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THE LAW AND THE BLUDGEON.

It must be conceded that behind all laws passed in a civilized state stands the policeman with his baton, and behind him again the soldier with his sword, his gun, and all the paraphernalia of war. But if for the enforcement of every law which is passed in a civilized community the policeman and the soldier had to be resorted to, society would be in a chronic state of commotion, and peace and good order would be banished from the land.

For the due enforcement of the law it is obvious there must be a coercive power existing somewhere; and anarchy would prevail unless the coercive powers were reasonably effective. But the wise legislator will so frame his laws that they be in the main generally acceptable to the community which is to be affected by them. Laws which do not command the general assent of the community are always extremely difficult of enforcement; and to make a law and not enforce it is to offer a premium to lawlessness, and more or less to bring all law into contempt.

It ought to be needless to say that when great political changes are to be effected in the status of any large body of people, the first thing to be done is to persuade by argument those who are intended to be affected that what is proposed to be done is really for their benefit.

When, for instance, the Confederation of the British possessions in North America was contemplated, great pains were previously taken to convince the people of the various provinces that the measure was one that would redound to their advantage. Had an opposite course been taken and had the people or any considerable part of them been coerced into the project it is very doubtful whether the Dominion of Canada would have prospered as it has done. People may be obstinate, short sighted,

and unable properly to appreciate the good that is offered them. It may take time to convince such people, but it is better to spend time than to use force. It seems almost axiomatic to say that all great constitutional changes to be effective and successful must take place with the hearty concurrence and good will of those affected. The world has changed and the old time notion that constitutional changes can be forced on an unwilling people is one that belongs to past days of tyranny and oppression, and is absolutely opposed to those principles of freedom which the British people have been so long and so laboriously elaborating.

It is therefore somewhat surprising to find that there can be an intention to force on a reluctant people a change in their political status which they, for some reason, whether good or bad is immaterial, detest and abhor. What prospect of happiness and prosperity could there be for the successful carrying out of a political system which is inaugurated in such circumstances?

It would seem that so far persuasion has failed in the Ulster problem and so, without more ado, the bludgeon is to be called in to crack heads which refuse to accept arguments. This is as we say, from the modern standpoint, an altogether new method of bringing about political changes and with all due respect to whose who favour the method it appears to us to savour rather of a past age of barbarism, than of the more enlightened civilization of the present day. It is the Procrustean conception. The patient does not fit the bed and forthwith his legs must be chopped off to make him fit.

A somewhat unexpected denouement has developed from this determination to adopt the bludgeon method. It now appears that he who wields the bludgeon unexpectedly turns out to be made of flesh and blood, and is not a mere machine obedient to the will of the forceful legislator. Soldiers are supposed "not to reason why, theirs but to do and die," and this unexpected development of a reasoning faculty in that which was supposed to be a mere machine has proved to be somewhat disconcerting to those who desire to use physical force to effect political ends.

It is perhaps fortunate for the British people that the wielders

of the bludgeon (in this case the sword) are fellow citizens who do not abnegate their manhood when they take up the duties of a policeman or a soldier. It may be from a disciplinary point of view, that they should be required to have no opinions except those of the persons who for the time being are in command of them, but men remain men in spite of their uniforms. Naturally they have the same repugnance as other men to shooting down their countrymen for no better reason than that they object to be dragooned by what they claim to be a parliamentary faction which for the time being happens to have a majority, and which majority they claim does not represent the wish of the majority of their fellow citizens; and at least whose opinion on the subject has not been asked. This assertion of their manhood by those who have been placed in a difficult and trying position, even though it may be in some ways injurious, may have had the effect of averting the calamity of a civil war which would be the worst thing that could possibly happen.

One cannot ignore the danger of weakening discipline in the army, and it is difficult to define the exact limit where a soldier should be allowed to claim a right of private judgment, but that some such right will sometimes be claimed is obvious. Each case must depend upon its own merits, and in exercising such right the soldier must be prepared to accept the most rigorous treatment if he goes beyond a reasonable limit; but there seems to be in the case in point a consensus of opinion that the soldier has not overstepped the limit in refusing to be used as an instrument to coerce by force of arms those who desire to retain their present political status.

It is of the proper nature of tyranny that it is unreasoning. "Sic volo, sic jubeo," is none the less the dictum of the tyrant though it issue from the mouth of Demos. Is it in vain that the political patient avers "I do not like your pill and do not want it, and will have none of it"? Is the only answer to be vouchsafed "You must take it no matter whether you like it, or want it or not, and if you won't take it quietly we'll call in the bludgeon"? The patient should receive much sympathy under such circumstances.

ACTIONS FOR PERSONAL INJURY.

In a recent issue (vol. 49, p. 575,) we published a short extract from the *Law Magazine* in reference to actions for personal injury. A subscriber asks us as to the state of the law on the subject in the Province of Ontario.

The Statute bearing on the point would appear to be 1 Geo. V. ch. 26, sec. 40 (now R.S.O. ch. 121, sec. 41). Most of the cases come under The Fatal Accidents Act, but it would look as if, where there is no one to claim under that act, the personal representatives might possibly recover for the benefit of the deceased estate. The act gives the personal representatives a right of action inter alia for injuries to the person of their testator or intestate and they are to have "the same rights and remedies as the deceased would if living have been entitled to." This section, if intended to include injuries causing death, does not appear to be very happily worded. How could a man if living recover for an injury causing his death? In *McHugh* v. *G.T. Ry. Co.*, 2 O.L.R. 600, it was held that the statute did not apply to injuries causing death, and any action which might be brought would have to be carried to the Supreme Court of Canada, or to the Privy Council, if desired to reverse the McHugh case. See also *Conrod* v. *The King post infra* p. 273

PRICE MAINTENANCE AGREEMENTS.

The existence of agreements for the maintenance of prices is now a well-recognized feature of modern commerce. And although there may be superficial objections to such agreements as restrictive of freedom of dealing, their practical utility overrides any drawbacks they may involve. It is, on the whole, in the interests of retailers that there should be uniformity of price for particular commodities, but, owing to the difficulty of effective combination among them, they are compelled to look to the manufacturer to take effective steps to ensure such uniformity. This the manufacturer is in a better position to do. It is perfectly open to him to sell his commodities on any terms he thinks fit,

and to refuse to sell except to persons who will undertake to observe such terms. If they do not like the terms, they need not buy, and there is no law which will compel a manufacturer to sell his wares if he does not wish to do so.

The validity of an agreement to maintain retail prices was considered in the case of *Elliman, Sons and Co. Limited* v. *Carrington and Son Limited* (84 L.T. Rep. 858; (1901), 2 Ch. 275). The manufacturers of an embrocation sold it wholesale to druggists and other dealers, and, in order that the retail price should not fall below a certain fixed level, they required their trade purchasers to enter into written agreements undertaking not to sell below the named prices. They also required their purchasers, in the event of their supplying any of the embrocation to the trade, to obtain from any retailer they supplied a similar written undertaking. The defendants, who had purchased a large quantity of bottles of the embrocation from the plaintiffs and signed the agreement sold a portion of them to certain retail dealers without obtaining from them any undertaking. Messrs. Elliman having learned that the retail dealers had sold some of these bottles at less than the stipulated prices commenced proceedings against the defendants for damages.

Objections were raised to the claim that the agreement sued upon was in restraint of trade. This view the court declined to adopt, and it refused to put restrictions upon the right of manufacturers when selling their goods to make a bargain as to the use to be made of them by the purchasers. Just as the manufacturers could not be interfered with in fixing the price to the wholesale dealer, so they were at liberty to fix a price below which the goods should not be sold retail. They had their remedy in that they could refuse to supply the goods, and they could maintain an action for breach of agreement against dealers who had contracted with them.

Difficulties have, however, arisen where manufacturers have sought to impose conditions upon persons with whom they were under no definite contractual relationship. For while it is clear

that a manufacturer may make it a condition of the sale of his goods that they shall not be sold retail at less than certain prices, such a condition only affects contracting parties and does not become attached to the goods so as to bind them in the hands of subsequent purchasers. Mere notice of such a restriction as to retail price is in no way binding on such purchasers in the absence of a clear contract existing between the retailer and the manufacturer. The case of *Taddy and Co.* v. *Sterious and Co.* (89 L.T. Rep. 628; (1904), 1 Ch. 354), provides a good illustration of the principle that conditions of this kind do not run with the goods. The plaintiffs were manufacturers of tobacco, some of which was sold in packets under the name of "Myrtle Grove." In order to ensure that their goods should be sold by retailers at a fixed uniform price, they had printed upon all their invoices, price lists and catalogues, a notice to the effect that all packet tobaccos and cigarettes were sold upon the express condition that retail dealers did not sell them below certain named prices. There was a further condition that acceptance of the goods was to be deemed a contract between the purchaser and the plaintiffs that he would observe the stipulations. Then followed a condition that in the case of a purchase by a retail dealer through a wholesale dealer, the latter should be deemed to be the plaintiff's agent. Some of the plaintiffs' Myrtle Grove tobacco was bought by a wholesale dealer and by him sold at a profit to the defendant firm of retail tobacconists. They had sold and claimed the right to sell the plaintiffs' Myrtle Grove tobaccos at a half-penny an ounce less than the list price, notwithstanding the conditions, and refused to desist from doing so. The plaintiffs contended, first, that the conditions constituted a contract made by the defendants with the wholesale dealers as the plaintiffs' agents; secondly, that as the goods were sold subject to conditions, the defendants, having notice of such conditions, could not sell except in accordance with them. As Mr. Justice Swinfen Eady pointed out, "conditions of this kind do not run with goods and cannot be imposed on them." Successive purchasers did not take subject to any conditions which

the court could enforce, since no condition attached to tobacco passing from hand to hand. The real question was: Was there a contract between the plaintiffs and the defendants? There was clearly no direct contract, but the condition being relied on, that on purchase by a retail dealer through a wholesale dealer the latter was to be deemed the plaintiffs' agent, the learned judge pointed out that the plaintiffs sold their goods out and out to the wholesale dealers, who bought and sold them for their own profit and not as agents for the plaintiffs. This was the true effect of what actually took place, and the mere insertion in the condition of the words that the wholesale dealer was deemed to be an agent did not make him such when in fact he was not.

The principles enunciated by Mr. Justice Swinfen Eady were affirmed by the Court of Appeal in the subsequent case of *McGruther* v. *Pitcher* (91 L.T. Rep. 678; (1904), 2 Ch. 306). There the plaintiffs, who were manufacturers of revolving heel pads under license from the owner of the patent, sought to enforce against retail dealers certain conditions of sale they had had printed on the boxes in which the heel pads were packed when sold. The conditions provided that the goods were not to be retailed at less than a fixed price, and that the acceptance of the goods by any purchaser was to be deemed an admission that he agreed to be bound by the conditions. The plaintiffs sold large quantities of these revolving heel pads to factors for resale by them. It was alleged that the defendant when purchasing the goods from one of the plaintiffs' factors had accepted the conditions. Upon the question whether these conditions were binding on the defendant, the Court of Appeal held that a vendor could not by printing a condition upon some part of the goods, or on the case containing them, say that every subsequent purchaser of the goods must comply with it. Conditions could not be made to run with the goods in that way. The court held there was no evidence of the defendants having entered into any direct contract with the plaintiffs, and if there had been a contract between the defendant and the factor which was not found, the

plaintiffs would not have been able to sue upon it. An attempt was made to found the claim upon patent rights, but the court pointed out that such a claim could only arise if the limits of the license at the time when the patentee parted with his goods were in question, which was not this case. It must, of course, be remembered that it is open to a patentee to make a sale of a patented article subject to restrictive conditions, which would not apply in the case of the sale of ordinary chattels, and the purchaser will be bound by such conditions if knowledge of them at the time of the sale is brought home to him: (cp. *National Phonograph Company of Australia* v. *Menck*, 104 L.T. Rep. 5; (1911), A.C. 336). In *McGruther* v. *Pitcher* (*ubi sup.*) the determining question was whether the retailer had in fact entered into a contract with the manufacturers.

The importance of establishing a contractual relationship in order to found a cause of action having therefore been clearly laid down, the next case raised the question in a somewhat different form. In *Dunlop Pneumatic Tyre Company Limited* v. *Selfridge and Co. Limited* (reported *ante*, pp. 428-429), Mr. Justice Phillimore gave judgment for the plaintiffs, but the judgment was reversed in the Court of Appeal as being based upon an erroneous view of the facts. The manufacturers entered into a contract with certain wholesale dealers to sell them motor tyres, covers, and tubes subject to certain discounts and to an undertaking not to sell such goods below specified fixed prices. The wholesale dealers also agreed, acting as agents for the manufacturers, in case of the sale of such articles, to obtain from purchasers written undertakings to observe the manufacturers' list prices and conditions of sale, and to refuse them any discounts unless such undertakings were given. A sum of £5 was to be payable by the wholesale dealers for every breach of this agreement. Similar terms were embodied by the wholesale dealers in their agreement with a certain fixed firm of retail dealers. The fixed minimum retail prices were to be observed, and it was provided that any breach of these terms should in-

volve the payment of £5 by the retailers direct to the manufacturers. This provision, as will be seen, was relied upon as establishing a right on the part of the manufacturers to sue on the contract. And on discovery of the sale of two tyres at prices below the current list prices, the manufacturers brought this action against the retailers. The Court of Appeal found that no contract had been proved to exist between the manufacturers and the retailers. The contract was in form between the wholesale dealers and the retailers. Although there was a stipulation in the contract in favour of the manufacturers, this would not have the effect of giving rights to the manufacturers, or enable them to sue upon a contract to which they were not parties. The form of the contract, moreover, was inconsistent with the wholesale dealers having entered into it as agents for the manufacturers. The plaintiffs had therefore failed to prove a subsisting contractual relationship between them and the defendants. If the middlemen had in fact and in terms contracted as agents for and on behalf of the manufacturers, they would then drop out and the manufacturers could sue the retailers for breach of contract. The law is therefore clear, and if manufacturers desire to protect themselves they must arrange their business accordingly and enter into direct contractual relations with the retail traders.

As we have seen above, these agreements between manufacturers and their customers to regulate retail prices are not void as in restraint of trade: (cp. *Elliman, Sons and Co.* v. *Carrington and Son, ubi sup.*). Different considerations, however, apply where a number of manufacturers seek by agreement amongst themselves to fix the price, below which they undertake not to sell their goods. Such agreements have been held to be against the public interest and in restraint of trade, and therefore not enforceable: (*Urmston* v. *Whitelegg Brothers*, 63 L.T. Rep. 454).—*Law Times.*

THE REMOVAL OF FIXTURES.

An important point as regards the law of fixtures was recently decided by the Court of Appeal in the case of *Re Morrison, Jones and Taylor Limited; Cookes* v. *Morrison, Jones and Taylor Limited* (109 L T. Rep. 722; (1914) 1 Ch. 50). The question raised was one as to rights under a hire-purchase agreement entered into with regard to a certain machinery installation erected on certain premises. The court sanctioned the removal of the fixture under circumstances and for reasons which will be stated below.

The general law of fixtures is of a comparatively modern growth. Even the term "fixture" as a legal term is, as was pointed out by Baron Parke in *Sheen* v. *Rickie* (1839, 4 M. & W. 175, at p. 183), a very modern one. It is not to be found, as Lord Campbell pointed out in *Wiltsheare* v. *Cottrell* (1853, 1 E. &. B 674, at p. 682), in that classical dictionary of legal terms known as Terms de la Ley. The steady trend in the development of the law has been to extend the category of fixtures, and this has been further effected by numerous modern statutory enactments.

The term "fixture" is a somewhat misleading one. Probably the best definition of the term which can be given is, that a fixture is a chattel, so fixed to the soil that it would become part of the inheritance under the old legal principle embodied in the ancient maxim Quicquid plantatur solo, solo cedit, were it not for some special reason. This, no doubt, is the strict meaning of the word. But, unfortunately, a great deal of very unnecessary confusion has been introduced into the subject by the slovenly misuse of terms. Thus it is usual to speak of tenant's fixtures and landlord's fixtures; and these expressions are generally used in contradistinction. Such a use of terms would, no doubt, be correct if some chattel were referred to as a fixture, and the contradistinction indicated was intended to distinguish the right of the inheritance owner as against the landlord, on the other hand, and the right of the landlord as against his tenant on the other. In other words, the use of the terms would be correct if it were a question whether the particular chattel was owned by the landlord as against his reversioner, or by the tenant as against his landlord. But the

terms "landlord's fixtures" and "tenant's fixtures" will be found in practice to be seldom used in this manner. Generally when a chattel is termed a "landlord's fixture" the intended meaning is that the chattel is annexed to the inheritance, and in nine cases out of ten is not a fixture properly so called. And where a chattel is termed a "tenant's fixture" it will be found, in the great majority of cases, that the so-called "fixture" is no fixture at all; and that this is the very meaning which the speaker intends to convey when he speaks of the chattel as being a tenant's fixture. Such misuses of a legal term are, no doubt, excusable in persons other than lawyers, but unfortunately the misuse is not confined to such persons.

This subject was greatly elucidated by the judgment of the Exchequer Chamber in the case of *Climie* v. *Wood* (18 L.T. Rep. 609; L. Rep. 4 Ex. 328). "There is no doubt," runs the judgment of the court, delivered by Mr. Justice Willes, "that sometimes things annexed to land remain chattels as much after they have been annexed as they were before. The case of pictures hung on a wall for the purpose of being more conveniently seen may be mentioned by way of illustration. On the other hand, things may be made so completely a part of the land, as being essential to its convenient use, that even a tenant could not remove them. An example of this class of chattel may be found in doors or windows. Lastly, things may be annexed to land, for the purposes of trade or of domestic convenience or ornament, in so permanent a manner as really to form a part of the land; and yet the tenant who has erected them is entitled to remove them." It is only this last-mentioned class of chattel which is in strictness a fixture.

One circumstance, then, is a sine quâ non before there is a fixture strictly so called. That is annexation to the soil. That annexation is necessary which would primâ facie give the owner of the soil the ownership of chattel under the ancient legal maxim cited above.

There are a great number of authorities upon the question what does, and what does not, amount to annexation. It is not proposed to give an exhaustive list of the methods of fixation

which have been held to amount to annexation. No very useful purpose would be served by so doing. Lord Blackburn in delivering the judgment of the court in the Exchequer Chamber in the case of *Holland* v. *Hodgson* (26 L. T. Rep. 709; L. Rep. 7 C. P. 328, at p. 335) gave some very striking examples. Blocks of stone placed on the top of one another so as to form a dry stone wall would become part of the land. Yet if these were deposited in a builder's yard and were, for the sake of convenience, placed one on top of another in the form of a wall, they would remain chattels. Then his Lordship gives another instance. An anchor of a large ship must be firmly fixed in the ground in order to bear the strain of the cable, yet no one could suppose that the anchor became part of the land, even though the shipowner happened to be the owner in fee of the land at the spot where the anchor was dropped. On the other hand, an anchor fixed in the soil for the purpose of bearing the strain of the chain of a suspension bridge would become part of the land. Again, the nailing of a carpet to the floor does not make the carpet part of the house.

It is the fact of annexation to the soil of a chattel by some person other than the absolute owner of the land that gives rise to the question of fixture or no fixture. This is a fundamental point which ought never to be lost sight of, when dealing with any point on the law of fixtures. Necessarily, there are innumerable degrees and methods of fixation. But without some degree of annexation there can be no question but that the chattel is no fixture. However paradoxical it may seem, the method and degree of fixation may be an important factor in deciding the question whether a chattel is a fixture. This arises from the fact that the intention of the party fixing the chattel is in truth the governing question in the whole matter. Speaking of this question whether a particular chattel was, or was not, a fixture, Lord Blackburn in *Holland* v. *Hodgson* (*sup.*, at p. 334) said: "It is a question which must depend on the circumstances of each case, and mainly on two circumstances, as indicating the intention viz., the degree of annexation and the object of the annexation. The effect of the cases, however, appears to be that this intention is one which must be gathered from the general circumstances

of the case, and that direct evidence of intention on the part of the person fixing the chattel is not admissible: (see *Hobson* v. *Gorringe,* 75 L. T. Rep. 610; (1897) 1 Ch. 182). Hence the importance of the mode of annexation—an importance derived from the fact that annexation is one of the best indications of intention.

In *Hellawell* v. *Eastwood* (1851, 6 Ex. 295) cotton-spinning machines which were fixed by means of screws, some into the wooden floor, some into lead which had been poured in a melted state into holes in stones made for the purpose of receiving the screws, were held to be fixtures and removable as such. "The question whether the machines when fixed were parcel of the freehold," said Baron Parke (at p. 312), "is a question of fact, depending on the circumstances of each case, and principally on two considerations: first, the mode of annexation to the soil or fabric of the house, and the extent to which it is they are united to them, whether they can easily be removed integre salve et commode or not, without injury to them or the fabric of the building; secondly, on the object and purpose of the annexation." Then the learned Baron went on to say tha the object and purpose of the annexation was not in that particular case to improve the inheritance, but merely to render the machines steadier and more capable of convenient use as chattels. *Hellawell* v. *Eastwood* (*sup.*) has been somewhat severely criticised. Lord Lindley in *Reynolds* v. *Ashby and Son* (91 L. T. Rep. 607; (1904) A. C. 466, at p. 473) observed that it has been much commented upon in later cases, and that it was of questionable authority. But, notwithstanding this, it is conceived that the dicta of Baron Parke cited above illustrate the principle very lucidly.

"Whenever the chattels," said Lord Blackburn in the case of *Wake* v. *Hall* (48 L. T. Rep. 834; 8 App. Cas. 195, at p. 204), "have been annexed to the land for the purpose of the better enjoying the land itself, the intention must clearly be presumed to be to annex the property in the chattels to the property in the land, but the nature of the annexation may be such as to show that the intention was to annex them only temporarily."

In *Viscount Hill* v. *Bullock* ((1897) 2 Ch. 482) the Court of Appeal (Lord Justices Lindley, Lopes, and Chitty), affirming the decision of Mr. Justice Kekewich, held that cases containing

stuffed birds, attached to "T"-shaped iron brackets fixed to the wall, were "fixtures," and removable as such. While in *Norton* v. *Dashwood* (75 L. T. Rep. 205; (1896) 2 Ch. 497) Mr. Justice Chitty held that tapestry, which had, for at least a century, remained in a "tapestry room" designed and decorated with reference to such tapestry was part of the mansion-house.

It is important to distinguish cases where persons have acquired a right, by way of easement, to place and maintain some chattel in the land of another person. These are not in strictness cases of fixtures properly so called; but a reference to such cases ought to be made here in order that they may be distinguished in principle. In *Moody* v. *Steggles* (41 L. T. Rep. 25; 12 Ch. Div 261) the court upheld a claim to keep a signboard fixed in the wall of another person. In *Hoare* v. *Metropolitan Board of Works* (29 L. T. Rep. 804; L. Rep. 9 Q.B. 296) an easement was established in respect of a public-house entitling the owner to keep a sign-board standing on the land of another, as was also the incidental right of entering that land to repair the sign-board whenever it fell into disrepair. In the two last-mentioned cases, it will be observed that the chattel was fixed, not by the person in rightful possession of the land in which it was fixed, but by some stranger. But in cases of fixtures, strictly so called, the annexation takes place by some party rightfully in possession of the premises, and the question of fixture or no fixture is one between him and the person entitled to the inheritance.

Another important indication of intention, especially with regard to chattels affixed to buildings, is the nature of the premises in which the chattel is fixed, and the relative suitability of the fixture to the premises. This was well illustrated by the case of *D'Eyncourt* v. *Gregory* (L. Rep. 3 Eq. 382). The question in that case was whether certain chattels, which had been affixed to a residence of which the testator was tenant for life, passed under a specific gift of chattels or remained part of the property of which the testator was tenant for life. Lord Romilly, then Master of the Rolls, held that tapestry which has been fixed to the walls by the testator was thereby made part of the house and therefore part of the inheritance, and so did not pass under the gift of chattels. It was clear, his Lordship said (at p. 395).

that the testator could not have disposed of paper affixed to the walls, nor, if he had used silk instead of paper for lining the walls, could he, in his Lordship's opinion, have removed the silk. So, if the testator had covered the walls with panelling, he could not have removed the panelling and have left the walls bare. If he caused them to be painted in fresco, he could not have removed the paintings, and if he had caused the panels to be painted he could not have removed the painting any more than if he had put in panels already painted and fixed them close to the wall. In all those cases those things must be considered to be fixtures not removable by the tenant for life. In a subsequent part of his judgment the learned judge said: "In all those cases the question is not whether the thing itself is easily removable, but whether it is essentially a part of the building itself from which it is proposed to remove it, as in the familiar instance of the grinding-stone of a flour mill, which is easily removable, but which is nevertheless a part of the mill itself and goes to the heir."

Sufficient has been said to show that in determining whether or not a chattel is a fixture properly so called—that is to say, a chattel so affixed to land or buildings that primâ facie it is part of the land, but nevertheless removable by the party fixing it or his assigns—a number of circumstances have to be considered. First, the method or degree of fixation or annexation; secondly, the nature of the land or premises to which the chattel is affixed; thirdly, the nature of the chattel; fourthly, the interest of the person fixing it; and, fifthly, the purposes for which it was fixed. These purposes must necessarily depend upon the intention of the person fixing the chattel, but that intention is to be discovered from the general circumstances subsisting at the time when the chattel is affixed.

The question of fixture or no fixture often arises in connection with so-called hire-purchase agreements. Thus A. delivers to B. a chattel on a hire-purchase agreement, and the chattel is annexed by A. or by B. to the land of C.—B. being in possession of that land for the time being. B.'s interests in the land terminate and the chattel remains fixed in C.'s land. C. then sells the land to D., and A., under the hire-purchase agreement, claims to recover the chattel. What are the respective rights of A., B., C.,

and D.? These rights will appear from a perusal of the following three cases, which includes the recent case mentioned at the commencement of this article.

In *Hobson* v. *Gorringe* (75 L. T. Rep. 610; (1897) 1 Ch. 182) a gas engine was let out on hire under an agreement in writing, but not under seal. Under this agreement the hirer agrees to pay certain instalments, on the failure to pay any of which the owner was to be at liberty to repossess himself of the engine. It was further agreed that on the payment of the specified number of instalments the engine was to become the property of the hirer. The engine was affixed to the hirer's land, of which he was owner in fee simple, and he used it in his saw mill. On a plate on the engine a statement was inscribed to the effect that engine was the property of the owner. After some instalments had been paid, default was made in payment. A mortgage debt secured on the hirer's land was subsequently transferred by the hirer and his mortgagee to another person, who took a mortgage in fee simple of the land, saw mill, fixed machinery, and fixtures. On the hirer being adjudicated bankrupt, this mortgagee entered into possession of the mortgaged premises, including the engine. The owner of the engine then claimed the engine. The Court of Appeal (Lord Russell of Killowen and Lords Justices Lindley and A. L. Smith) held that the engine was a fixture—*i.e.*, part of the soil—subject to the right in the owner of the engine, who had hired it out, to remove it; that that right of removal was not an easement in favour of such owner, the agreement not having been under seal; but that that right was not one which could be enforced at law or in equity against the mortgagee.

In *Re Samuel Allen and Sons, Limited* (1907) 1 Ch. 575, an agreement, somewhat similar to that entered into in the last-mentioned case, was entered into in respect of certain machinery. The hirers were a company holding certain leasehold premises to which the machinery was affixed. Subsequently the company executed a document declaring that the lease of the premises had been deposited with a bank, to whom the document was addressed, to secure the company's current account; and the company thereby agreed to execute a legal mortgage of the premises on demand. The bank had no knowledge of the hire-

purchase agreement. Default was made in payment of instalments under the hire-purchase agreement and the machinery was seized. The owners of the machinery demanded its return, and an order for winding-up the company was subsequently made. Mr. Justice Parker held that the claim of the bank, who were merely equitable mortgagees, could not prevail over the claim of the owners of the machinery, whose agreement was first in point of time.

In the recent case, mentioned in the opening lines of this article, a hire-purchase agreement was entered into in respect of a certain installation. The assets and liabilities of the firm which were the hiring parties under the agreement were subsequently taken over by a company, which issued a series of first mortgage debentures containing a charge in the usual form on the company's undertaking. A receiver and manager was appointed in an action on the part of the debenture-holders to enforce their security. The debenture-holders had no notice of the hire-purchase agreement. The owners of the machinery sought to recover it, as default had been made under the agreement. The Court of Appeal, affirming the decision of Mr. Justice Eve, held that under the hire-purchase agreement the parties who had hired out the machinery which was intended to be, and was in fact, affixed to the land of the company's predecessors in title acquired an equitable interest in part of the land—viz., in the machinery annexed to it; and that the interest of the debenture-holders, being equitable only, and subsequent in date to the interest of the parties who had hired out the machinery, the claim of the latter prevailed.

These cases show that a fixture properly so called is part of the land itself, and that the right of removal is one which when based on equitable grounds, such as on an agreement, is an equitable interest in land. It is now clear that such an equity would not prevail against a purchaser of the land acquiring the legal estate in that land without notice of the agreement.—*Law Times.*

SURVIVORS—CARELESS USE OF THE WORD.

The words "survivor" and "survive" should be absolutely banished from wills, unless it is quite clear on the face of the document itself who or what is to be survived, and in what sense "survive" is used. To take a very simple instance: A testator says: "I bequeath a sum of £*c* upon trust for my wife for life and afterwards for the survivors of my children." Does this mean that the children to take are those who survive the testator or those who survive the wife or those of the children who live longest? So common is the difficulty of ascertaining the testator's intention when he uses one of these words, that we noted two cases in our last number. In *Re King* (noted *ante*, p. 484) the gift was after the death of each of his daughters for her children who survived the testator. None of the daughters married in the testator's lifetime, but one of them afterwards married and had three children. Could it be said that these three survived the testator when they had not been born at his death? The natural meaning of survive is "to live beyond," and a person can scarcely be said to have lived beyond the life of another person when their lives did not overlap at all. No one, for instance, would say that Napoleon survived Julius Cæsar. Words are, however, our servants, not our masters, and it was obvious that the testator must have intended his grandchildren to take though they were born after his death; and Mr. Justice Eve was enabled to hold that the grandchildren did take by allowing to the word "survive" a secondary meaning of "live after." In the other case to which we referred—namely, *Re Mears* (noted *ante*, p. 484)—the question was, in effect, whether "survivor" could not be interpreted as "other." The trusts of the will were, briefly, that the residue should be held in trust to pay the income equally between his three daughters during their respective lives, and after the death of any leaving issue to pay one-third of the capital to her children who shall attain twenty-one, and if they should die without leaving issue the survivors or survivor should take the de-

ceased's share of income during her life. If all died without issue the capital was to go to the testator's next of kin. As it will be seen, there was no gift over of the capital of any dying without issue unless they all died without issue. As a matter of fact, two died without issue, and the children of the third had hopes that they might take under a kind of stirpital gift over. Probably this was intended, but the testator had not said so, and Mr. Justice Eve refused to hold that a gift of income to the surviving daughters implied also a gift of capital to the children of any of the three who had children.—*Law Times.*

SOLDIERS AND THE LAW.

The situation created by the threatened resignation of certain officers of the regular army, and the discussion which has ensued thereupon in Parliament, are of great interest to those of the Legal Profession who are versed in constitutional law. Mr. Justice Stephen, whose authority upon such a point nobody would question, points out that the soldier is subject to two jurisdictions, the civil and the military, which may involve him in a difficult position when those jurisdictions conflict. On the one hand, if ordered to attack a civilian, the soldier obeys, he may be amenable in his character as an ordinary citizen to the criminal jurisdiction of the civil courts, whilst, on the other hand, refusal to obey the order of his superior may put him within reach of the military jurisdiction of a court-martial. The great difficulty arises as to what cases or circumstances will, in the eye of the common law, justify a soldier in making an attack upon a civilian in obedience to the superior orders of his commander. Such a case does not appear to have received any authoritative decision in a court of law, but the generally accepted opinion would seem to be that the order of a military superior will justify his subordinates in executing an order, for the giving of which they may fairly and reasonably suppose he had good ground. Each case must depend, of course, upon the whole circumstances surrounding it, the difficulty of laying down any more definite rule being

much the same as that which besets anyone who endeavours to define the amount of violence or threatened violence necessary to justify an assault and battery. The difficulty may, of course, in many cases be obviated by a reliance upon the duty of a soldier, in his capacity of citizen, to come to the aid of the law in the suppression of a riot or armed resistance to the executive which is endeavouring to enforce a legal measure or to perform its legal duties.—*Law Times.*

JUDICIAL DEMEANOUR.

One of our English exchanges takes to task, in a recent issue, some of their English judges. The following item under the head of "Judicial Levity" is fortunately not as applicable to judges in this country as it appears to be to some in England. It may be quoted, nevertheless, for reference should the occasion require. "We are not surprised that the opinion of the general public, as reflected by the lay press throughout the country, is becoming distinctly weary of the quips and jokes which cause reports of some legal cases to be interspersed with laughter.' No protest whatever could ever have been raised against the true wit of the late Lord Bowen or the late Lord Macnaghten, while in the judgments of one present Lord of Appeal many gems are to be found. Their methods of driving home some particularly forceful observation have done much to brighten the literature of the law, but jesting, in contradistinction to wit, merely degrades the dignity of the Bench and is singularly out of place in a court of justice."

What the writer says on another subject is of more importance. Possibly the cap may fit some of our judges. "We cordially agree with Lord Reading that it is of the utmost importance that cases brought before the courts should never be hurried, and that patience is one of the greatest qualities necessary for a judge. As a corollary to this, we would add that talkative judges, and judges who are incessantly interrupting the arguments of counsel, not only unduly prolong the cases and add to the list of arrears and to the expenses of litigants, but also increase their own difficulties in arriving at a correct determination. The ideal judge listens attentively, interrupts moderately, and considers carefully."

REVIEW OF CURRENT ENGLISH CASES.

SALE OF GOODS—PRINCIPAL AND AGENT—BROKER RECEIVING DEL CREDERE COMMISSION—LIABILITY OF DEL CREDERE AGENT—NON-PERFORMANCE OF CONTRACT—SOLVENT BUYER.

Gabriel v. *Churchill* (1914) 1 K.B. 449. In this case the plaintiffs had sold goods through the defendants, who were paid a *del credere* commission. The buyers were perfectly solvent, but a dispute arose between them and the plaintiffs as to the performance of the contract and they refused to pay the balance claimed by the plaintiffs to be due by them. Thereupon, the plaintiffs commenced the present action against the agents, claiming that in default of payment by the buyers they were liable as principals. The plaintiffs relied on certain dicta of Lord Mansfield in *Grove* v. *Dubois*, 1 T.R. 112 at p. 115, and of Mellish, L. J., in *Ex parte White* (1871) L.R. 6, Ch. 397 at p. 403, but Pickford, J., came to the conclusion that they did not correctly state the law as to the liability incurred by a *del credere* agent; and, without deciding whether that liability was confined solely to the question of the solvency of the buyer, he held that it did not, at all events, make him liable as a principal, but that his liability does not extend further than this, that where there is an ascertained amount or certain sum due as a debt from the buyer to the seller which the buyer fails to pay either through insolvency or some other cause, that there the agent is responsible for the default. In the present case no debt was really ascertained to be due and owing, by reason of the unsettled dispute between the buyer and the sellers as to an alleged breach of the contract, and the action therefore was dismissed.

MERCHANT SHIPPING—PERSUADING SEAMAN TO DESERT—ARTICLES NOT SIGNED—MERCHANT SHIPPING ACT, 1894 (57-58 VICT. c. 60), ss. 113, 236.

Vickerson v. *Crowe* (1914) 1 K.B. 462. This was a case stated by a magistrate. The defendant was charged with persuading a seaman to desert his ship. The Merchant Shipping Act, 1894 (57-58 Vict. c. 60, s. 113) requires the master of a ship, except as therein mentioned, to enter into an agreement with every seaman whom he carries to sea as one of his crew from any port of the United Kingdom, which is to be in the form approved by the Board of Trade and is to be dated and signed as therein directed. Section 236 of the Act provides that a person persuading or attempting to persuade a seaman to neglect or refuse to join or pro-

ceed to sea in, or to desert from, his ship, shall be liable to a penalty. A seaman was engaged to serve on board the applicant's ship, but had not signed any agreement and the defendant had attempted to persuade him not to join the applicant's ship. He subsequently signed the agreement but acting on the defendant's persuasions, refused to go to sea. There was no evidence that the defendant had used any persuasion after the seaman had signed the articles. On this state of facts the defendant was convicted, and the Divisional Court (Darling and Atkin, JJ.) affirmed the conviction. The court holding that the ship the seaman had agreed to join was his ship although he had not signed the agreement.

SHIP —BILL OF LADING—EXEMPTION FROM LIABILITY—FIRE—PERILS OF SEA—DANGEROUS CARGO—DEFECTIVE STOWAGE—STOWAGE RENDERING VESSEL UNSEAWORTHY—MAINTENANCE OF VESSEL—MERCHANT SHIPPING ACT, 1894 (57-58 VICT. C. 60), S. 502.

Ingram v. *Services Maritimes* (1914) 1 K.B. 541. This was an action by the plaintiffs to recover the value of goods shipped on board the defendants' vessel. The defendants relied on the provisions of s. 502 of the Merchant Shipping Act as exempting them from liability; the loss in question having been caused by fire, but Scrutton, J., held that the defendants were not entitled to the protection of that section because the cargo had not been properly stowed and owing to the defective stowage the vessel became unseaworthy, and such defective stowage had occasioned the fire and loss of the goods in question, without the actual fault or privity of the defendants, within the meaning of the statute, but that the following exceptions in the bill of lading disentitled them to the protection of the statute "(1) Fire on board . . . and all accidents, loss and damage whatsoever from . . . the perils of the seas . . . or from any neglect or default whatsoever of . . . the master, officers, engineers, crew, stevedores or agents of the owners . . . in the management, loading, stowing or otherwise . . ." "(11) It is agreed that the maintenance by the shipowners of the vessels' class . . . shall be considered a fulfilment of every duty, warranty or obligation, and whether before or after the commencement of the said voyage." The learned judge considered that these express provisions in regard to fire and maintenance of the vessel excluded the operation of the Act, but the Court of Appeal (Williams, Buckley and Kennedy, L.JJ.) held that neither of these exceptions precluded the defendants from the benefit of the Act, and the judgment of Scrutton, J., was therefore reversed.

TELEGRAPH—PLACING POSTS AND WIRES ON AND ACROSS PUBLIC STREETS—CONSENT OF BODY HAVING CONTROL OF STREET.

Postmaster-General v. *Hendon* (1914) 1 K.B. 564. The Court of Appeal (Cozens-Hardy, M.R., and Eady and Phillimore, L.JJ.) have affirmed the decision of the Railway and Canal Commissioners (1913), 3 K.B., 451 (noted *ante* vol. 49, p. 748), to the effect that where "the consent of the body having the control" of a street, is required for the placing of telegraph poles and wires in or across such street, an urban district council which is not liable to repair the street though within its territorial limits on which it was proposed to place telegraph posts, was not "the body having the control" thereof.

FALSE IMPRISONMENT—ARREST WITHOUT WARRANT BY PRIVATE INDIVIDUAL—FELONY FOR WHICH PLAINTIFF ARRESTED NOT COMMITTED—OTHER FELONIES COMMITTED BY PERSONS OTHER THAN PLAINTIFF—REASONABLE AND PROBABLE CAUSE.

Walters v. *Smith* (1914) 1 K.B. 595. This was an action for false imprisonment. The defendants were proprietors of a bookstore at a railway station of which the plaintiff was assistant manager. In 1912 on taking stock a deficiency was discovered which indicated that money or stock were being stolen. The defendants, acting on advice, set a trap by causing copies of a book called "Traffic" to be marked and delivered for sale at the station where the plaintiff was employed. An agent of the defendants thereafter went to a shop kept by the plaintiff and his wife where magazines and newspapers were sold to purchase a copy of "Traffic" and on a later day he called and one of the marked copies was sold to him in exchange for the price he then paid. The book had been taken on June 15, 1912, by the plaintiff from the bookstall without payment and without the knowledge of the manager or his assistants. It was also discovered that the plaintiff had acted in various respects in contravention of the practice regulating his employment by the defendants, which he was bound to observe and in particular that he, with his wife's assistance, was carrying on a business where newspapers, magazines and occasionally books were sold. These facts were reported to one of the members of the defendants' firm, who thereupon questioned the plaintiff and receiving unsatisfactory answers from him gave him into the custody of a police officer, honestly believing that the plaintiff had stolen the book "Traffic." The plaintiff was committed for trial and eventually tried for the offence, the defence being that in taking the book the plaintiff had no felonious intent, which the jury accepted,

and acquitted him. At the trial of the present action it was admitted that the plaintiff had not stolen the book, but had taken it away with the intention of subsequently accounting or paying for it and no imputation rested upon him in connection with the transaction. Isaacs, C.J., who tried the action found that the defendants had reasonable and probable cause for suspecting the plaintiff of having stolen the money and books other than the book "Traffic" when they gave the plaintiff into custody for stealing the book "Traffic," but that they did not cause his arrest for those other thefts, but only for that of which they considered they had clear evidence, and they were influenced in giving him into custody because of their suspicion of his having been guilty of other thefts, whereas, but for that, they might merely have summoned him, or perhaps not prosecuted him at all. The jury acquitted the defendants of malice. In this state of facts the learned Chief Justice held that the plaintiff was entitled to recover because in order to justify an arrest by a private individual it is necessary to be shown that the crime, for which the arrest was made, was actually committed, and that a private individual cannot justify an arrest as a police officer may, merely on the ground of suspicion that a crime has been committed. Judgment was therefore given for the plaintiff for the damages assessed by the jury with costs except as to the issue of malicious prosecution which the plaintiff was ordered to pay.

MOTION TO QUASH CONVICTION—BIAS OF JUSTICES—SUFFICIENCY OF AFFIDAVIT—KNOWLEDGE OF FACTS DISQUALIFYING.

The King v. *Williams* (1914) 1 K.B. 608. This was a motion for a certiorari for the purpose of quashing a conviction; the ground relied on was that one of the magistrates who tried the case was disqualified. It did not appear by the affidavit of the applicant in support of the motion that any objection to the competence of the court was taken at the hearing, nor did it state that at the date of the hearing the applicant was ignorant of the facts alleged to disqualify one of the justices. In these circumstances the Divisional Court (Channell, Rowlatt and Atkin, JJ.) held that the writ was not grantable *ex debito justitiæ*, and that on the facts, in the proper exercise of judicial discretion, the writ should be refused.

COPYRIGHT—ADVERTISEMENT—TRANSLATION FROM FOREIGN LANGUAGE—RIGHT OF TRANSLATOR TO COPYRIGHT INNOCENT INFRINGER—COPYRIGHT ACT, 1911 (1 & 2 GEO. V. c. 46), ss. 1, 5, 8.

Byrne v. *Statist Company* (1914) 1 K.B. 622. This is a somewhat curious case arising under the Copyright Act, 1911 (1 & 2

Geo. V. c. 46). The plaintiff was a permanent employee of a newspaper called the "Financial Times" and was specially employed by the paper to translate and summarize a speech reported in a foreign language, but this work was done in his own time and independently of his ordinary duties. The speech so translated and summarized was published as an advertisement in the "Financial Times," with the words added, "Translated from the Portuguese language by F. D. Byrne." The defendants, who were publishers of another paper called the "Statist," applied to the authority on whose behalf the advertisement had been published in the "Financial News" for authority to publish it also in the "Statist," which was granted, and a copy of the advertisement was accordingly published in the "Statist" as an advertisement. The plaintiff claimed as the translator of the speech in question that he was entitled to copyright in his translation which had been infringed by the defendant's publication. Bailhache, J., who tried the action came to the conclusion that the plaintiff's claim was well founded and he gave judgment for the plaintiff for £150 and costs.

SAVAGE DOG—PARENT AND CHILD—DOG KEPT BY DAUGHTER OF SEVENTEEN IN HER FATHER'S HOUSE—LIABILITY OF FATHER FOR INUJRY CAUSED BY DAUGHTER'S DOG.

North v. *Wood* (1914) 1 K.B. 629. This was an action brought for the loss of a dog in the following circumstances. The plaintiff owned a Pomeranian puppy and the defendant's daughter, a girl of seventeen, kept at her father's premises a bull terrier which was known to be savage and to have a particular aversion to dogs of the Pomeranian breed. The plaintiff was leading her puppy past the defendant's premises when the bull terrier rushed out and bit the puppy, of which injury it shortly afterwards died. The action was tried in a County Court and was dismissed. The plaintiff appealed, but the Divisional Court (Ridley and Bankes, JJ.) held that as the daughter was of sufficient age to allow of her exercising control over her dog, she and not her father was responsible for the damage done by it. The appeal therefore failed.

CONTRACT—BUILDING CONTRACT—INTERFERENCE BY WRONGDOER WITH ACCESS TO PREMISES—DELAY AND DAMAGE TO BUILDER—LIABILITY OF BUILDING OWNER.

Porter v. *Tottenham Urban District Council* (1914) 1 K.B. 663. The plaintiff in this case had contracted with the defend-

ants to build a school for them on land of the defendants. The access to the parcel on which the school was to be built was through some adjoining land of the defendants over which a temporary roadway was to be made by the plaintiff to the street. The defendants put the plaintiff in possession of the site and also enabled him to make the temporary roadway over the adjoining property, but the owner of the soil of the street alleged that it was not a public highway and prohibited the defendant from using it, and threatened to sue him for an injunction. In consequence the plaintiff ceased work for more than two months, until after the defendants had sued the owner of the soil of the street and obtained a declaration that it was a public highway. The plaintiff claimed to recover from the defendants damages for the loss and delay thus occasioned to him; but Ridley, J., who tried the action, held that there was no obligation, express or implied, upon the defendants to indemnify the plaintiff against the loss caused by the wrongful interference of a third party with his means of access to the site.

ATTACHMENT OF DEBTS—GARNISHEE ORDER—RENT DUE TO JUDGMENT DEBTOR AS MORTGAGOR—RECEIVER APPOINTED AT THE INSTANCE OF SECOND MORTGAGEE—NOTICE OF RECEIVER —PRIORITY.

Vacuum Oil Co. v. *Ellis* (1914) 1 K.B. 693. In this case the Court of Appeal (Buckley and Kennedy, L.JJ., Williams, L.J., dissenting) have determined, overruling the Divisional Court (Ridley and Lush, JJ.), that where an order is made attaching rent due by a tenant of the judgment debtor, after a receiver has been appointed of such rent at the instance of a second mortgagee, but before any notice of such appointment has been given to the tenant, and before any demand of the rent has been made by the receiver, the attaching order is entitled to priority over the claim of the mortgagee to the rent so attached, and that a notice given by the second mortgagee to the tenant to pay the rent to him after the service of the attaching order is inoperative as to such rent.

PRACTICE—FOREIGN CORPORATION—SERVICE OF FOREIGN CORPORATION WITHIN JURISDICTION—CARRYING ON BUSINESS—AGENT IN ENGLAND—NO AUTHORITY TO CONTRACT—(ONT. RULE 23).

Okura Co. v. *Forsbacka* (1914) 1 K.B. 715. The defendants in this case were a foreign corporation carrying on business as manufacturers in Sweden. They had as their sole agents in the

United Kingdom a London firm, who also carred on business as merchants on their own account. These agents had no authority to enter into contracts on behalf of the defendants, but they obtained orders which they submitted to the defendants for their approval and on being notified by the defendants that they approved, the agents signed contracts on their behalf with the purchasers. The goods were shipped direct to the purchasers from Sweden. The agents in some cases received payment for goods and remitted the amount less their agreed commission. The plaintiffs issued a writ against the defendants which was served on the London firm, and the defendants applied to set aside the service as not being warranted by the Rules (see Ont. Rule 23) on the ground that the defendants were not carrying on business within the jurisdiction at their agent's office in London, so as to be resident at a place within the jurisdiction, Ridley, J., on appeal from a master, held that the defendants were right, and on Appeal to the Court of Appeal (Buckley and Phillimore, L.JJ.) his order was affirmed.

ADMINISTRATION—CREDITORS' ACTION—LIABILITY UNDER COVENANTS IN LEASE—DISTRIBUTION OF ESTATE AMONG BENEFICIARIES—CONTINGENT LIABILITY—DEVASTAVIT—STATUTE OF LIMITATIONS—TRUSTEE ACT, 1888 (51 & 52 VICT. c. 59), s. 1 (3); s. 8 (1 *a*, *b*)—(R.S.O. c. 75, s. 47 (2 *a*, *b*).)

In *Re Blow; St. Bartholomew's Hospital* v. *Cambden* (1914) 1 Ch. 233. This was a creditor's action for the administration of the estate of a person who died in January, 1902. At the time of his death he was lessee of certain premises from the plaintiffs. In October, 1902, the executors of the lessee distributed the entire residue of his estate without making any provision for any future liability under the covenants in the lease. In 1909 the rent fell in arrear and in 1911 the plaintiffs commenced the present action against the surviving executor and the beneficiaries, the executors of the deceased executor being subsequently added as defendants. The surviving executor and the representative of the deceased executor pleaded the limitations contained in the Trustee Act, 1888, as a bar to the action as against them (see R.S.O. c. 75, s. 47 (2 *a*, *b*).) Warrington, J., who tried the action, held that the statute was no bar, but a majority of the Court of Appeal (Cozens-Hardy, M.R., and Eady, L.J.) held (Phillimore, L.J., dissenting) that the statute was a good defence. Phillimore, L.J., was of the opinion that the time only began to run under the statute when the right of action first accrued, which was when the rent fell in arrear, viz., in 1909, but if this were the

law it would serve to follow that no estate could be distributed with safety as long as any lease was current on which a liability might accrue; and would be tantamount to giving a lessee a security for his rent which in *King* v. *Malcott*, 9 Hare 692, he was held not to be entitled to.

WILL—CONSTRUCTION — GIFT TO "CHILDREN" — ILLEGITIMATE CHILDREN—BELIEF OF TESTATRIX THAT ILLEGITIMATE CHILDREN WERE LEGITIMATE.

In re Pearce, Alliance Assurance Co. v. *Francis* (1914) 1 Ch. 254. A testatrix whose will dated in 1911 was in question in this case, gave the residue of her property in trust for her brother W. W. Francis for life and after his death in trust for all or any of his children living at the death of the survivor of the brother and the testatrix. At the date of the will the brother had six illegitimate children living, by a woman named King, who had died in 1900, and two legitimate children by a subsequent marriage. The woman King had been accepted and received in society as the brother's wife and his six children by her were regarded as legitimate and the testatrix knew and was fond of them all, and Francis in response to an application by her for a list of his children prior to the making of her will had informed her that they were the children of his first wife. The question was whether these illegitimate children were entitled to participate in the bequest of the residue. Sargant, J., held that they were not (1913) 2 Ch. 674 (noted *ante* p. 64) and the Court of Appeal (Cozens-Hardy, M.R. and Eady and Phillimore, L.JJ.) affirmed his decision and held that the fact that the testatrix believed them to be illegitimate did not constitute an exception to the general rule that under a bequest to children only legitimate children can take. Their lordships held that the only two exceptions to that rule are those stated in *Hill* v. *Crook*, L.R. 6 H.L. 265, and *Dorin* v. *Dorin*, L.R. 7 H.L. 568.

WILL—GENERAL CHARGE OF DEBTS INCLUDING MORTGAGE DEBTS —SPECIFIC DEVISES OF INCUMBERED AND UNINCUMBERED REALTY—LATER CLAUSE DEVISING SPECIFIC PROPERTY FOR PAYMENT OF DEBTS.

In re Major, Taylor v. *Major* (1914) 1 Ch. 278. An originating summons was issued in this case to determine certain questions arising under a will whereby the testator, at the commencement thereof said: "First I will that all my just debts (including mortgage debts) and funeral and testamentary expenses be paid and satisfied." He then devised specifically certain parts of his

realty incumbered and unincumbered, and by a later clause devised other realty and the residue of his personalty to pay his just debts (including mortgage debts) and funeral and testamentary expenses. It was conceded that this latter fund must be first applied pro rata in payment of all debts including mortgage debts and funeral expenses; but the main question presented for decision was how the residue of the debts was to be paid? Did the opening words of the will create a general charge of debts on all the realty, so as it were to pool them and make all the realty answerable for all debts including mortgage debts? Sargant, J., held that the opening words being followed, as they were, by a specific devise for payment of debts, had not the effect of creating a general charge of all the debts on all the lands; but he held that all the realty specifically devised was ratably liable for payment of the residue of the unsecured debts and funeral expenses, which the special fund was insufficient to pay, and that in ascertaining the amount for which the incumbered realty was liable to contribute the amount of the incumbrance thereon not discharged out of the special fund must be deducted, and that the remainder of the mortgage debts not discharged out of the special fund were to be borne by the respective mortgaged properties.

SOLICITOR—ADMISSION OF WOMEN AS SOLICITORS—INVETERATE USAGE.

Bebb v. *Law Society* (1914) 1 Ch. 286. Miss Bebb, a lady ambitious to pursue the profession of a solicitor, made application to the Law Society to be admitted to the necessary examinations, but the Society, having refused her application, brought an action against the Society, which having been dismissed by Joyce, J., she appealed to the Court of Appeal (Cozens-Hardy, M.R., Eady, and Phillimore, L.JJ.), but that Court was equally obdurate and held that the inveterate usage excluding women from the legal profession must prevail until altered by express legislation. That Lord Coke had said "a woman is not allowed to be an attorney" was in the opinion of the Master of the Rolls, conclusive as to what was the common law on the subject, and the court held that the Solicitors Act (1843) was not intended to, and did not in fact, confer any new right.

CORPORATION—SUCCESSORS AND ASSIGNS—DISSOLUTION OF CORPORATION—ASSIGNMENT OF UNDERTAKING—LIABILITY OF ASSIGNEE TO PERFORM STATUTORY OBLIGATIONS—REVERSION OF LAND TO GRANTORS.

In re Woking (1914) 1 Ch. 300. This is a somewhat important contribution to company law. In 1777 an Act was passed

incorporating a canal company and authorizing it to construct a canal, acquire land and levy tolls. All persons were to have the right to use the canal on payment of tolls. The company was to make and maintain bridges. Throughout the Act the obligations were imposed on the corporation, its successors and assigns. The canal was made and carried on until 1866 when the company was wound up and in 1874, the liquidator, with the sanction of the judge, sold the canal to William St. Aubyn. The word "undertaking" was not used in the conveyance, but St. Aubyn thereafter carried on the canal and levied tolls. In 1878 the company was dissolved by order of court. St. Aubyn ultimately sold the canal and by divers mesne conveyances it ultimately passed to the London & South West Canal Limited. This company was now in liquidation and the bridges over the canal having fallen into disrepair, the Woking Urban Council obtained an Act of Parliament in 1911 which authorized them to do the repairs and recover the costs from the company. The present proceeding was instituted for the purpose of recovering that outlay. Sargant, J., who heard the application, held the London & South West Canal Co., as assignees of the canal, were liable and that the expense was a first charge upon the property. The Court of Appeal (Cozens-Hardy, M.R., and Eady and Phillimore, JJ.) however, threw an entirely new light on the matter. In their judgment the original company had no power to assign their undertaking and nothing really passed by the conveyance to St. Aubyn in 1874. Furthermore on the dissolution of the company in that year the land of the company really reverted in law to the original grantors, who, however, were now barred by the Statute of Limitations as against St. Aubyn and his grantees and they had thus acquired a fee simple in the land, free from any obligations or rights of the original company. Consequently that the London & South West Canal Co. were owners of the canal, but were not bound to keep it up or do repairs and on the other hand they had no right to collect tolls. They also held that the Act of 1911 did not impose any fresh liability, and therefore no liability for repairs attached either to the London & South West Canal Company or their mortgagee.

COMPANY—PROMOTERS—LEASE "AGREED TO BE GRANTED"—ABSENCE OF BINDING AGREEMENT—LEASE AFTERWARDS GRANTED—CLAIM BY COMPANY TO APPORTION PRICE FIDUCIARY POSITION OF PROMOTERS.

Omnium Electric Palaces v. *Baines* (1914) 1 Ch. 332. This was an action by a limited company against the promoters to recover from them a part of the purchase money paid to them

for certain property, including *inter alia* a lease "agreed to be granted," of certain premises. At the time of the contract there was not in existence any binding agreement to grant the lease in question, but after the sale the lease was granted to the promoters and duly assigned by them to the company. The company contended that the proportion of purchase money attributable to the "lease agreed to be granted" should be refunded. Sargant, J., who tried the action, held that whether or not the lease was properly described in the contract the company had, in fact, obtained what it had bargained for, and no secret profit having been made, the company was not entitled to any relief, and this opinion was affirmed by the Court of Appeal (Cozens-Hardy, M.R., and Eady and Phillimore, L.JJ.). Sargant, J. also held that the objection if valid would have gone to the entire contract and that relief could not be given by way of apportionment of the purchase money.

WILL—LATENT AMBIGUITY—GIFT TO HUSBAND AND WIFE AND "THEIR DAUGHTER"—EXTRINSIC EVIDENCE AS TO WHICH ONE OF FIVE DAUGHTERS WAS MEANT—HUSBAND AND WIFE

In re Jeffery, Nussey v. *Jeffery* (1914) 1 Ch. 375. Under the will in question in this case the testatrix gave her residuary personal estate "between my brother W. J., his wife and their daughter." At the date of the will and at the death of the testatrix W. J. had five daughters and one of the questions in the case was which one of the five was meant. Evidence was given to show that the testatrix had been on intimate terms with a daughter named Phœbe and not with any of the others and that she had, in 1909, made a previous will in which Phœbe and her father were the residuary legatees. Warrington, J., was of the opinion that the evidence was admissible to show which of the five daughters was intended, but treating it as evidence of surrounding circumstances only it was sufficient to show that Phœbe was the daughter referred to by the testatrix. Another question for decision was in what proportions the parties took, and it was held that they took in equal third shares, the husband and wife taking separately and not as one person, the learned judge following on this point *Re Dixon*, 1889, 42 Ch.D., 306, in preference to *Re Jupp* (1888), 39 Ch.D. 148.

RESTRAINT OF TRADE—OTHER BUSINESS SIMILAR TO THAT OF EMPLOYER—SEVERANCE OF COVENANT—REASONABLENESS—AREA OF RESTRAINT—TIME LIMIT—INJUNCTION.

Nevanas & Co. v. *Walker* (1914) 1 Ch. 413. In 1908 the plaintiffs, who were meat importers, agreed to employ the defendant

as their manager at Liverpool for five years from January, 1909, and it was provided in the agreement that the defendant should not for a period of one year after the determination of the agreement whether by effluxion of time or otherwise, either solely or jointly with, or as agent for, any other person, firm or company, directly or indirectly carry on or be engaged or interested in carrying on within the United Kingdom the trade or business of an importer of meat, except with the plaintiff's consent. At the date of the agreement, the plaintiff's business was confined to the Australasian trade as distinguished from the American trade, though they did some business as wholesale dealers in meat including American meat. The business was conducted almost entirely in the North of England and in the Midlands, but had since undergone considerable expansion. The action was brought to enforce the covenant, so far as it related to the business of a meat importer, it being conceded that the clause as to other businesses was too wide and could not be supported. Sargant, J., who tried the action, although admitting that the covenant was severable, was nevertheless of the opinion that the other part of the covenant was too wide (1) because it embraced the whole trade including the American as well as the Australasian and (2) because it extended to the whole United Kingdom, which was an unreasonable area of restriction, and therefore the whole covenant was void as being in undue restraint of trade

REPORTS AND NOTES OF CASES.

Dominion of Canada.

SUPREME COURT.

Ont.] [Feb. 22.

TOWNSEND *v.* NORTHERN CROWN BANK.

Banks and banking—Loans—Security—Wholesale purchaser—"Products of the forest"—Bank Act. s. 88.

By sec. 88 (1) of The Bank Act a bank "may lend money to any wholesale purchaser. . . . or dealer in products of agriculture, the forest, etc.; or to any wholesale purchaser . . . of live stock or dead stock and the products thereof, upon the security of such products or of such live stock or dead stock and the products thereof."

Held, affirming the judgment of the Appellate Division (28 O.L.R. 521), which affirmed the decision of a Divisional Court (27 O.L.R. 479) by which the judgment of the trial judge (26 O.L.R. 291) was maintained, that a person who purchases lumber by the car load having on hand at times 200,000 or 300,000 feet and sells it by retail or uses it in his business is a "wholesale purchaser" within the meaning of the above provision.

Held, also, that sawn lumber is a "product of the forest" on which money can be lent under said provisions.

Held, per Anglin, J. The words "and the products thereof" at the end of the above subsection mean the products of live or dead stock and not of the other sources previously mentioned.

Appeal dismissed with costs.

Laidlaw, K.C., for appellant. *Arnoldi*, K.C., for respondents.

Ex. C.] CONROD *v.* THE KING. [March 2.

Right of action—Lord Campbell's Act—Death by accident—Action by widow—Accord and satisfaction.

Where the death of a person is caused by the wrongful act, neglect or default of another an action for damages does not lie under Lord Campbell's Act unless the deceased could have maintained an action if death had not ensued.

C. was a temporary employee on the Intercolonial Railway, and as such a member of the Employees Relief and Insurance Association. By the rules of the association the object of the Temporary Employees Accident Fund was to provide for members

suffering from bodily injury and for the family or relations of deceased members. Each member had to contribute to the fund and the Railway Department gave the annual sum of $8,000 in consideration of which it was to be relieved of all claims for compensation for injury or death of any member. C. was killed by a railway train and his widow was paid $250 out of this fund. She then brought an action under Lord Campbell's Act

Held, affirming the judgment of the Exchequer Court (14 Ex. C.R. 472), that as by his contract with the Association C. could not have maintained an action had he lived the widow's right of action was barred.

Appeal dismissed with costs.

Power, K.C., for appellant. *Rogers*, K.C., for respondent.

Railway Board.] [March 23.

CANADIAN PACIFIC RY. CO. v. GRAND TRUNK RY. CO.

Railways—Crossing lines—Overhead bridges—Contract for maintenance—Future traffic.

A railway company wishing to cross the line of another contracted with the latter for four crossings, three by an overhead bridge and one by a subway under a bridge of the other company. The contract contained this provision: "The said several crossings . . . shall all be maintained at the cost of the Ontario Company (junior road) and shall each always be maintained in a good and safe state, and so as in no way to endanger the property, fixed or movable, of the Midland Company (senior road)." The said bridges were to be constructed according to plans and specifications settled and approved by the Chief Engineer of the senior road and if the junior failed to maintain them to the satisfaction of said Chief Engineer the senior could cause the necessary work to be done at the cost of the other company.

Held, that the obligation of the junior road was not merely to keep the crossings in good and sufficient repair in the condition they were in when the contract was made, but they could at any time be ordered by the Railway Board to make them fit for the heavier traffic caused by the increased business of the senior road.

W. N. Tilley, for appellants. *Lafleur*, K.C. and *Chisholm*, K.C., for respondents.

Ont.] HITCHCOCK *v.* SYKES. [March 23.

Vendor and purchaser—Agreement for sale—Agent to procure purchaser—Agent joining in purchase—Non-disclosure to co-purchaser—Payment of commission—Rescission of contract.

H. was owner of mining land and S. was offered a commission of ten per cent. for finding a purchaser therefor. S. induced W. to take up the matter and joined him in the purchase without disclosing his agency. A contract was entered into with H. and W. paid $20,000 on account of the purchase price on which S. was paid his commission. Default having been made in the further payments H. brought action claiming possession of the property and the right to retain the amount paid. W. counter-claimed for rescission of the contract and return of the money paid with interest and on the trial swore that he knew nothing of S.'s agency for several months after the contract was signed.

Held, affirming the judgment of the Appellate Division (29 O.L.R. 6), Fitzpatrick C.J., dissenting, that it was the duty of H., on becoming aware that S. was a co-purchaser with W., to satisfy himself that the latter was aware of the agency of S.; that H. was responsible for the fraudulent misrepresentation of their agent; and that W. was entitled to the relief asked by his counter-claim.

Appeal dismissed with costs.

Cline, for the appellants. *Kilner*, for the respondents.

Province of Ontario

SUPREME COURT.

Middleton, J.] [15 D.L.R. 684.

PEDLAR *v.* TORONTO POWER CO.

1. *Damages—Measure of compensation—Death—Claim by parent—Lord Campbell's Act.*

The basis for the recovery of damages under Lord Campbell's Act for death caused by negligence is not for injured feelings or on the ground of sentiment but compensation for a pecuniary loss; the parent's claim in respect of the death of a child of tender years must be based upon a reasonable expectation of pecuniary benefit.

2. *Negligence—Injuries to children—Dangerous attractions—Narrow foot-bridge.*

A narrow foot-bridge built over water for the convenience of its owner is not such a dangerous attraction to children as will render the owner liable for the death of a child of tender years who fell therefrom into the water and was drowned where there was no license extended to children to go there and the bridge was ordinarily inaccessible by the withdrawal of a plank leading to it.

[*Cooke* v. *Midland G.W.R. Co.*, [1909] A.C. 229, distinguished.]

3. *Death—Contributory negligence.*

To permit a two year old child to go about unattended knowing that he may wander upon a narrow foot-bridge over deep water, is such contributory negligence as would prevent the parent from recovering damages for the child's death from drowning by falling from such bridge.

W. M. McClemont, for plaintiffs. *D. L. McCarthy*, K.C., for defendants.

NOTE—An instructive annotation on this case will be found in 15 D.L.R. 689.

Province of Nova Scotia.

SUPREME COURT.

Full Court.] [March 14.

REX *ex rel.* WALSH *v.* JUDGE OF THE COUNTY COURT JUDGES' CRIMINAL COURT AT HALIFAX.

Criminal law—Code 825 (4)—*Indictment—Meaning of—"Or who is otherwise in custody awaiting trial"—Speedy trial.*

The relator was put on trial by the Stipendiary Magistrate of the City of Halifax on a charge of indecent assault and admitted by him to bail in June 1913, and made no election under section 827 of the Criminal Code. At the October sittings, 1913, of the Supreme Court for criminal trials at Halifax, he was indicted for this offence by the grand jury and not appearing was arrested in March 1914, on a bench warrant. The Sheriff brought the relator before the Judge of the County Court Judges' Criminal Court at Halifax under section 826 of the Code, but the learned judge declined to put the prisoner to his election on the ground that he had no jurisdiction to deal with the matter at all, owing to the indictment in the Supreme Court. On motion for a writ of mandamus or alternatively for a mandatory order under Crown Rule 70 directing the judge to proceed in the matter:—

Held, allowing the mandamus, that the relator, notwithstanding the indictment, being "otherwise in custody awaiting trial" within the meaning of sec. 825 (4) of the Code, was entitled to his election under sec. 827 of the Code, and that the judge had jurisdiction to proceed thereunder, and should put the relator to his election as therein provided, and if he elected to be tried before him that he should proceed to try him for, the said charge. *R.* v. *Sovereen*, 20 Can. Cr. Cases 103, considered.

Power, K.C., for the motion. *Morrison*, K.C., *contra* for the Crown.

Province of Manitoba.

KING'S BENCH.

Mathers, C.J.K.B.] [15 D.L.R. 588.

ALEXANDER *v.* ENDERTON.

Brokers—Commission to purchaser's agent as condition of contract —Effect.

Where a real estate broker enters into negotiations with the owner to buy for an undisclosed purchaser, and on concluding the bargain includes in it a condition which the owner accepts, that the latter to whom he was under no fiduciary obligation should pay him a commission on the sale, such will not alone constitute the broker an agent of the vendor.

J. B. Coyne, and *J. P. Foley*, for plaintiff. *R. M. Dennistoun*, K.C., *A. J. Andrews*, K.C., *W. H. Curle*, *F. M. Burbidge*, and *E. R. Chapman*, for defendants.

ANNOTATION ON ABOVE CASE IN 15 D.L.R. 595.

It is a well-established rule that an agent to whom instructions are given to procure a purchaser for property, has not, although the price and terms of sale are named in the instructions, without the concurrence of his principal, authority to enter into a binding contract with a purchaser to sell the property: *Margolis* v. *Birnie* (Alta.), 5 D.L.R. 534, 4 A.L.R. 415; *Doyle* v. *Martin*, 3 A.L.R. 184; *Williams* v. *Hamilton*, 14 B.C.R. 47; *Gilmour* v. *Simon*, 15 Man. L.R. 205, affirmed 37 Can. S.C.R. 422; *Ryan* v. *Sing*, 7 O.R. 266; *Bradley* v. *Elliott*, 11 O.L.R. 398; *Havner* v. *Weyl* (Sask.), 5 D.L.R. 141, affirmed 7 D.L.R. 682; *Schaefer* v. *Millar* (Sask.), 11 D.L.R. 417; *Boyle* v. *Grassick*, 2 W.L.R. 284, reversing 2 W.L.R. 99; *Prior* v. *Moore*, 3 Times L.R. 624; *Chadburn* v. *Moore*, 61 L.J.Ch. 674; *Godwin* v. *Brind*, 17 W.R. 29; *Wilde* v. *Watson*, 1 L.R. Ir. 402; *Hamer* v. *Sharp*, 44 L.J. Ch. 53, L.R. 19 Eq. 108.

Notwithstanding that the term "sell" is ordinarily used in listing property with a broker in order to find a purchaser, it will be inferred that the intention was merely to authorize the broker to find a buyer, unless there is something to indicate that there was an intention to give authority to sell: *Boyle* v. *Grassick*, 2 W.L.R. 284, reversing 2 W.L.R. 99.

Power to enter into a contract of sale on behalf of a principal is not conferred on a real estate broker by listing with him land for sale under an agreement not containing an express authorization to conclude a contract of sale, where the owner reserved the right to sell the land either by himself or through other agents, notwithstanding the agreement authorized the agent "to list the property for sale," or "sell it," since such limitation was an intimation that the agent's authority was confined to securing a purchaser: *Schaefer* v. *Millar* (Sask.) 11 D.L.R. 417.

A real estate broker who was told that if he could sell a piece of land within three days, for a stipulated sum on the terms specified, he would receive a given commission, was not thereby empowered to enter into a contract of sale on behalf of his principal: *Gilmour* v. *Simon*, 37 Can. S.C.R. 422, affirming 15 Man. L.R. 205. So, a statement by a landowner, in reply to a letter from a real estate agent inquiring whether $1,200 would be accepted for the land, that $1,275 was the least it would be sold for, does not confer authority on the agent to make a binding contract of sale: *Bradley* v. *Elliott*, 11 O.L.R. 398. Nor is such authority conferred by a letter to an agent requesting him to call on the writer's tenant with a proposition to sell him the demised premises for cash, and stating that if a sale was made, that the necessary papers would be sent the agent: *Ryan* v. *Sing*, 7 O.R. 266. And a real estate agent is not empowered to make a contract for the sale of land by virtue of a letter from his principal giving his price and terms of payment, in which he stated that he would refer all inquiries concerning the land to the agent; but directing the latter to send him all the necessary papers for execution if a purchaser was found: *Margolis* v. *Birnie* (Alta.), 5 D.L.R. 534. To the same effect see *Williams* v. *Hamilton*, 14 B.C.R. 47. Nor is such power conferred by verbal instructions to a person who had previously managed property for the owner, to endeavour to find a purchaser: *Doyle* v. *Martin*, 3 A.L.R. 184.

Power to enter into a contract of sale is not conferred on an agent by a request to procure a purchaser, and to insert particulars in a monthly circular issued by him, until further notice: *Hamer* v. *Sharp*, L.R. 19 Eq. 108; nor by instructions to find a purchaser and negotiate a sale: *Chadburn* v. *Moore*, 61 L.J. Ch. 674. And instructions for an estate agent to put property on his books, with the owner's lowest price, as for sale, is insufficient for such purpose: *Prior* v. *Moore*, 3 Times L.R. 624. Nor may an agent enter into such an agreement under instructions contained in an advertisement of the sale of land directing prospective purchasers to apply to him in order to view the land and to treat regarding it: *Godwin* v. *Brind*, 17 W.R. 29.

Bench and Bar

JUDICIAL APPOINTMENTS.

Louis Martin Hayes, of the City of Peterborough, Province of Ontario, K.C., to be Judge of the County Court of the County of Wellington, vice Austin Cooper Chadwick, who has retired from the said office. (Mar. 30.)

Henry Alfred Ward, of the Town of Port Hope, Province of Ontario, K.C., to be Judge of the County Court of the United Counties of Northumberland and Durham, vice Thomas Moore Benson, who has retired from the said office. (Mar. 30.)

Anson Spotton, of the Town of Harriston, Province of Ontario, Barrister-at-law, to be Junior Judge of the County Court of the County of Wellington, vice Joseph Jamieson, who has retired from the said office. (Mar. 30.)

Flotsam and Jetsam.

In Croatia, a purely Slavonic country under the Hungary crown, attorneys are still appointed by the government and consequently more or less independent. The Bar of the country have long been contending for a free advocature, and have declared themselves willing on their side, to submit to the very strict requirements as to training, responsibility and censorship. Practically the whole Bar is Slav, while the central government is rabid Magyar. The latter has proposed a reform, but the main point of it is, a proposed transfer to the notaries of a great deal of the business hitherto belonging to the Bar, probably with a view of lowering the power and influence of the advocature. There is an old saying to the effect that a badly treated bar means a poor administration of justice, and it seems as if Croatia is about to become the next country to prove the truth thereof.

The authorities referred to in an article on the meaning of "presence" in attestation of witnesses to a will in the *Central Law Journal*, vol. 78, p. 111, may be useful in this country where a discussion arises on the subject. The writer discusses it in relation to mental consciousness; change of position of the witness to see the testator affix his signature, and inability to change position so as to see the witness; obstruction to range of vision. The testator's acknowledgment is of aid only in inability cases.

Contempt of Court.

"Now lemme see," said the rural justice, figuring on the back of an old envelope. "Your bill will come to jest—forty-seven dollars."

"Forty-seven dollars!" echoed Wigglethorpe. "Why, Judge, the fine for overspeeding is only fifteen dollars."

"Ya-as, I know," said the justice. "The thutty-two dollars is fer contempt o' court."

"But I haven't expressed any contempt for this court," protested Wigglethorpe.

"Not yit ye hevn't," grinned the justice, "but ye will, my friend, ye will before ye git a mile out o' town. I've made the fine putty stiff so's t' give ye plenty o' room to move round in." —*Harper's Weekly.*

Mechanical Reproductions.—The way in which the law develops in order to meet the advance of invention was well illustrated by the provisions of the Copyright Act, 1911, with reference to the mechanical reproduction of copyright works. It has now been held by Mr. Justice Bailhache that a performance for the purpose of a cinematograph film constituted a breach of an agreement by a music-hall artist not to give "any colourable imitation, representation, or version of the performances" during a certain fixed time, the learned judge being of opinion that the cinematograph reproduction was a colourable imitation of the artist's performance on the music-hall stage. It would seem that the decision largely turned on the character of the performance and the terms of the agreement in question, but, having regard to the enormous growth of all kinds of mechanical contrivances for reproducing dramatic and musical works, no doubt in the future special provisions should be inserted in all contracts clearly defining the rights of the parties.