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GAMBLING CONTRACTS.

The Statute book of Illinois contains an Act specifying three offences for which punishment by fine or imprisonment, or both, is provided. The offences are the sale of "options," "forestalling the market" and "cornering" the market. Judge Jameson, in charging a grand jury lately, remarked that all these offences have either in name or in spirit, been always interdicted by the common law, and that of "forestalling" was, at a very early day, made punishable in England by statutes. "Over a century ago," he added, "a movement arose in England for abolishing the restrictions upon the freedom of trade, and these statutes were, as a part of them, repealed; but the common law has remained, both there and in this country, unchanged, though fallen into disuse. The exigencies of the times induced our Legislature a few years since to re-enact the statute against 'forestalling,' and to add to it those touching 'options' and 'corners' which I have read—offences in which the criminal ingenuity of our ancestors seems not to have been equal."

The learned Judge proceeded to define the offences as he understood them, and as some of the terms used, such as "cornering the market," have hardly yet emerged from the vocabulary of slang, a judicial interpretation of them may be useful.

"The first offence," he says, "is the illegal sale of options for future delivery of grain and other commodities. The fact that property is sold to be delivered at a future day does not make the contract illegal; or that it is not at the time possessed or owned by the seller; or that the time of its delivery is left within fixed limits, optional with the buyer or seller, though in one sense any such sale is a sale of an option apparently within the statute. What makes it a gambling contract is the intent of the parties that there shall not be a delivery of the commodity sold, but a payment of differences by the party losing upon the rise or fall of the market. Of this intent the jury are to be the judges, and it may be inferred directly from the terms of the contract, or indirectly from the course of dealing of the parties: *Pickering* v. *Cease*, 79 Ill. 328; *Walcott* v. *Heath*, 78 Ill. 433; *Pixley* v. *Boynton*, 79 Ill. 351.

"By this legislation the General Assembly had no purpose to interdict *bona-fide* sales of commodities, but only such as are colorable or fraudulent, contrived by both parties as a cover merely for gambling transactions.

"The offence of forestalling originally consisted in the buying or contracting for merchandise or victuals coming to market, or dissuading persons from bringing their goods or provisions, or inducing them to raise their prices. 2 Wharton, Criminal Law, § 1849.

"Our statute has narrowed the offence, so that it covers only forestalling the market by 'spreading false rumors to influence the prices of commodities therein.' The obvious purpose of the Legislature in making this provision was to protect the people, the consumers as well as innocent traders, from the damage resulting from unnatural and fictitious fluctuations of prices, brought about by the false suggestions of interested persons.

"The offence of cornering the market is not, so far as I am aware, mentioned in the books, but it is one of the numerous family of frauds of which the various members in their fight with society assume an infinitude of shapes and colors. To detect and punish these, notwithstanding the novelty and apparent innocence of their disguises, is the first business of courts of justice. The thing which we know as a 'corner' in the market might be briefly described as a process of driving unsuspecting dealers in grain, stocks, and the like, into a 'corral' and relieving them of their purses. The essence of the offence consists in the party securing a contract for the future delivery of some commodity at his option, and then, by engrossing the stock of such commodity in the market, making it impossible for the other party to complete his contract, but by purchasing of his adversary at his own price, or paying in cash the difference fixed by such adversary."

The concluding observations of the Court evinced a disposition to enforce the law, which, if generally imitated, must carry dismay into a good many gambling circles in Chicago and elsewhere. "If the crimes indicated are

being committed," he said, "it imports much that the validity of our statute and its sufficiency to reach the guilty parties should be early tested. If the spread of gambling has infected our business men, the consequences cannot but be disastrous; the course of business, instead of proceeding quietly and healthily, will become broken by fits of fever and panic; unlawful gains will be preferred to the slow profits of legitimate trade; our farmers, partaking of the prevalent spirit, will hold back their crops in expectation of corner prices, borrowing money upon mortgage to carry on their operations, instead of realizing by the sales of farm products. It is said that these phenomèna are already apparent, and they are charged to be the effects of violations of the law. I will only add that it is not your duty to seek inquisitorially for evidence that crimes have been committed. Should evidence come to you through the regular channels, your duty will be to consider it and act fearlessly and promptly to vindicate the laws. I think I may promise on the part of the judiciary of the county that if you present men for crime it will not go unpunished, so far as the enforcement of the law depends upon them."

TRIAL BY JURY.

In the disturbed condition of society in Ireland during the past year, the judges have had frequent occasion to deplore the unwillingness of jurors to respect their oath and convict the guilty. A special committee of the House of Lords, appointed to inquire into the operation of the Irish jury laws, report that juries in most districts have, during the recent agitation, been guilty of very gross misconduct, limited, however, to crimes arising out of disputes as to the occupation of land; crimes arising out of political or religious antagonism, and aggravated assaults. The report states that though the criminal may have been detected in the act of committing the crime, though he may have been arrested bearing upon his person traces which could leave no doubt as to his guilt, though his identity may have been clearly established, the jury have again and again either disagreed or found a verdict of acquittal. On other occasions the prosecution has been compelled to accept a plea of guilty upon an understanding that the defendants were to be liberated without punishment on their own recognizances. The committee very naturally remark that it is scarcely possible to conceive a more complete frustration of justice, or one more calculated to demoralize society.

The report suggests several remedies, and among them the extreme one of suspending for a time the right to a jury trial where the disturbing influences exist.

NOTES OF CASES.

SUPERIOR COURT.

MONTREAL, Sept. 27, 1881.

Before MACKAY, J.

TRUST & LOAN CO. OF CANADA v. THE RIGHT REV. THE LORD BISHOP OF MONTREAL, MUNRO and HUTTON, T. S., and THE SYNOD OF THE DIOCESE OF MONTREAL, intervening.

Powers of Bishop—Authority to bind successors in office.

There were three contestations arising out of the same matter. The Trust and Loan Company in 1875 recovered judgment against Bishop Oxenden in his corporate capacity for the amount of their loan to Trinity Church, the Bishop being vested with the property on which the Church was erected. An attachment was then taken out by the plaintiff in the hands of a number of persons to whom the Bishop had from time to time loaned money in his corporate capacity. In these proceedings the Synod of the Diocese of Montreal intervened, and claimed that all these moneys thus loaned formed part of the Episcopal Endowment Fund, which was vested in the Synod as their property, subject to the trust contained in an indenture executed in 1856, between the Society for the Propagation of the Gospel in Foreign Parts and the Church Society of the Diocese of Quebec and the Church Society of the Diocese of Montreal. Under this indenture the Church Society of the Diocese of Montreal was vested with a certain proportion of funds then held by the Church Society of the Diocese of Quebec, and which was to be paid over to the former after the death of Bishop Mountain. At the time of the execution of that indenture the Church Society of the Diocese of Montreal held from the Society for the Propagation of the Gospel in Foreign Parts the sum of over $57,000 in trust for and as an en-

dowment of the See of Montreal, and after the death of Bishop Mountain they received, under said indenture, from the Church Society of the Diocese of Quebec an amount of over $19,000 to be held in trust as an endowment of the said See of Montreal, and under the Act of Incorporation of the Synod the Church Society of the Diocese of Montreal was merged into the Synod and all this property passed to, and became the absolute property of the Synod, subject to the same trust as the Church Society that held the same. In this way it was contended by the intervenant that the whole of the moneys originally held by the Church Society became vested and were the absolute property of the Synod, and included in this property were the said moneys so received from the Society for the Propagation of the Gospel in Foreign parts, and consequently that these moneys were held by the Synod, subject to the trust mentioned in said indenture, and that under said indenture the Synod was bound to pay over to the Bishop, for the time being, of the Diocese, the revenue of such moneys to the extent of $5,000 per annum.

The Synod contended that the moneys seized under the attachment were in reality the very same moneys that the Synod had become vested with in the manner before mentioned, and, therefore, claimed that the moneys were not liable for the debt on Trinity Church, which was contracted by Bishop Oxenden simply for the purposes and uses of Trinity Church alone, and independently of the property of the Diocese, and under the special authority of the Provincial Statute, 38 Victoria, chap. 63, and that it was incompetent to Bishop Oxenden, to pledge, nor did he pretend to pledge, any portion of the said Episcopal Endowment Fund.

The Right Reverend Bishop Bond also intervened personally, and claimed that the only fund out of which his salary, as Bishop, could possibly be paid was the revenue arising from said loans, and that the same could not be attached under the present proceedings. There was also an incidental point in the case in the shape of a contestation by the plaintiffs of the declaration of James Hutton, one of the *tiers-saisis*.

MACKAY, J., said that the Lord Bishop of Montreal is a corporation sole, and before the Act of 1875 he was vested with the property of Trinity Church. That Church being in pecuniary difficulties, got an Act passed by which a loan was authorized, and the Bishop authorized to mortgage the church property as security. His Honour could not see that the Bishop had any power at all to involve his successors in office. The Act (38 Vic. c. 63) was a law in favor rather of the minister and church-wardens of Trinity Church; it was they who petitioned for the Act. It was perfectly clear what the object was, viz., that the Bishop might borrow and for security mortgage the property with the consent of those interested, and that upon failure to pay, the church might be seized and taken in execution, and that was all. It did not authorize him to declare that he bound his successors to pay; as he has declared. The Church has been sold at the suit of the plaintiffs, but has not produced enough to pay them in full. There is a deficit, and it is contended that the successors of the Bishop are liable for it, and monies vested in their name are seized. The powers of the Bishop in this province are well known; he cannot borrow without leave. Several instances have occurred of the Roman Catholic Bishops here asking for powers to borrow money; and in France a Bishop can never borrow or mortgage a property which he is holding in trust, without authority. The case of the Synod here was made out, the moneys seized belonging to the Synod of the diocese. The judgment would, therefore, maintain the intervention of the Synod, *mainlevée* being granted as regards the two *tiers saisis*; costs of contestation against plaintiffs in favor of intervenant; "considering that the Synod, intervenant, has proved its material allegations of intervention, and its title to the monies claimed by it, subject, however, to the trust stated in the intervention: considering that under the circumstances disclosed upon the record, the seizure in this cause of monies in the hands of the *tiers saisis* must be declared vain, null and void; considering the contestation by the plaintiff of the Synod's intervention unfounded, and its denial of the Synod's proprietorship unfounded, and so its allegations of simulation and fraud."

Intervention maintained.

*** TRUST AND LOAN CO. v. THE RIGHT REV. THE LORD BISHOP OF MONTREAL, MUNRO and HUTTON, *tiers saisis*, the RIGHT REV. BISHOP BOND, intervenant, and plaintiff contesting.—In this case

Bishop Bond intervened as interested in the fund. He is entitled to the interest of the monies seized, and has a right to have it declared that the interest should be paid him. The petition in intervention by him is maintained, and *main-levée* of the seizure is granted as prayed; costs of contestation by plaintiffs against them in favor of intervenant; considering that the intervenant has proved his material allegations and his interest to have and maintain such intervention; considering the contestation of the said intervention of the Lord Bishop intervening, unfounded, etc.

TRUST AND LOAN CO. v. THE RIGHT REVEREND LORD BISHOP OF MONTREAL, and HUTTON, et al., *tiers saisis*, and plaintiff contesting.—This came up on a contestation of the declaration of the garnishee Hutton. On similar grounds the contestation must be dismissed, but without costs of this contestation: Considering that the *tiers saisi* has established the truth and sufficiency of his allegations in his answer to plaintiff's contestation of his declaration, considering that the said *tiers saisi* is really debtor only to the Synod of the diocese of Montreal, and it was by error that he obliged himself towards defendant by the obligation referred to in plaintiff's contestation.

Judah & Branchaud for Trust and Loan Co.
Bethune & Bethune for intervenants.

SUPERIOR COURT.

MONTREAL, Oct. 10, 1881.

Before MACKAY, J.

PROVOST v. LA BANQUE D'HOCHELAGA.

Promissory note—Stamps.

An endorser paid to the discounting bank the amount of a note which, as he subsequently discovered, had not on it the proper stamps. It was proved that the note was properly stamped when discounted by the bank. Held, that he had no action to recover the amount of the note from the bank.

PER CURIAM. The action is *en répétition de l'indu*, in other words, for recovery back of a sum (over five thousand dollars) paid by plaintiff to defendant in 1876. The plaintiff had endorsed a note made by Victor Hudon, endorsed first by one Desmarteau. The note went to protest, and defendants made the plaintiff pay it, who at first gave them collateral securities; these having realised enough, the bank gave up to the defendant the original note during the summer of 1880, when, says plaintiff, I saw that the note had never been stamped, and was, therefore, from the beginning a nullity, and the protest a nullity, and myself never under responsibility as endorser of it; the bank was in fault in not stamping and cancelling stamp on the note as required by law; the note amount was paid before plaintiff discovered the real facts, he says, and the bank has delivered to him a note of no use, to serve against the maker, and the first endorser, inasmuch as it has not been stamped. The payment by me made was null under the Stamp Act, says plaintiff; the civil code treats it as "payment of money not dve, and Article 1047 gives me right to have my money restored to me."

The article certainly reads clearly: "He who receives what is not due to him, through error of law or of fact, is bound to restore it." It calls for observation that the plaintiff only commenced his suit in April, 1881, after having had the note in possession probably six or seven months.

The bank pleads that the note was duly stamped and the stamps cancelled, but that they must have fallen off. It also pleads that the note was a renewal of a former one that went to protest, upon which the plaintiff was liable, and can yet be charged, if he succeed in the present suit.

That former note is produced; I notice that it was over five years due at the date of the defendant's pleas. As regards the note filed by the plaintiff, the bank proves it to have been stamped duly at the time of the discounting of it, and two witnesses testify that it bears marks of the stamps having been cancelled duly. The machine, by means of which it is claimed that the defacing was operated, is filed by the bank. For myself I have extreme difficulty to discover the marks of defacing that the witnesses describe. The stamps, supposing them to have once existed, have disappeared, and there is reason for fixing the date of their disappearance at a time before the protest of the note; for the protest is indicative of no stamp, and the notary says that it seems there was none at the time of protest. Here it may be useful to observe that a notary protesting a note which he sees is unstamped shows some in-

difference to the interests of his employers. The inveterate practice of the bank (say two witnesses) was always to see that all notes discounted were duly stamped, and a book exists showing what notes have ever been presented to the defendant's bank unstamped, for discount, and what stamped, and from what appears the note, the foundation of this action, *was* stamped when presented—so say two witnesses.

Under the 33 Vic., the plaintiff incurred a penalty of $100 for endorsing, or for paying the note he now sues upon, if unstamped. *He* had duty, as others had, to see to the stamping of the note. The defendants' bank certainly had such duty, and a penalty was enacted first by the 31 Vic., and afterwards by the 33 Vic., against them if they discounted notes unstamped. The penalty was a fine of $100 and utter nullity of a note unstamped as required by the statute. But for this enactment of nullity of the note it would be held by some that the nullity did not exist. But we need not go into that particular question. The Promissory Note Act reads:—"After a note requiring to be stamped has been settled, or paid, no penalty shall be enforced against any party thereto, or against any person or corporation, who had been the holder thereof, by reason of such note having been insufficiently stamped, &c., unless it be proved that the party from whom a penalty is demanded was aware, before or at the date of the maturity of such note, of the defect in the stamping, or in the effacing of the stamps thereon, and did not thereupon affix double stamps thereto," &c.

Even in the absence of such particular law, I would pronounce in favor of defendants upon what proofs are of record. But in the presence of it I ask: Has the plaintiff proved that the defendants' bank was aware before or at the date of the maturity of the note referred to in the pleadings in this cause, of the want of stamps, etc.? I do not see it, and I believe that the clause last read by me is to be treated in favor of the defendants, and of persons in their position, and charged as they are in this cause. It was statute law of repose, and meant as such. But for it I have no doubt that hundreds of suits could be invented against banks and others; for very slovenly modes of defacing stamps have been pursued, and the penalties have been ordered as much against insufficient defacing of stamps as against the total want of them.

Under all the circumstances, I am of opinion that plaintiff's action ought not to be maintained; so it is dismissed with costs.

Peltier & Jodoin, for plaintiff.
R. Laflamme, Q. C., counsel.
Beique & McGoun, for defendants.

SUPERIOR COURT.

MONTREAL, Oct. 12, 1881.

Before TORRANCE, J.

PRATT v. BERGER.

Partnership—Proof of, where not witnessed by a writing.

PER CURIAM. This was a demand for $8,000, for goods sold and delivered, and materials supplied. The declaration was in the usual assumpsit form.

The plea was to the effect that the contract set out by plaintiff had not existed, but on the contrary, the defendant had employed the plaintiff as a journeyman on wages, and had paid him for his work.

The evidence showed that in 1879, there were tenders asked for the supply of furniture to the Jacques-Cartier School. Both George Pratt, the plaintiff, and Noel Pratt, his father, acting for him, and Berger were desirous of securing the contract as a profitable one. Pratt was an insolvent, but he was a skilled workman, and Berger could supply funds.

Rosaire Thibaudeau deposed that the government were induced to accept the tender of Berger on the representation that Pratt had an interest in it. The work was chiefly done at the workshop of Pratt who now worked in the name of his son, the plaintiff, from whom a full power of attorney was produced. The foreman of Berger took an active part in the superintendance of the work, and both Pratt and Berger superintended likewise. The money and credit of Berger were largely used, and the evidence of several witnesses proved that both plaintiff and defendant represented that they were jointly interested in the fulfilment of the contract and that there was a partnership. The statute of frauds prevents the proof of an agreement for a partnership, but certain facts may be proved from which a partnership necessarily exists. De Villeneuve in his Dictionnaire du

contentieux commercial vo. Société, No. 42, "S'il y a eu société *de fait*, bien que non régula-"risée par écrit, * * * * nous pensons que la so-"ciété, nulle pour l'avenir, en ce sens que chacun "des associés peut s'en dégager quand il le vou-"dra, produira néanmoins des effets pour le "passé en ce sens que les associés se devront "respectivement compte, selon les règles du "droit commun, des opérations qui ont été fai-"tes, de la perte ou du gain qu'elles ont entrai-"né." It is true that we have rules in our own Code based upon the statute of frauds and the English commercial law, but the same general principle underlies the English rules. Lindley on Partnership has a chapter on the proof of partnerships, and expresses himself in pretty much the same sense as De Villeneuve in these words: "As partnerships very often exist in this coun-"try without any written agreement at all, the "absence of direct documentary evidence of "any agreement for a partnership is entitled to "very little weight. As between the alleged "partners themselves, the evidence relied on, "where no written agreement is forthcoming, "is their conduct, the mode in which they have "dealt with each other, and the mode in which "each has, with the knowledge of the other, "dealt with other people. This can be shown "by books of accounts; by the testimony of "clerks, agents and other persons, by letters "and admissions, and, in short, by any of the "modes by which facts can be established." Page 94 of edition of 1873.

The Court is not here called upon to say whether there is a partnership, but the evidence abundantly shows that the contract set forth by Pratt has not been proved. Action dismissed.

R. & L. Laflamme, for plaintiff.
Geoffrion & Co., for defendant.

SUPERIOR COURT.

BEAUHARNOIS, Oct. 7, 1881.

Before BELANGER, J.

MATHEWSON v. BUSH; SHOREY et al. v. BUSH; LAKE ST. FRANCIS NAVIGATION CO. v. BUSH.

Capias after judgment—New Action—C.C.P. 802.

Where a plaintiff has obtained judgment against a defendant, he cannot cause the issue of a capias founded on such judgment, except as an incident in the original cause, and in the same district.

BELANGER, J. Les mêmes questions se présentent dans ces trois causes. Entre autres questions il s'agit de savoir si un demandeur qui a déjà obtenu un jugement devant la Cour Supérieure à Montréal contre un défendeur, peut, avec une nouvelle poursuite contre le même défendeur, et basée sur ce même jugement, faire émaner un *capias ad respondendum* contre ce défendeur.

Les demandeurs ont poursuivi séparément le défendeur devant la Cour Supérieure à Montréal, et ont obtenu jugement contre lui. Maintenant ils le poursuivent de nouveau pour les montants qui leur sont dus en vertu de ces jugements et documents, et demandent une nouvelle condamnation contre lui, et ils ont en même temps fait arrêter le défendeur sous le prétexte qu'il a caché ses biens et effets en vue de les frauder.

Il me semble que la question n'offre aucune difficulté.

L'article 802 du Code de Procédure Civile qui n'est que la réproduction des anciens statuts, détermine la manière quand et comment le bref de *capias* peut émaner: "Le bref d'arrestation peut être joint au bref d'ajournement, ou émaner pendant l'instance, comme un incident de la cause, il doit dans ce dernier cas être accompagné d'une assignation à jour fixe pour le voir déclarer valable et joindre à la demande principale. Le bref peut aussi émaner après jugement obtenu pour le recouvrement de la dette." Il est évident d'après cet article que le *capias*, soit qu'il émane avec le bref d'ajournement pendant l'instance, ou après jugement, il ne doit toujours être qu'un incident de la cause et doit par conséquent être émané dans la cause même; or, il apparaît par l'affidavit même dans la présente cause et par le bref lui-même, qu'il devra émaner et a été émané non-seulement dans une cause différente, mais même dans un autre district que celui où l'action et le jugement ont été institués et rendus.

Cette raison me paraît tout-à-fait suffisante pour casser le *capias*.

La question a déjà été jugée dans une cause de *Hay* v. *Caddy*, mentionnée au 3me volume de la Revue de Législation, page 306, dans laquelle il a été décidé que, "a *capias* cannot be obtained in an action founded on a judgment of the King's Bench, Montreal."

Pour cette raison le *capias* est cassé avec dépens.

Quant à la question de chose jugée elle ne peut pas se présenter sur la requête du défendeur, car pour juger cette question il ne suffit pas de voir à l'affidavit qui n'indique pas la nature des conclusions de la déclaration, mais il me faudrait recourir à l'action même, ce que je ne puis faire sur le procédé actuel. Cette question pourra être jugée avec le mérite de l'action d'une manière plus propre.

J. J. Maclaren, for plaintiff in each case.
D. McCormick, for defendant.

COUR DE CIRCUIT.

TEMISCOUATA, Oct. 3, 1881.

Before H. T. TASCHEREAU, J.

BÉRUBÉ v. OUELLET.

Dommages—Responsabilité.

Le demandeur déclare qu'il avait loué une stalle pour son cheval le dimanche dans l'étable de A. St. Pierre. Le défendeur en avait aussi loué une voisine de celle du demandeur du côté nord. La stalle du côté sud voisine de celle du demandeur n'était pas louée. Le 26 décembre 1880, le défendeur est venu avec deux chevaux, en a mis un dans sa stalle louée et l'autre dans la stalle non louée. Après la messe le cheval du demandeur avait la jambe gauche de derrière cassée par les ruades du cheval du défendeur mis dans la stalle du sud, et on fut obligé de tuer le cheval blessé. Le demandeur réclame la valeur de son cheval.

Le défendeur plaida que son cheval était doux, nia tous les faits, et prétendit que si le cheval du demandeur avait été frappé c'était un accident dont il n'était pas responsable.

La Cour a jugé que le défendeur ayant mis son cheval sans permission dans une stalle non louée voisine de celle du demandeur, était responsable de la perte du cheval du demandeur, vu qu'évidemment, par l'aspect et la position de la blessure, c'était le cheval du défendeur qui avait fait le dommage quoique personne ne l'eût vu faire.

Autorités citées à l'argument :—Art. 1055 C. C.; Toullier, Délits et quasi délits Nos. 296, 297, 316; Sourdat, 2e part., liv. 2, chap. 1er, Nos. 1,453 et suivants.

J. Elz. Pouliot, procureur du demandeur.
Pouliot & Pouliot, procureurs du défendeur.

RECENT ENGLISH DECISIONS.

Fraud—When fraud and collusion ground for rescinding public contract—Notice. — A contract entered into by a local board provided that payment for the work executed thereunder, *i. e.*, the making of a reservoir, should be made by instalments upon the certificates of a certain engineer. Several payments had been made when it was discovered that the reservoir would not hold water, and further payment was refused. Thereupon the contractor brought an action against the board for £1067. 11*s.* 6*d.*, the balance due under the contract, which was stayed however on the board executing an agreement with the contractor, undertaking to pay the sum of £800 at the expiration of six months. The agreement was assigned by the contractor to a bank with whom he had an account, and to whom he was indebted to an amount exceeding £800. Notice of the assignment was given by the bank to the board, and at the expiration of the six months the bank brought the present action against the board to recover the amount secured by the agreement, when for the first time the board denied their liability on the ground that they had discovered that the contractor and the engineer had conspired together to give false certificates; and that therefore the agreement was one which had been obtained by fraud. *Held*, that the defence that the agreement had been obtained by the fraud and collusion of the contractor was a good answer to the action brought against the defendants. *Held*, also, that there was no obligation on the part of the defendants to give notice to the bank of the discovery of the fraud until steps were taken to enforce the agreement. Ct. of Appeal, April 8, 1881. *Wakefield & Barnsley Banking Co.* v. *Normanton Local Board.* Opinions by Bramwell and Lush, L. JJ. 44 L. T. Rep. (N. S.) 697.

RECENT UNITED STATES DECISIONS.

Charter-party—Involuntary bailee—Burden of proof of negligence.—If goods are sent out in an outward cargo, and the consignee refuses to receive them, and the master therefore stores them on his vessel; on the return voyage he is, as to these goods, an involuntary bailee. And in a cross-action to a suit for the freight, or a defence by way of recoupment against the bailees, the burden is upon the bailor to show

that the goods were lost through the negligence of the bailee.—*Mayo* v. *Preston*, Supreme Judicial Court of Massachusetts. Decided June, 1881.

Rape—Evidence—Reputation for chastity.—In a prosecution for rape the character of the prosecutrix for chastity is involved in the issue, and may be impeached by general evidence of her reputation, but particular instances of criminal connection with other persons than the defendant are inadmissible.—*Commonwealth* v. *Harris*, Supreme Judicial Court of Massachusetts, June, 1881.

Action by female servant against master for persuading her to illicit intercourse.—A master persuaded his female servant to have sexual intercourse with his minor son, to whom she was at the time engaged to be married. The son afterwards refused to fulfil his engagement. Held, that these facts afforded the servant no ground of action against the master.—*Jordan* v. *Hovey*, 72 Mo. Reports.

Bills and Notes—Undisclosed principal—Intended corporation.—If an agent authorized to execute a promissory note executes it in his own name, whether he discloses his agency or not, his principal may be sued on the note, unless it is clear that both parties to the note intended that the agent alone should be liable; and parol evidence is admissible to prove the intent. In this case members of a Masonic lodge which had made an abortive attempt to become incorporate, were held liable upon a note executed by the officers of the lodge for the purposes of the lodge, with the approval of the members.—*Ferris* v. *Thaw*, 72 Mo. Rep.

Husband and Wife—Agreement to dissolve marriage contract.—An agreement between husband and wife, having for its object a dissolution of the marriage contract, is contrary to sound public policy; and a note and mortgage, executed in pursuance of such an agreement, are illegal and void.—*Cross* v. *Cross*, Supreme Court of New Hampshire, 58 N. H.

GENERAL NOTES.

The London *Law Times* says: "The law with regard to bees is rather peculiar. A dispute as to the ownership of a swarm came recently before Mr. W. F. Woodthorpe, the judge of the Belper county court, and it was contended that, being *feræ naturæ*, there could be no property in them, and that therefore the plaintiff, from whose land they had strayed to that of the defendant, could not demand their return or damages for their loss. It was proved, however, that the plaintiff had followed the swarm on their departure from his own land, and had not lost sight of them until he saw them alight in the defendant's garden. On the strength of the following passage from Blackstone (vol. ii. p. 392): 'Bees are *feræ naturæ*, but when hived and reclaimed, a man may have a qualified property in them, by the law of nature as well as by the civil law. Reclamation, that is, hiving or including them, gives the property in bees, for though a swarm lights up on my tree, I have no more property in them till I have hived them, than I have in birds which make their nest thereon; and therefore, if another hives them, he shall be their proprietor; but a swarm which fly from and out of my hive are mine so long as I can keep them in sight and have power to pursue them, and in these circumstances no one else is entitled to take them,' judgment was entered in favor of the plaintiff for the amount claimed as the value of his truant bees."

Judge Clifford died on the 25th Aug., at Corinth, Me. He was born in New Hampshire in 1803. He removed to Maine in 1827. He served three terms in the Legislature of that State, two as speaker. He was attorney-general of that State four years. He served two terms as representative of that State in Congress under President Polk. He was attorney-general, commissioner to arrange the treaty with Mexico, and minister to that country. In 1838 he was appointed associate justice of the Federal Supreme Court, and sat on that bench until last October. He was also a member of the Electoral Commission. He suffered a paralytic shock last October, but the immediate cause of his death was an injury to a foot, causing gangrene and necessitating amputation. He was a man of pure character and considerable technical learning. His great industry, experience and familiarity with Federal questions made him a valuable adviser on the bench. His mental faculties have for some time been clouded, but in his best estate he was not a great lawyer. He has faithfully discharged his onerous duties, but he made them much more onerous than was necessary. He loaded the books and vexed the profession with long and tedious opinions on trite subjects, especially in his later years. He was of a school of judges quite apt to flourish and very useful in a new court and community, but quite out of place on the bench of the highest court in the country.—*Albany L. J.*

Eccentric Bequests.—A Manchester lady bequeaths a surgeon £25,000, on condition that he should claim her body and embalm it, and "that he should once in every year look upon her face, two witnesses being present." Another lady, of an economical turn of mind, desires that if she should die away from Branksome, her remains, after being placed in a coffin, should be inclosed in a plain deal box, and conveyed by goods train to Poole. "Let no mention," she states, "be made of the contents, as the conveyance will not be then charged more than for an ordinary package." A French traveller, recently deceased, desired to be buried in a large leather trunk, to which he was attached, as it "had gone round the world with him three times;" and an English clergyman and justice of the peace, who at the age of eighty-three had married a girl of thirteen, desired to be buried in an old chest he had selected for the purpose. Tastes differ in the matter of burial. One man wishes to be interred with the bed on which he has been lying; another desired to be buried far from the haunts of man, where nature may "smile upon his remains:" and a third bequeaths his corpse for dissection, after which it is to be put in a deal box and thrown into the Thames. One man does not wish to be buried at all, but gives his body to the Imperial Gas Company, to be consumed to ashes in one of their retorts; adding that should the superstition of the times prevent the fulfilment of his bequest, his executors may place his remains in St. John's Wood Cemetery, "to assist in poisoning the living in that neighborhood." A person may approve of cremation himself, but it is a little hard when he requires his relatives to approve of it also.—*The Spectator.*