Hochelaga Bank

had been pronounced and whilst the appeals in the cross actions were before the Queen's Bench, the respondents McDougall, Beard and Rough sought to put in evidence that judgment. The application made with that view was refused by the Court on the ground apparently either that the judgment not being a final one it was not competent to introduce it, or that the rules of procedure did not admit of its being then introduced. The judgment of the Queen's Bench in the action brought by the appellant Bank condemned the defendants in that action to pay the sum demanded by the Bank, but suspended the execution of this condemnation until the Bank had put an end to the trouble and danger of eviction complained of. In the action brought by Rough it remitted the proceedings to the Court of first instance to be proceeded with according to the rights and obligations of the parties defined and established by the judgment of the Court of Appeal, after the regular introduction in that cause of the definitive decree of nullity pronounced at the instance of the Bank of Hochelaga.

The Court of Queen's Bench in the judgment now under review came to the conclusion that the appellant Bank were not strangers to the acts which rendered the sale by the sheriff invalid and that their warranty was therefore not fulfilled. Their lordships see no reason whatever to differ from that conclusion.

The appellant Bank insist, however, that seeing that the postscript to the letter of the 8th of January made it one of the conditions that they should "deed without warranty," they are entitled to the purchase money and are under no obligation to the purchasers even though these should be evicted from the property on the ground that the Bank acquired no title from the sheriff. It was contended that although the deed of sale by the Bank to Rough contains an express warranty as regards their own acts, the Bank are entitled to appeal to the agreement which the deed of sale was intended to carry out, and which when examined shows that there was to be no warranty at all.

It is not necessary for their lordships to consider whether it is competent to the parties thus to go behind the provisions of the deed and to absolve themselves from one of its express stipulations. Assuming it to be so their lordships do not think that this appeal to the document of January, 1883, is calculated to improve the case of the Bank. It is clear that the basis of the

whole transaction was to be a purchase by the Bank from the sheriff, and this must mean a valid and effectual purchase and not a mere apparent or pretended one. The circumstances show that the Bank did not really become the purchasers, not by reason of any defect in the prior title but because of a vice in the sale itself, which prevented its being a sale. It was only in the event of their becoming the purchasers that the terms and conditions of the letters of January, 1883, became applicable, and their lordships think that the Bank never did, within the true meaning of those documents, become the purchasers.

For these reasons their lordships will humbly advise Her Majesty that the judgment appealed from should be affirmed and the appeal dismissed with costs.

*R. B. Haldane, Q. C.*, and *A. W. Atwater*, (of the Montreal Bar) for appellant.

*R. W. Macleod Fullarton, Q. C.*, for respondents.

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## SUPREME COURT OF CANADA.

OTTAWA, 18 Feb. 1896.

Ontario.]

AGRICULTURAL INSURANCE CO. v. SARGENT.

*Suretyship—Principal and surety—Continuing security—Appropriation of payments—Imputation of payment—Reference to take accounts.*

J. H. S. was a local agent for an insurance company, and collected premiums on policies secured through his agency, remitting moneys thus received to the branch office at Toronto from time to time. On 1st January, 1890, he was behind in his remittances to the amount of $1250, and afterwards became further in arrears until, on the 15th October, 1890, one W. S. joined him in a note for the $1250 for immediate discount by the company, and executed a mortgage on his lands as collateral to the note and renewals that might be given, in which it was declared that payment of the note or renewals or any part thereof was to be considered as a payment upon the mortgage. The company charged J. H. S. with the balance then in arrears which included the sum secured by the note and mortgage, and continued the account as before in their ledger charging J. H. S. with premiums, etc., and the notes which they retired from time to time as they

became due and crediting moneys received from J. H. S. in the ordinary course of their business, the note and its various renewals being also credited in this general account as cash. W. S. died on 5th December, 1891, and afterwards the company accepted notes signed by J. H. S. alone for the full amount of his indebtedness, which had increased in the meantime, making debit and credit entries as previously in the same account. On 31st July, 1893, J. H. S. owed on this account a balance of $1926, which included $1098 accrued since 1st January, 1890, and after he had been credited with general payments there remained due at the time of trial $1009. The note W. S. signed on 15th October, 1890, was payable four months after date with interest at 7 per cent, and the mortgage was expressed to be payable in four equal annual instalments of $312.50 each, with interest at 6 p. c. on unpaid principal.

*Held*, that the giving of the accommodation notes without reference to the amount secured had not the effect of releasing the surety as being an extension of time granted without his consent and to his prejudice ; that the renewal of notes secured by the collateral mortgage was *primâ facie* an admission that at the respective dates of renewal at least the amounts mentioned therein were still due upon the security of the mortgage ; that in the absence of evidence of such intention it could not be assumed that the deferred payments in the mortgage were to be expedited so as to be *eo instanti* extinguished by entries of credit in the general account which included the debt secured by the mortgage; and that there being some evidence that the moneys credited in the general account represented premiums of insurance which did not belong to the debtor, but were merely collected by him and remitted for policies issued through his agency, the rule in *Clayton's case* as to the appropriation of the earlier items of credit towards the extinguishment of the earlier items of debit in the general account, would not apply.

*Held*, also, reversing the judgment dismissing the plaintiff's action in the courts below, that under the circumstances disclosed the proper course should have been to have ordered accounts to be taken upon a reference to the master.

Appeal allowed with costs.

*Holman*, for the appellants.

*Watson, Q. C.*, for the respondent.

18 Feb., 1896.

Ontario.]

ROOKER v. HOOFSTETTER.

*Mortgage—Agreement to charge lands—Statute of frauds—Registry.*

The owner of an equity of redemption in mortgaged land, called the Christopher farm, signed a memorandum as follows: "I agree to charge the east half of lot no. 19 in the seventh concession of Loughborough, with the payment of two mortgages held by G. M. G. and Mrs. R. respectively upon the Christopher farm . . . amounting to $750 . . . and I agree on demand to execute proper mortgages of said land to carry out this agreement or to pay off the said Christopher mortgages."

*Held*, affirming the decision of the Court of Appeal (22 Ont. App. R. 175) that this instrument created a charge upon the east half of lot 19 in favour of the mortgagees named therein.

This agreement was registered and the east half of lot 19 was afterwards mortgaged to another person. In a suit by one of the mortgagees of the Christopher farm for a declaration that she was entitled to a lien or charge on the other lot, it was contended that the solicitor who proved the execution of the document for registry as subscribing witness was not such, but that the agreement was in the form of a letter addressed to him.

*Held*, affirming the judgment of the Court of Appeal, that as the agreement was actually registered the subsequent mortgagee could not take advantage of an irregularity in the proof, the registration not being an absolute nullity.

*Held*, per Taschereau, J., that if there was no proof of attestation, the Registry Act required a certificate of execution from a County Court judge, and it must be presumed that such certificate was given before registry.

Appeal dismissed with costs.

*Smythe, Q. C.*, for the appellant.

*Langton, Q. C.*, for the respondent.

18 Feb., 1896.

Prince Edward Island.]

MAYHEW v. STONE.

*Administrator—Payment of doubtful claim by—Death of administrator—Administration de bonis non—Recovery back of amount paid—Unadministered asset.*

M. married a widow with a daughter, S., thirteen years old, who afterwards lived with him as one of his own family. M. died intestate, but had previously provided well for his own children. His widow took out letters of administration and advertised for presentation of claims against the estate. S. presented a claim of $1000 for services performed for deceased and the administratrix consulted her solicitor and others who advised her to pay it, which she did, and a month after she died. An administrator *de bonis non*, was appointed, who filed a bill in equity to have S. declared a trustee for the estate of the $1000 and ordered to transfer it to the estate. On the hearing S. gave evidence of a claim for payment for services made by her on deceased in his life-time, and a promise by him to provide for her at his death. The Master of the Rolls granted the decree as prayed for in the bill, but his judgment was reversed by the Court of Appeal in equity on the ground that S. was entitled to recover on a *quantum meruit* the value of her services to deceased according to the terms of the agreement to which she testified, and following *McGugan* v. *Smith* (21 Can. S. C. R. 263) and *Murdoch* v. *West* (24 Can. S. C. R. 305). On appeal from that decision:

*Held*, that the claim of S. having been made *bonâ fide* and paid by the administratrix under competent advice, the money, even if paid under a mistake in law, could not be recovered back by the estate as an unadministered asset.

Appeal dismissed with costs.

*Stewart, Q.C.*, for the appellant.
*Davies, Q.C.*, for the respondent.

18 Feb., 1896.

Nova Scotia.]

N. S. MARINE INSURANCE CO. v. CHURCHILL.

*Marine insurance—Repair of ship—Constructive total loss—Notice of abandonment—Sale by master—Necessity for sale.*

The schooner "Knight Templar," insured by a time policy, sailed from Turk's Island, W. I., bound for Nova Scotia. Having sprung a leak she put back to Turk's Island and was beached. A survey was held and the surveyors recommended that the cargo be taken out to get at the leak. Two days later another survey resulted in finding her leaking three inches per hour, and two days after she was making six inches, and the master was advised, if she could not be hove out, to put in ballast and take her to port for repairs. She was then taken round to an anchorage where she remained some weeks, and after being surveyed again was stripped, beached, and sold at auction. The owners first heard of her having been disabled after the sale, and they sent to the underwriters a full account of the whole proceedings.

In an action for the insurance tried with a special jury all the findings were in favour of the assured, one of them being that the schooner could have been repaired if cost were not considered, but that it would cost much more than she was worth. A verdict was given against the underwriters.

*Held*, affirming the judgment of the Supreme Court of Nova Scotia, that if the vessel could have been repaired, even at a cost far exceeding her value, there was not even a constructive total loss, unless notice of abandonment was given, but

*Held*, further, that as it appeared that instructions could not be received from the owners inside of four weeks, the expense of keeping the schooner safely, the danger of her being driven ashore, and the probability that she would greatly deteriorate in value during the delay, justified the master in selling on his own responsibility, and the sale excused the giving of notice.

Appeal dismissed with costs.

*Macdonald*, for the appellant.
*Ritchie*, for the respondent.

## *TOO MANY WORDS.*

One great difficulty in learning what is the law on any given subject is that its expounders use too many words. Open one of the portly compilations which are often put forth as treatises, and read. A thorough master of the English language could put three or four pages into one; could express all the ideas of several paragraphs in as many sentences And by this condensation contradictions would be brought together in contrast, inconsistencies exposed, cautiously concealed doubts brought to light, and the distinction between settled law and debatable questions forced upon the attention of the writer or the reader, or both.

*Language is an instrument of thought.* And the current legal language, as used in setting forth the law, is as clumsy and burdensome as are the ploughs and harrows of two centuries ago compared to the implements of to-day.

But this is not a mere question of expression. Better rhetoric will not alone suffice. It will aid, and only aid. What is needed is that clearness of conception which only requires a few words. When our ideas upon a subject are vague, undeveloped, nebulous, we require amplitude of space and phraseology to do justice to them. Clear conclusions can be shortly expressed.

The same principle applies to the process of reasoning by which those conclusions are reached. Unsatisfactory reasons force us to expansion and amplification to make them appear to fill the need. Satisfactory reasons can be shortly stated.

If a student, when required to abridge a case or a passage in the work he is studying, is allowed to take all the space he inclines to, he will probably make a long screed which will leave the critical instructor in doubt whether he has really mastered the thought. But compel him to reduce the chain of reasoning to its separate links, and state each in a single sentence, and all on a single page of small notepaper, and we see from the result, at once, whether he has made the subject his own.

Erroneous conceptions, confusion of thought, unrecognized inconsistencies, unperceived inadequacies, easily hide themselves in a superabundance of flowing sentences rambling on without restraint. Conciseness is the great detector of fallacies. To introduce severe terseness into unrestrained verbiage brings all

its weakness into the light. To cancel every sentence and every member of a sentence that does not add something valuable to what was said before, and to cancel every word in the sentences left that does not make that value more clear, is a pruning that lets the light of truth into the tree of knowledge and gives vitality to the fruit.

To raise thought to its highest power, the formula of words must be reduced to its lowest terms. This more than any other intellectual characteristic is the secret of the masterful power of Shakespeare, and Bacon's essays, and the English Bible.

There is no class of compositions in all the arts of letters which stands in sorer need of this principle than judges' opinions and lawyers' briefs. A large part of legal writing appears to be done as a means of thinking through the fog out into the clear. The easy facility of expression which shorthand and the typewriter give us, and the habit of estimating expression by a commercial value of so much a folio, are responsible for much of that growing uncertainty of legal minds about the law, which is called "uncertainty of the law." It is really uncertainty of the lawyer.

Voluminousness is the mother of indecision.—*University Law Review, New York.*

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## *THE SCOTCH OATH IN THE COURTS OF LAW.*

In view of the practice of some of the judges, says the *London Law Journal*, the following letter of Mr. Francis A. Stringer, which appeared some time since in the *Times*, is worthy of reproduction:

Under the above heading you were good enough to publish a letter from me on March 17, 1893, calling attention to the statutory right of every person sworn for any purpose to swear in Scotch form without the use of any book. On May 31, 1893, a circular was issued by the Home Office giving the form of Scotch oath to be administered under section 5 of the Oaths Act, 1888. Prior to March, 1893, there had been considerable friction in the various Courts of the country in consequence of resistance being offered to the claims of medical men to be sworn without 'kissing the Book,' in accordance with their undoubted right under the section named. This resistance was offered by officials of the Courts who were ignorant of the then somewhat new provision,

and by coroners, magistrates, and even judges who retained a personal objection to the new form of oath prescribed by statute.

Since that time correspondents have brought to my notice many instances of the same kind. The *Lancet* and the *British Medical Journal*, and, indeed, all the medical papers, have persevered in strongly upholding the right of every witness to be sworn without 'kissing the Book,' and they not unnaturally complain that those who administer the law should place hindrances in the way of witnesses who claim only their legal right when they ask to be sworn in Scotch form.

Two recent occurrences of the kind are in such flagrant violation of the Oaths Act that I venture once more to call attention to the matter in your columns, in the hope that this constant cause of friction in legal proceedings may thereby be diminished, and perhaps even removed altogether. On one of the occasions referred to the rector of a country parish was called upon to give evidence before the magistrates. He asked to be sworn in Scotch form. The chairman said to him, 'I should like to know, Mr. ——, why you, being a clergyman of the Church of England, object to kiss the Book?' The witness answered, 'I have a strong objection to kissing the Book in these days of infectious diseases.' The magistrate exclaimed: 'He is afraid of catching an infectious disease from the Bible!' The other occurrence took place in one of our London County Courts only a few days ago. A witness, who was a Scotchman, objected to 'kiss the Book' on the ground that 'hundreds of people had kissed it before him that day, and some of them probably had infectious diseases.' It is incredible, but the report states that the witness was bullied by the usher who was administering the oath, reprimanded by the judge, and made to kiss the Book. I enclose cuttings from newspapers in verification of these statements. I merely refer to these occurrences as an illustration of what is going on.

I need not insist at any length on the legal question involved. There is no doubt whatever about it. The Oaths Act says (section 5): 'If any person to whom an oath is administered desires to swear with uplifted hand in the form and manner in which an oath is administered in Scotland he shall be permitted so to do, and the oath shall be administered to him in such form and manner without further question.' The form of the Scotch

oath has been duly prescribed, and every person who administers an oath is bound to know it, and to use it whenever it is asked for, and every person has a right to be so sworn if he wishes "without further question."

But a form of oath established by the State rests necessarily upon something less tangible, it may be, but not less powerful in its operation, than an Act of Parliament. If it has no root in the national sentiment, it fails to appeal to the imagination of the person to whom the oath is administered, and gradually sinks into an empty form of words. That, to my thinking, is precisely what has happened to our English method of swearing by kissing the Bible. It was originally founded on the national feeling of reverence for the Bible, which feeling the State desired to utilize so that it might bind people's consciences to act honestly in public positions and speak the truth in aid of justice. It has lost its power and degenerated into a mere form, partly because the words of the oath are not clear or precise, and partly I believe, because the indiscriminate use of the Bible for the purpose has removed all sense of solemnity from the act of kissing it. In my judgment the Bible is desecrated by the use it is put to in our Courts. Some time ago, having to wait in a South London Police Court on a Monday morning, I witnessed the Saturday night's charges being disposed of. Upwards of a hundred witnesses were sworn, and the Court copy of the Bible was handled and kissed by people of the lowest type—by prostitutes and street ruffians of dissipated and filthy appearance and by persons bearing evident marks of advanced consumption or other diseases. I cannot see in such a practice any evidence of reverence for the Bible.

On several occasions when a witness has desired to be sworn in the solemn Scotch form the presiding judge or magistrate has made the same sort of disparaging remark as the one I have quoted above, suggesting that in the objection to "kiss the Book" for fear of infection there lurked a lack of reverence for the Bible. I have reason to believe that the fear of having such a charge made against them from the Bench deters many witnesses from asking to be sworn in Scotch form, which they would greatly prefer. This is not as it ought to be. Medical men refuse to be sworn by 'kissing the Book,' because they believe the practice is dangerous to health. If their view is right, ought the State to retain such a form of oath? Would it

not be better to abolish it altogether in favour of the more cleanly, and far more solemn, form of the Scotch oath?

Mr. Justice Hawkins at Cambridge Assizes recently passed a strong condemnation on the ordinary form of oath. He thought it lacked clearness and definiteness. He said that, in his opinion, it was surprising that the legislature had not turned its attention to the subject, and he suggested that every witness should swear before giving evidence by simply saying the words, "I swear to God that I will speak the truth." This is, in fact, the Scotch form of oath.

I cannot but hope that Parliament will adopt Mr. Justice Hawkins' suggestion. The whole law of oaths would be enormously simplified thereby. Such an oath as that suggested could be taken without alteration by Christians of all denominations, by Jews, Mahomedans, and Buddhists, and, indeed, by everyone except those who have the right by law to affirm in lieu of swearing.

In the meantime it would be well if the authorities would take notice of every attempt on the part of magistrates, judges, or officials to ignore or resist the provisions of section 5 of the Oaths Act, 1888.

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## *GENERAL NOTES.*

THE ADMINISTRATION OF THE OATH IN COURTS OF LAW.—In view of the danger of contagious disease being spread through the handling and the kissing of the New Testament by persons of all sorts and conditions, in the ordinary form of the administration of the oath to a witness, Judge Emden has had notices conspicuously posted in the Lambeth County Court calling attention to the provisions of the Oaths Act, 1888, by which the kissing of the book may be dispensed with. He has also instructed the officers of the Court, when administering the oath, to draw the attention of witnesses to the fact that they need not kiss the book unless they think fit. In making this announcement in Lambeth County Court, Judge Emden said the Oaths Act permitted any person so desiring to be sworn with uplifted hand, which was known as the Scotch form, and any witness appearing at the Courts over which he presided was at full liberty to be sworn in this manner. It was noticed that in the cases which were heard after his Honour's announcement the witnesses all availed themselves of the Act referred to by Judge Emden.