The Legal News.

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SAUVE v. *SAUVE.*

Two judgments have been communicated to us,—one rendered some years ago, in the case of *Berthelot* v. *Theoret*, and the other a recent decision by Mr. Justice Sicotte in the case of *Sauvé* v. *Sauvé*. The suggestion is that these decisions are in conflict, one holding that the *cédant* has no right of action, and the other that the *cédant*, and only he, may sue. It must be conceded, however, that there is a very material difference between the two cases. In the recent case an heir had ceded his rights of succession, but this transfer had never been signified upon those sued, and by a private writing the transfer had been cancelled before the suit was brought. The debtor, therefore, had no interest in invoking the transfer. As far as he was concerned it was as though it had never been. In the case of *Berthelot* v. *Theoret*, the plaintiff sued for the balance of the price of sale, after such balance had been transferred to another party, and the debtor had accepted notice of such transfer. In the latter case the action was dismissed, and it seems to us rightly.

RIGHTS OF RAILWAY COMPANIES.

A decision recently given in England by Vice-Chancellor Malins in the case of *Norton* v. *The North Western Railroad Company*, is interesting as laying down the principle that railway companies do not possess precisely the same rights over their land as other proprietors. The plaintiff in the case was the proprietor of a hotel erected on land adjoining the land of the company, and there were windows overlooking the company's land, which had been used for several years without interruption. In 1874 the company erected a signal cabin, with a chimney, immediately under the windows, and the plaintiff complained that the smoke entered his hotel by the windows over the chimney. The company, when the smoke was complained of, in the first place demanded a quit rent from the plaintiff in consideration of his windows overlooking the railway, and when that was refused, commenced to erect on their land a high, close board fence about two feet from the hotel windows. The action was for an injunction against the erection of the fence. The pretention of the company was that the fence was to prevent the plaintiff from acquiring by user an easement which would interfere with the erection of buildings that might be required thereafter for the company's business. The injunction, however, was granted, the Vice-Chancellor remarking that a railway company had not all the rights of an owner in fee simple, and that the owner of land adjoining the lands of a railway had the same rights as if the railway had not been constructed. He had a right to have windows overlooking the railway, so long as he did not interfere with the working of the line.

DECOY LETTERS.

A case of some interest was decided recently by the United States Circuit Court in Missouri. One McAfee, acting as agent for the Society for the Detection of Vice, deposited in the post-office at St. Louis, with the concurrence of the authorities, a letter in these terms :—

"Butler, Ga., Nov. 14, 1877.

"Dr. Whittier,—Can you furnish me an absolutely sure way to prevent conception? What will it cost? How can I get it? What is the price of your 'Marriage Guide?' Address Miss Nettie G. Harlan,

"Butler, Georgia."

The letter was post-marked on the outside as coming from Georgia, and was delivered to Whittier by the mail-carrier in the usual course. In reply, Whittier wrote and deposited in the post-office at St. Louis the following :—

"Miss Nettie G. Harlan, Butler, Ga.—I have what you desire. It is perfectly safe, sure and healthful, and can be easily used. The price is $10, sent by express only on receipt of price. Price of Marriage Guide is 50 cents. Respectfully,

"C. Whittier, M.D."

The letter was directed to Miss Nettie G. Harlan, Butler, Ga., but it was handed by the post-office authorities to McAfee, and on these facts an indictment was found against Whittier under an Act of Congress enacting (amongst other things) that those sending through the mails "Every obscene, lewd, or lascivious book, &c., and every article or thing intended or adapted for any indecent or immoral use, and every written or printed card, circular, book, pamphlet, advertisement, *or notice of any*

kind giving information, directly or indirectly, where or how, or of whom, or by what means, any of the hereinbefore mentioned matters, articles or things may be obtained or made, &c., shall be guilty of a misdemeanor," &c. The question submitted to the court was whether the indictment could be sustained, and it has answered it in the negative. The judges, however, did not decide that decoy letters cannot be used to detect persons engaged, or suspected to be engaged, in violating criminal laws; on the contrary, it recognized the doctrine that such letters may be so used. But it quashed the indictment on the ground that the letter written by Whittier did not give the prohibited information, and hence was not within the statute. The point is a very narrow one, for evidently, if the letter of inquiry had been a genuine one, the reply, stating how the article could be procured, would have brought the case within the statute. Decoy letters are, in truth, not to be commended, nor to be lightly resorted to; but if their use is ever justifiable, it should be for the detection of such an offence as this, the evidence of which is so hard to be procured by other means. "Many frauds upon the postal, revenue and other laws," remarked Judge Dillon, "are of such a secret nature that they can be effectually discovered in no other way. Accordingly, there have been numerous convictions upon evidence procured by means of what are called decoy letters—that is letters prepared and mailed on purpose to detect the offender, and it is no objection to the conviction, when the prohibited act has been done, that it was discovered by means of letters specially prepared and mailed by the officers of the government, and addressed to a person who had no actual existence. The books contain many cases where such convictions have been sustained": *Reg.* v. *Rathbone*, 2 Moody's C. C. 310; *Reg.* v. *Gardner*, 1 Carr. & Kirwan, 628, &c.

"There is a class of cases," continued the judge, "in respect of larceny and robbery, in which it is held that, where one person procures, or originally induces the commission of the act by another, the person who does the act cannot be convicted of these particular crimes, although he supposed he was taking the property without the consent or against the will of the owner. Archbold's Crim. Pr. & Ev. 364; *Rex* v. *Eggington*, 2 Bos. & P. 58; *State* v. *Covington*, 2 Bailey (S. C.), 569; *Dodge* v. *Brittain*, Meigs (Tenn.) 84, 86; *Alexander* v. *State*, 12 Tex. 540; 3 Chitty's Crim. Law, 925; 2 East's P. C. 665; 1 Bish. Crim. Law (5th ed.), §§ 262, 263.

"The reason is obvious, viz; The taking in such cases is not against the will of the owner, which is the very essence of the offence, and hence no offence, in the eye of the law, has been committed.

"The offender may be as morally guilty as if the owner had not consented, but a necessary ingredient of legal guilt is wanting. This is strikingly shown by *Rex* v. *McDaniel*, Foster, 121; S. C.' 2 East's P. C. 665, where 'Salmon, McDaniel and others conspired to procure two persons, ignorant of the design, to rob Salmon on the highway, in order that they might obtain the reward at that time given for prosecuting offenders for highway robbery. Salmon, accordingly, went to a particular place fixed upon, with some money, and the two men who were procured, being led there by one of the conspirators, robbed him, and they were afterward prosecuted and convicted, but the conspiracy being afterward detected, the conspirators were indicted as accessories before the fact to the robbery, and, the facts being found by a special verdict, the case was argued before all the judges, who held that the taking of Salmon's money was not a larceny, being done not only with his consent, but by his procurement.' But this principle must be limited to the cases where the consent will, as a matter of law, neutralize the otherwise criminal quality of the act. 1 Bish. Crim. Law (5th ed.), § 262. Thus, where a prosecution was founded on an act of the Legislature, imposing a penalty on any one who should deal or traffic with a slave without a written ticket or permit from the owner, it is held that the offence is consummated, although the trading was done by the slave in pursuance of instructions of the owner, and in his presence, when the accused was ignorant of such instructions and presence. The reason is, that, "like *Eggington's case, supra*, this is a contrivance to detect the offender." *State* v. *Covington*, 2 Bailey (S. C.), 569, 573; *see*, also, *Regina* v. *Williams*, 1 Carr. & K. 195; *Regina* v. *Gardner*, id. 628."

—There are now 149 barristers and 5 solicitors in the House of Commons.

REPORTS AND NOTES OF CASES.

SUPERIOR COURT (IN REVIEW).

MONTREAL, May 31, 1875.

MONDELET, BERTHELOT AND TORRANCE, JJ.

BERTHOLET v. THEORET.

Right of Action—Transfer.

A *cédant*, although his transfer has not been served on the debtor, has no action, the *cessionnaire* only having the right to sue and recover the amount of the transfer.

This was a review of a judgment rendered by the Superior Court, Montreal, on the 31st March, 1875. In the Court below, JOHNSON, J., gave judgment as follows:—

On the 8th of April, 1864, Etienne Prevost purchased from the plaintiff a lot of land at St. Louis de Gonzague, and the purchaser's father, Narcisse Prevost, became a party to the deed of sale, and hypothecated his property at Ste. Genevieve for the payment of the price, and subsequently, on the 5th of October, 1864, he sold to the defendant the property he had so hypothecated. The plaintiff now brings her action against the defendant, with hypothecary conclusions as to the payments that are due under the deed of sale, and *en interruption de prescription* as to those that are to become due. The defendant pleads that on the 7th November, 1867, the plaintiff transferred to Narcisse Papineau the balance of the price due and to become due under the deed of sale, and the debtor, Etienne Prevost, subsequently, on the 3rd of December, 1867, acknowledged and accepted the transfer, and that, therefore, Papineau, the *cessionnaire*, is proprietor of the debt, and he alone could sue either the purchaser or the surety. This plea was demurred to by a special answer, on the grounds that the defendant was not setting up his own right, but the right of another, and that the assignment of the debt, the registration, and the acceptance by the debtor only gave a right to the *cessionnaire* against the principal debtor, but none against the defendant. It is further set up in another special answer that the assignment to Papineau had been made with promise of warranty by the plaintiff, and that she was therefore interested in seeing the debt paid. These questions were reserved by consent, and the case has been heard on the merits. Therefore the law and the merits are before me. The defendant here is not the debtor. He is only surety for the debt. He can liberate himself by giving up the property. When the plaintiff has once assigned her debt, she has also assigned the accessories. [See Art. 1574, C.C.] It is nowhere pretended in this case that the real plaintiff is the *cessionnaire*, and it could not be so unless the *transport* had assigned all the *droits, noms, raisons, et actions* of the *cédant*, which it does not do. Therefore the *cédant* is here insisting on her own right to maintain the action; but in her declaration she says nothing about the transfer to Papineau, or of her promise of warranty (*garantir, fournir, et faire valoir*), and the special answer cannot change the ground of action, which should have been disclosed in the declaration in order that the defendant might plead to it. She might probably have had an action, if there was such promise of warranty on her part, to the extent at least of preserving the *hypothec* in the event of her being called on to make good her promise. But we first hear from the defendant in his plea of this transfer that the plaintiff has made of her rights; and in the special answer it is too late to rectify the omission in her declaration of the only ground of action, and that, too, in a modified form, that she could have had against the defendant. I am therefore of opinion to dismiss the plaintiff's action, with costs.

The Court of Review unanimously confirmed the above judgment.

Doutre & Co. for plaintiff.

Mousseau & Co. for defendant.

SUPERIOR COURT.

MONTREAL, July 8, 1878.

SICOTTE, J.

SAUVÉ v. SAUVÉ et al.

Right of Action—Vendor—Non Signification.

Although an heir has sold all his rights in the succession of his father to a third party, and has caused the deed of sale to be duly registered, but the transfer has not been signified, he must sue afterwards in his own name in the interest of the third party who has acquired such rights, such third party having no action in his own name.

SICOTTE, J. The plaintiff claims the succession of his father from the defendants, his co-heirs and legatees, who are in possession. It is the *petition d'héredité*. The defendants pretend that the plaintiff cannot make this demand because

he has made a transfer of his rights of succession. The plaintiff answers that it is true he has made a cession, but the transfer has not been signified, and the defendants cannot avail themselves of this ground; that, besides, the transfer had been resiliated and annulled previous to the action, and he produces a paper *sous seing privé* showing the resiliation. The defendants have made no proof against this document, and there can be no reason for not giving it force. The defendants do not contest the ownership of the succession claimed, nor the defendant's quality of heir. They must give back the succession and render an account, as prayed.

Independently of this resiliation, the action as instituted would be well brought. See Pothier, *Droit de Propriété*, Nos. 369, 393.

Notwithstanding the sale of his rights of succession, the vendor always continues heir and third parties are entitled to consider him such. See Troplong, vol. 2, No. 979.

In the present case there has been no signification of the cession, and it is without effect as regards third parties. Troplong, Nos. 884, 885, 886. Pothier, *Vente*, Nos. 550, 554.

The judgment in *Berthelot* v. *Theoret*, invoked by the defendant, is not applicable. In that case there was signification of the cession. Everything was different, the cause of action and the condition of the parties.

The judgment is as follows:—

The Court, &c.

Considering that the plaintiff has proved the allegations of his action; that he was entitled to claim the succession devolving to him from his father, and of which the defendants are in possession;

Considering that the defendants are not well founded in the exception which they invoke, by reason of the transfer which they allege has been made of this succession by the plaintiff, inasmuch as it is proved that the cession had been annulled before the institution of the action, and as such cession, even if not resiliated, so long as it was not signified, could not entitle the defendants to oppose it to the *cédant*;

Considering, &c., &c. Judgment for plaintiff.

St. Pierre & Co. for plaintiff.
Doutre & Co. for defendant.

A GREAT CHANCELLOR.

The great chancellors are few in number. They appear but once in a generation. Those of our own country may be counted upon the fingers of one hand; while the mother country, except for the longer duration of her judicial history, has been scarcely more prolific. It is the purpose of this paper to sketch in outline the career of one of the few; one who received the great seals solely as the reward of judicial merit, who held them for a longer period than any of his predecessors, and who was, in his generation, the foremost figure in English jurisprudence.

John Scott, the future Lord Eldon, was born at Newcastle on June 4, 1751, the day being otherwise memorable only as the birthday of George III., the sovereign whom he afterwards served so well. His father was a coal-fitter, of decent station in life, and of sufficient means to afford his sons John and William, who was afterwards the celebrated admiralty judge, Lord Stowell, good educational advantages. Scott's early education was had at the Free Grammar School in Newcastle, and on May 15th, 1766, when scarcely fifteen years of age, he matriculated at University College, Oxford. His college life was uneventful, and on February 20, 1770, he received his Bachelor's degree. He continued in residence at the university, and successfully competed for the chancellor's prize for the best composition in English prose, his subject being: "The Advantages and Disadvantages of foreign Travel."

He was intended, originally, for the Church, but the change in his circumstances brought about by his marriage forced him to abandon his original plans. Soon after receiving his degree he became acquainted with a Miss Surtees, the daughter of a banker at Newcastle, and after a year's engagement, their union being opposed by the parents of both, they were compelled to resort to a runaway match, with the usual accompaniments of ladder and post-chaise. Leaving Newcastle, they drove all night, and reached next morning the village of Blackshiels, near Edinburgh, where they were married, November 19, 1772. The Scotts soon relented toward the young couple, and they were invited to take up their residence under the paternal roof. The Surtees family withheld their blessing upon the runaway match for a longer period, but

finally accepted the situation, and joined in making a modest settlement upon the young people. While no doubts were entertained of the validity of the clandestine marriage, yet, with a view of better preserving the evidence of their union, it was thought desirable to again perform the ceremony in England, which was accordingly done at Newcastle, January 19, 1773. The marriage proved an exceedingly happy one, and throughout his long and eventful career Scott showed the warmest devotion to the Bessy of his earlier days. When he afterward held the great seal under George III., the king boasted that he had what no previous king of England could boast—an archbishop of Canterbury, Dr. Sutton, and a lord chancellor, both of whom had run away with their wives. But the chancellor seems to have had little sympathy for run-away matches other than his own, and when his eldest daughter eloped with the youth of her choice, but not her father's, three years passed before he became reconciled to the young couple.

His marriage having rendered the clerical profession impracticable with the slender means at his command, young Scott immediately turned his attention to the law—rather from the necessity of earning a livelihood than from any previous inclination. Repairing to London, he was entered as a student at the Middle Temple, January 28, 1773, and with his wife he then took up his residence at Oxford, while reading for the bar and keeping his terms in London. Sir Robert Chambers, the Vinerian professor of law, having just been appointed to a colonial judgeship, Scott was selected as his deputy to read his lectures during his absence, receiving for these services a salary of £60 per annum. His introduction to his new field of labor was described in his own words, as follows: "The law professor sent me the first lecture, which I had to read immediately to the students, and which I began without knowing a single word that was in it. It was upon the statute 'Of young Men running away with Maidens.' Fancy me reading, with about 140 boys and young men giggling at the professor. Such a tittering audience no one ever had."

On February 13, 1773, Scott took his Master's degree, and immediately applied himself to the study of the law with great earnestness. Few men have studied their profession more diligently. He rose at four o'clock in the morning, took little exercise, lived abstemiously, studied until a late hour of the night, and seriously endangered his health by his close application to his legal studies. In the long vacation of 1775 he bade farewell to Oxford and, with his wife and infant child, took up his residence in London. His intention, at this time, being to fit himself for conveyancing, and to settle as a conveyancer in his native town, he was so fortunate as to obtain admission to the chambers of a Mr. Duane, one of the most eminent conveyancers of that time, who kindly waived the usual fee of 100 guineas. During his six months in the chambers of Mr. Duane he labored incessantly, copying all the manuscript forms to which he had access, making an immense collection of precedents, and examining all the drafts of conveyances which passed through the office. And to this period of his study he afterwards ascribed much of his professional success.

On February 9, 1776, Scott was called to the bar by the Honorable Society of the Middle Temple, and in the Easter term following he presented himself as a candidate for practice. He chose the Northern Circuit, and for the first year seems to have had but little business. He used to relate that he was cheated out of his first fee, and that his entire professional gains for the first twelve months after donning the gown amounted to but 9*s*. In his second year he seems to have been more fortunate, being frequently retained by the attorneys of Newcastle, and achieving considerable success in defending criminals.

At this period he determined to carry out his original plan of settling as a provincial counsel as Newcastle, and actually hired a house with this end in view. Fortunately for his subsequent career he changed his plans and decided to remain in London, possibly owing to the promise, by Lord Thurlow, of the office of a commissioner of bankruptcy; a promise which that chancellor never fulfilled.

At about this period, also, he began to abandon the common law courts and took himself to the Court of Chancery, though still continuing to travel the circuit. His reasons for the change, as stated in his own words, were the following: "The Court of Chancery was

not my object when first called to the bar. I first took my seat in the King's Bench; but I soon perceived, or thought I perceived, a preference in Lord Mansfield for young lawyers who had been bred at Westminster School and Christ Church, and as I had belonged neither to Westminster School nor Christ Church, I thought I should not have a fair chance with my fellows, and, therefore, I crossed over to the other side of the hall."

At this time the Court of Chancery was scarcely regarded as a public forum, its proceedings being rarely noticed in the newspapers; and an equity barrister was not ranked of very high standing in the profession. The number of counsel then practising at the equity bar did not exceed twelve or fifteen. These were accustomed to sneer at Scott's presumption in aspiring to success in this branch of the profession, since he had never been bred to the chancery practice, and they could not understand how a lawyer who had never drawn a bill or answer, or served an apprenticeship in an equity draughtsman's office, could hope to be a successful equity barrister; and for a time his prospects were far from bright. His brother William, writing to his brother Henry, in January, 1779, says: Business is very dull with poor Jack, very dull indeed; and of consequence he is not very lively."

But, despite the sneers of the chancery bar, "poor Jack" applied himself diligently to studying the doctrines and procedure of the court of equity, and in his first cause of importance, the celebrated case of Ackroyd v. Smithson, 1 Bro. C. C. 503, he won his spurs. The case has always been cited as a leading authority upon the doctrine of conversion, and it is not too much to assert that the argument of young Scott established the doctrine of the English courts upon the questions involved. The testator had by his will directed all his real and personal estate to be sold, and, after the payment of several specific legacies, directed that the residue should be divided in certain proportions among fifteen legatees. Two of these residuary legatees died during the lifetime of the testator. Upon his death a bill was filed by his next of kin against the surviving legatees and the heir at law, claiming to be entitled to the interest of the two deceased legatees as lapsed, and, therefore, as part of the personal estate to which the next of kin was entitled. Lord Sewell, master of the rolls, held that the surviving legatees took the whole in proportion to their respective legacies, and dismissed the bill, when an appeal was had to Lord Thurlow.

Scott appeared for the heir at law, and, in an argument of singular force and brilliancy, contended that the death of the two legatees had not been contemplated by the testator, and that he had not intended that the lapsed legacies should go either to the next of kin or to the surviving legatees; and, therefore, they should still be treated as realty, as to that portion derived from the realty, and, hence, should go to the heir at law. Lord Thurlow decreed accordingly, and the case has ever since been ranked as a *cause celèbre*. The argument of the young barrister, even as imperfectly reported in Brown, is an admirable example of the closest and severest legal logic.

Ackroyd v. Smithson is also remarkable as being one of two instances where future chancellors achieved sudden prominence in the profession by a single argument at the bar; the other instance being the maiden effort of Erskine, who, from a midshipman in the navy and a lieutenant in a regiment of the line, sprang into sudden and successful practice as the result of his wonderful speech in the case of Captain Baillie.

From this time onward Scott's success was assured, and his practice steadily increased. In 1783, when but seven years at the bar, he received the honor of a patent of precedence, and donning his silk gown he took his seat within the bar, his promotion occurring at the same time with that of Erskine. This distinguished honor—which the American bar, utterly wanting in any system of promotion or recognition of merit other than by elevation to the bench, can hardly understand—seems to have been awarded without solicitation, and solely as a recognition of his merit. Though yet young in the profession, he was rapidly attaining the leadership at the bar, and was during this year called to a seat in Parliament for the borough of Weobly. His maiden speech in Parliament, like that of Erskine, was made upon Fox's India Bill, and, like Erskine's, it was regarded as an utter failure.

In 1787 Scott received his first judicial

appointment, being made chancellor of the County Palatine of Durham, one of the inferior equity courts of the kingdom—the judicial duties then pertaining to the office, however, being little more than nominal.

In 1788 he was appointed solicitor general, to the great delight of his old friends and townsmen at Newcastle, who had watched his course with the warmest interest. He modestly desired to avoid the honor of knighthood, but George III. then laid down the rule, which has ever since been followed, that the attorney general and solicitor general, as well as judges, if not already of noble birth, should be knighted upon their appointment. Scott accordingly submitted to the ceremony and became Sir John—writing an amusing letter to his brother Harry recounting the event and his wife's annoyance over her new title.

Although the etiquette of the profession had always required that the attorney or solicitor general should, upon his appointment, renounce his circuit, Scott took the unusual step of again going the Northern Circuit, but for the last time. The ensuing four years of his professional and official life were comparatively uneventful. There was but little public business, few State prosecutions demanded his attention, and the greater portion of his time was left to his practice in the Court of Chancery, which had now become very large and lucrative. His professional income during the four years that he held the office of soliciter general averaged about £10,000 yearly, and during the period of his attorney generalship, from 1793 to 1799, it was still larger, reaching as high as £11,000 and £12,000, a sum representing at least double the same amount at the present day.

On February 13, 1793, Scott was promoted to attorney general, and from this period may be dated his active public career. The times were perilous. The French Revolution was unsettling all Europe, and nowhere outside of France were its effects more apparent than in England. Seditious meetings were held in various parts of the kingdom, chimerical schemes of reform were published, and various organizations were perfected throughout the country having for their object a change in the existing state of government, including the abolition of the monarchy and privileged orders. Many of the leaders of these organizations were indicted for high treason, and the State trials which occurred during the year 1794 have become memorable in the annals of the English bar. Among these were the celebrated cases of Thomas Hardy, Horne Tooke, and Thelwell, all of which were prosecuted by Scott as attorney general, Erskine leading for the defence in these as in most of the trials for high treason during that period. Erskine won the verdicts in the cases named, as he did in most of the State trials of that time. Indeed, it is no disparagement to Scott to say that he could not cope with Erskine as an advocate. The English bar has produced but one matchless advocate, supreme over all forensic orators ancient or modern, and that one was he whose early years were passed in the not over-refined society of a man-of-war, and in the barrack-room of a marching regiment.

But while Scott did not excel as an orator, during this or any portion of his career, either in his profession or in Parliament, his speeches were always clear, forcible, and in good taste, and he did his duty thoroughly, and in the main acceptably, as attorney general. The chief criticism upon his official course during this period has always been that he showed an undue severity in prosecuting offenders; and it must be conceded that there is much foundation for the charge. He certainly evinced an undue zeal in prosecuting for libels, and instituted many proceedings of this nature, in which he was more successful than in trials for high treason. On one occasion he boasted in Parliament that during the preceding two years of his administration there had been more prosecutions for libels than in any twenty years before. His career as attorney general terminated in 1799, and may be dismissed with the words of a contemporary: "For six years of active official and extra-official duty, during which he screwed the pressure of his power more tightly than any attorney general before or since, with the single exception of Sir Vicary Gibbs, he still retained a large share of personal good-will, and was the favorite alike of the bar, of suitors, and the public."

In July, 1799, he was promoted to the chief justiceship of the Common Pleas, and elevated to the peerage, taking the title of Baron Eldon, from an estate of that name which he had previously purchased in the county of Durham.

His record as a common law judge during the period of nearly two years that he sat in the Common Pleas was satisfactory alike to the bar and to the public, and during this period of his judicial career he seems to have been less prone to doubts and delays than was the case when he succeeded to the chancellorship. On September 24, 1799, he took his seat in the House of Lords, and it is not too much to assert that during the ensuing thirty years of English history, no man wielded a more marked and powerful influence in that body than Lord Eldon.

In April, 1801, the administration of Pitt came to an end, and to Mr. Addington, as the new prime minister, was assigned the task of constructing a cabinet. Lord Eldon was selected as chancellor, and on April 14th he received the great seal from the hands of George III. On the first day of the ensuing Easter term, in accordance with a time-honored custom, he headed a procession from his house to Westminster Hall, and was formally installed in the Court of Chancery, attended by all his colleagues of the new Cabinet, and by the entire profession of the law.

At the age of fifty years, with his faculties ripe and vigorous, he had attained, unaided by fortuitous accidents of birth or surroundings, and solely by force of his own merit, the highest judicial station among civilized nations; for if we consider the magnitude of the judicial functions proper which pertain to the office of lord high chancellor of England, with his onerous and varied duties and functions as a member of the Cabinet, and as presiding officer of the House of Lords, as well as the immense patronage, judicial and clerical, at his disposal, it must be conceded that the office surpasses in dignity and power all other judicial stations of modern times.

The appointment gave general satisfaction to the profession and to the public, and the new chancellor immediately addressed himself with vigor to the discharge of his onerous judicial duties. The period of his first chancellorship, lasting five years, was comparatively uneventful. The most serious criticism upon Eldon's administration of the office during this time was upon his conduct in the use of the king's name during his frequent periods of lunacy, especially during the years 1801 and 1804. It is undoubtedly true that the chancellor made use of the king's name in affixing the great seal to commissions and acts of Parliament when that monarch was in fact *non compos mentis*; and for this Lord Eldon was then, and for many years afterwards, both in and out of Parliament, severely censured by his political enemies. These animadversions caused the chancellor great unhappiness; and it was openly charged against him in Parliament that he had used the king's name when he was in such a condition of mental incapacity that a deed executed by him would have been held void by Lord Eldon sitting in his Court of Chancery. And yet it cannot be doubted that he acted from the purest motives, and that he was governed solely by a desire to promote the public good.

Pitt having succeeded Addington as a prime minister in 1804, Lord Eldon was retained as chancellor under the new administration. But the death of Pitt, in 1806, led to the formation of a new ministry, and the king sent for Lord Grenville to make up his Cabinet. Grenville insisted on taking in Fox as secretary of state and Erskine as lord chancellor, and the new Cabinet thus formed has passed into history as the Fox and Grenville Cabinet, or that of "All the Talents." Upon the completion of the new ministry, Eldon resigned the great seals to the king in person, February 7, 1806. But the new administration, though composed of "All the Talents," was destined to be short-lived, and lasted but little over a year. A new ministry followed, with the Duke of Portland at its head, and on April 1, 1807, the great seals were again placed in Eldon's willing hands, and he was warmly welcomed by the chancery bar on his return to the familiar court. Even the Whig lawyers, to whom he was opposed in politics, were delighted with his reappointment.

From the moment of his return to the Cabinet and the woolsack was again manifest what had been apparent throughout his former chancellorship—his marked ascendency over the king's mental indisposition, to which allusion has already been made, and it was evidenced in many ways. In 1804 he caused the king to dismiss Addington from his Cabinet and to recall Pitt as prime minister. Again, upon the formation of the Fox ministry, in 1806, Eldon

narrates that when he tendered the seals in person to the king, upon his resignation, "the king appeared for a few moments to occupy himself with other things; looking up suddenly, he exclaimed, "Lay them down on the sofa, for I can not, and will not, take them from you.'" So, when Canning was scheming for the destruction of Portland's administration, in 1809, Eldon tendered to the old king his resignation. "For God's sake," said the unhappy monarch, "don't you run away from me; don't reduce me to the state in which you formerly left me. You are my sheet anchor."

Indeed, after his recall to the woolsack in 1807, although the Duke of Portland was nominally the prime minister, Eldon was in reality the head of the government, and so continued during almost that entire administration. The appellation of Keeper of the King's Conscience was, in his case at least, no unmeaning sound, and he exercised a larger power and influence in the Cabinet and upon the king in person than had been exercised by a chancellor for many years.

In 1811 the increasing mental infirmities of George III., and his utter incapacity for business, led to the enactment of the Regency Bill, and the Prince of Wales became regent, and practically king. He continued all his father's ministers in power, and Eldon continued to hold the great seals. During the nine years of the regency, although the administration was at times in great danger of disruption, yet, owing largely to the skill, boldness, and address of Eldon, it weathered every storm, and held together until the death of the king, in 1820, when all his ministers, including Eldon, tendered their resignations, but were all immediately reappointed by George IV.

[To be continued.]

"DEVILS" OF THE ENGLISH BAR.

Considering the antipathy which any experience of the law excites among suitors, it is wonderful what fascination it seems to exercise over some of its exponents, or rather over its would-be exponents. We refer to that numerous class of young barristers who pursue the avocation of "devils". To the uninitiated we will explain what is meant by a devil. The picture is not to the lay mind a very attractive one, and yet there are a good many young gentlemen at the Bar who would give one of their ears to be in the shoes of a more fortunate friend who occupies the proud position of devil to a leading junior. In the first place a devil has no work of his own; if he had he could not properly exercise his demoniac functions. His duties consist in getting up masses of papers, and in holding the less interesting of the briefs of another barrister who has got more work than he can get through; in getting abused by the solicitor who does not approve of the work being done by a deputy, and who, if the case is lost, puts it down to the incapacity of the deputy aforesaid, and if it is won, never dreams of awarding any thanks, still less briefs to the winner. And the odd part of it all is that not one groat does the devil receive. He has to keep up chambers, a share of clerk, and himself, and to be constantly at the beck and call of his patron, for he knows if he is not, or if the work be carelessly done, there are seven, or, indeed, seventy others, worse or better than himself, as the case may be, ready to seize on the post with avidity. Another odd feature of the profession is, that the devil really enjoys his work until he gets tired of it. In no other profession that we know of is there presented the spectacle of one man doing another's work for nothing and really liking it. He is not always, to the non-legal mind, a very interesting person to meet in general society, for his conversation is apt to confine itself to recent cases, and the "points" taken or not taken therein, interspersed with choice legal anecdotes which are about as suitable at an ordinary dinner party as Mr. Bob Sawyer's illustration of the removal of a tumor from a gentleman's head, by means of a quartern loaf and an oyster knife, was at Dingley Dell. Of all shop—and shop of any kind is wearisome—legal shop falls the flattest on the ordinary diner-out.

The advantages which are gained, or are supposed to be gained by deviling are, firstly, that the young barrister gets experience, and what is of most importance, something to do during the weary years of waiting which tail off so many; secondly, that he is supposed to have opportunities for making friends of the Mammon of Unrighteousness in the shape of solicitors who, when the leading junior to whose skirts the devil clings, passes into the

smooth harbor of "silk," will bestow on him the briefs which they formerly showered on his patron. Too often the hope is a delusive one, and after having served so many years for the Rachel of practice, the legal Jacob sees her pass into the arms of a whiskerless stripling just out of his pupilage, who is the son or the nephew, or more often the son-in-law, of a solicitor. It is no new discovery that there is a block in all professions, and that in no profession is there anything like the block that there is at the Bar. It is no exaggeration to say that there is work for ten and a hundred to do it. No man without interest should in these days dream of going to the Bar unless he is possessed of exceptional abilities, and even then he must be sure that they are the right sort of abilities. Learning will not serve him without tact; and above all he must cultivate what is called a good manner both with judges and juries. We once heard a judge say of an eminent Queen's Counsel that there was something about his manner which made him *want* to give him the case whatever his own opinion might be as to the justice of his cause. But better far than the most transcendent abilities it is to have an uncle a solicitor. And, now a word as to solicitors. There doubtless are many firms of solicitors who look after the interests of their clients in the matter of the employment of counsel with scrupulous honor, and who only give their brief to those whom they think most likely to conduct the case to the best advantage; but there are an increasing number of solicitors who adhere too closely to the Scriptural doctrine that it is a man's duty to provide for his own family first, and who intrust the interests of their clients to the care of their barrister relations, regardless of their incapacity to do more than scramble through the work somehow. It is, perhaps, natural that they should do so, but it is the presence of so many barrister-solicitors, or solicitor-barristers, which crowds out an immense number of really capable men who come to the Bar provided with brains but unprovided with interest. Some twenty or thirty years ago a man coming to the Bar with a University reputation, and with the patience to let the profession see that he meant to stick to it, was certain to make a living, sometimes a fortune. Now it is very long odds that he will not make either.

No doubt the prizes at the Bar are such as to make it worth while for a man to go through a good deal to gain them, and the excitement of a "talking" practice, when once obtained, seems to have a fascination which renders it impossible for him who has once experienced it ever to retire into private life again, whatever his personal means may be. Sir Edmund Beckett, the present leader of the Parliamentary Bar, who is supposed to have inherited two fortunes and to have made a third at the Bar, was once asked why he did not give up practice now that he was such a rich man, and he is said to have replied that "It was the cheapest amusement he could find." Probably there are many parliamentary barristers who wish that Sir Edward would invent a more expensive one.

The as yet briefless one has, however, many reasons for thinking his own profession is not such a hard one after all, even if he does not rise through the successive gradations of leading junior and Queen's Counsel, and a seat in Parliament to being Attorney-General and finally to the Bench; he knows that there are many little pickings in the shape of County Court Judgships and Police Magistracies, which cannot go outside his own profession.—*London Week.*

THE COMING CONFERENCE AT FRANKFORT.

The following is the programme of the Conference of the Association for the Reform and Codification of the Law of Nations, which is to be held at Frankfort on Maine, from the 20th to the 24th of August, 1878:

The Conference will hold its sittings at the *Saalbau;* and the Inaugural Meeting will take place on Tuesday the 20th of August, at 11 A. M. Members attending the Conference are required to sign a list, setting forth their names and their addresses at Frankfort. This list will be open for signature and inspection from 10 A. M. to 4 P. M., at the *Saalbau.*

Reception of the Members by the Burgomaster of Frankfort.

Opening of the Conference by the President.

Annual Report of the Council.

Communication of letters, etc.

Subjects of the reports, papers, etc:

I. Private International Law.

Bills of Exchange: Report.

Negotiable Securities. The plan of the *lex mercatoria* is the English system as regards negotiable instruments.

General Average: Report.

Patents of Invention. Trade Marks. Copyright.

Bankruptcy: Report.

Foreign Judgements: Report.

On the desirability of establishing a uniform practice for taking Evidence: Foreign Tribunals in different Countries.

II. Public International Law.

The first Rule of the Declaration of Paris.

Codification of International Law.

Extradition of Criminals.

The limits to Arbitration for the Settlement of International Disputes.

The Law of Maritime Capture.

The first Article of the Treaty of Washington.

The Rights and Duties of Neutrals.

Collisions at Sea.

Conventions for the Relief of Shipwrecked Mariners.

International Tribunals of Egypt.

Miscellaneous Papers.

CURRENT EVENTS.

ENGLAND.

Liability of Master.—In *Charles* v. *Taylor*, 38 L. T. Rep. (N. S.) 773, decided by the English Court of Appeal on the 3rd of June last, it is held that where two persons are working for the same master, for a common general object, there is a common employment which exempts the master from liability to one of them for injury caused by the negligence of the other, although the work on which they are engaged is not the same. In this case, the plaintiff was hired by a man who had contracted to unload a coal barge at defendants' brewery, to assist in unloading; he was paid by the defendants, and defendants alone could discharge him. While employed in carrying coal, he was injured through the negligence of defendants' servants who were moving barrrels in the brewery. It was held that there was evidence to justify a finding that plaintiff was defendants' servant, and was engaged in a common employment with the person who caused the injury, and therefore he could not recover. The test in all these cases as to whether two persons employed by the same master are fellow-servants is, are they subject to the same general control, coupled with an engagement in the same common pursuit? If so, they are fellow-servants. Wood's Mast. and Serv. 837; *Rourke* v. *White Moss Colliery Co.*, L. R., 1 C. P. D. 556. In the latter case, workmen employed by a contractor who had engaged to sink a shaft for defendant, defendant agreeing to furnish the steam power necessary in prosecuting the work, were held to be fellow-servants of the engineer employed by defendant to run the engine furnishing the power. See, also, *Priestley* v. *Fowler*, 3 M. & W. 1; *Wiggett* v. *Fox*, L. R., 6 C. P. 24; *Illinois Cent. R. R. Co.* v. *Cox*, 21 Ill. 20. Also *Chicago, etc., R. R. Co.* v. *Murphy*, 53 id. 236; *Dalyell* v. *Tyrer*, E. B. & E. 899. See, however, *Swainson* v. *N. E. Railway Co.*, 38 L. T. Rep. (N. S.) 201; *Murray* v. *Carrie*, 23 id. 557; *Indermaur* v. *Dames*, 14 id. 564; *Bartonshill Coal Co.* v. *McGuire*, 3 Macqueen, 307; *Abraham* v. *Reynolds*, 5 H. & N. 143; *Smith* v. *Steele*, 32 L. T. Rep. (N. S.) 195.

Plans for Court Use.—The Lord Chief-Justice of England the other day alluded in terms of strong disapprobation to the unwieldy size of the plans which are prepared by those who are intrusted with the duty of making plans for the purposes of a trial. When a plan is produced in order to explain a case to a judge or jury it too frequently turns out to be of gigantic dimensions; folded in innumerable folds; far too large to be expanded with convenience on the judge's desk or on the counsel's table; concealing, when opened, every other paper within range of several square feet—in fact, a perfect nuisance to anybody who has to do with it. Frequently, there is no sort of pretence for this inconvenient amplitude, the plan proving to be nothing but a few colored lines, including vast blank spaces. We suppose the idea is to have a plan large enough to be seen by the jury when placed on the table at a distance from them. It would generally be far better to have a greater number of small plans for use in the jury-box; and in all cases where a plan is made for the use of the judge it should be of a handy size. No one who has not ex-

perienced it can be aware how troublesome it is, when a large plan is placed on a desk, to carry the eye from one point of it to another, and then when the judge requires a clear field in front of him for the purpose of taking notes, the plan has to be thrown aside somewhere, and then again it has to be picked up and spread out afresh when further reference to it becomes requisite. In most cases, a plan of very limited size would be sufficient for the purpose of elucidating a case. The Lord Chief-Justice half jokingly suggested that it would be a good thing if the masters would disallow the costs in respect of all plans above a certain size.

SCOTLAND.

A SOMNAMBULIST CONVICT.—According to the Scotch papers, a prisoner was recently convicted at Edinburgh of having, while in a state of somnambulism, murdered his child, and has since been set at liberty. Cases of this kind are very rare, but, assuming the somnambulism to be clearly proved, there can be little question of the correctness of the course adopted. Dornblüth, the German psychologist, tells of a young woman who, in consequence of a fright occasioned by an attack of robbers, was seized with epilepsy, and became subject to somnambulism. While in that condition she was in the habit of stealing articles, and was charged with theft, but on the advice of Dornbluth was released and eventually cured. Steltzer (cited in Wharton and Stillé) gives an account of a somnambulist who clambered out of a garret window, descended into the next house, and killed a young girl who was asleep there. And the same learned writers quote from Savarin an account of a somnambulist monk (related to Savarin by the prior of the convent where the incident happened): "The somnambulist entered the chamber of the prior, his eyes were open but fixed, the light of two lamps made no impression upon him, his features were contracted, and he carried in his hand a large knife. Going straight to the bed, he had first the appearance of examining if the prior was there. He then struck three blows, which pierced the coverings, and even a mat which served the purpose of a mattress. In returning, his countenance was unbent, and was marked by an air of satisfaction. The next day the prior asked the somnambulist what he had dreamed of the preceding night, and he answered that he had dreamed that his mother had been killed by the prior, and that her ghost had appeared to him demanding vengeance; that at this sight he was so transported by rage that he had immediately run to stab the assassin of his mother." Savarin adds that if the prior had been killed the monk could not possibly, under these circumstances, have been punished.

UNITED STATES.

TREATMENT OF WITNESSES.—The *Albany Law Journal* says: "It is not an uncommon thing, at the present time, for a crime to be committed in the public streets of a city, during the busy part of the day, and the police be unable to discover who perpetrated it. A robbery took place in the streets of New York last week, a man who was carrying a package of money being attacked by several persons who tried to get the money from him. He threw the package to a telegraph messenger boy telling him to run away, which the boy did. The robbers pursued the boy and compelled him to deliver the package to them. There were a number of people in the streets who saw the affair, yet the robbers escaped with their booty, and no one could be found who could identify them. We wonder if it has ever occurred to the police, and other officials, engaged in the business of preventing or punishing crime, that the practice of imprisoning witnesses has anything to do with the difficulty experienced in finding out the circumstances surrounding the commission of such offences? It is a common caution given to strangers in New York, "If you see any crime committed, don't say anything about it, or you will be called on as a witness and put to trouble and expense." We are confident that if the practice of detaining witnesses, who are unable to find security for their appearance, were done away with, the difficulty now experienced in detecting and convicting those who commit the more dangerous kinds of crime would, in a large degree, be done away with. Occasionally an offender might escape because the witnesses against him would not appear, but those familiar with the facts connected with violations of the law would be more ready to disclose them, and this would much more than counterbalance any disadvantage resulting from the failure of witnesses, for the people, now and then to put in an appearance.