THE

LEGAL NEWS.

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AN EDITORIAL ANNOUNCEMENT.

With the present number "The Legal News" completes its twentieth year, and the editor's connection with it comes to an end. As to the reasons for this step it is sufficient to say that the increasing pressure of other engagements has made it difficult for the writer to give adequate attention to his labors as a journalist, and he has long felt the need of some relief. The publishers are not in a position at present to make any definite announcement as to the future of the journal, but it may be continued under other management, in whose hands we trust that it will have a long and prosperous existence.

Twenty years, however long in the prospect, are but a brief span in the retrospect. Still, twenty years form no inconsiderable period in legal chronology. It is a period longer than the ordinary term of judicial service. It is more than half the average span of the lawyer's professional life. It is one-third of the long Victorian reign, and more than one-seventh of the time which has elapsed since the cession of Canada.

What changes have occurred in our own part of the Dominion during this period! Four Chief Justices, Sir Antoine Dorion, Sir Francis Johnson, Sir William Mere-

dith and Sir Andrew Stuart, have passed away. Not a single member of the Court of Appeal survives, and but five members of the Superior Court for the Province of Quebec, as constituted twenty years ago, are now on the bench. They are, Chief Justice Casault, Justices Routhier, Bélanger, Caron and Bourgeois. In the ranks of the bar the change is equally great. The elders of twenty years ago have for the most part disappeared from the arena; the rising men of twenty years ago are growing elderly; and pressing close behind them is a host of young men who were then in the school-room. It is not our purpose, however, to indulge in melancholy reminiscences on the present occasion. We shall only add that our work in connection with this journal has always been a great pleasure to us, and we desire to express our gratitude to the many friends who have aided us from the beginning.

The case of *Cusson* v. *Delorme* illustrates the law's uncertainty. By the original decision of Mr. Justice Archibald (Q. R., 10 S. C. 329) the action was dismissed Then the Court of Appeal reversed this judgment and maintained the action (Q. R., 6 Q. B. 202.) The latter judgment has now been reversed by the Supreme Court. The actual value of the land in dispute probably was less than forty dollars.

The Judicial Committee of the Privy Council has given the decision which was virtually announced at the hearing of the question, viz., that the provincial governments have the right to appoint Queen's Counsel with precedence in the local or provincial courts. The judgment does not interfere with the Dominion right of appointment. The undue augmentation of the ranks of Queen's Counsel which will probably follow this decision is an inconvenience of our constitutional system which does not appear to have been foreseen, and which must be accepted, unless the title should be dispensed with altogether.

SUPREME COURT OF CANADA.

Nova Scotia.] OTTAWA, 10 November, 1897.

KNOCK v. KNOCK.

Easement—Winter road—Appurtenant way—Necessary way—Implied grant—Landlocked tenement—User—Evidence of—Prescription—Discontinuous user—Contentious user—Obstruction of way—Interruption of prescription—Acquiescence—Limitation of action—R. S. N. S. (5 *ser.*) *c.* 112—*R. S. N. S.* (4 *ser.*) *c.* 100—2 *& 3 Wm. IV.* (*Imp.*) *c.* 71, *s.* 2 *& 3.*

K. owned lands in the county of Lunenburg, N.S., over which he had for years utilized a roadway for convenient purposes. After his death the defendant became owner of the middle portion, the parcels at either end passing to the plaintiff, who continued to use the old roadway, as a winter road, for hauling fuel from his wood-lot to his residence, at the other end of the property. It appeared that though the three parcels fronted upon a public highway, this was the only practical means plaintiff had for the hauling of his winter fuel, owing to a dangerous hill that prevented him getting it off the wood-lot to the highway. There did not appear to be any defined form of the way across the lands more than a track upon the snow, during the winter months, and it was not utilized at any other season of the year. This user was enjoyed for over twenty years prior to 1891, when it appeared to have been first disputed, but from that time the way was obstructed from time to time up to March, 1894, when the defendant built a fence across it that was allowed to remain undisturbed and caused a cessation of the actual enjoyment of the way during the fifteen months immediately preceding the commencement of the action in assertion of the right to the easement by the plaintiff.

The statute (R. S. N. S. 5 ser. ch. 112) provides a limitation of 20 years for the acquisition of easements, and declares that no act shall be deemed an interruption of actual enjoyment, unless submitted to or acquiesced in for one year after notice thereof and of the person making the same.

Held, that notwithstanding the customary use of the way as a winter road only, the cessation of user for the year immediately preceding the commencement of the action was a bar to the plaintiff's claim under the statute.

Held also, that the circumstances under which the roadway had been used did not supply sufficient reason to infer that the way was a necessary easement appurtenant or appendant to the lands formerly held in unity of possession, which would pass by implication upon the severance of the tenements, without special grant.

Appeal allowed with costs.

Wade, Q.C., for appellant.
Harrington, Q.C., for respondent.

Coram GIROUARD, J.

31 December, 1896.

EX PARTE MACDONALD.

Habeas corpus—Jurisdiction—Form of commitment—Territorial division—Judicial notice—R. S. C. c. 135, *s.* 32.

A warrant of commitment was made by the stipendiary magistrate for the police division of the municipality of the county of Pictou, in Nova Scotia, upon a conviction for an offence therein stated to have been committed "at Hopewell, in the county of Pictou." The county of Pictou appeared to be of a greater extent than the municipality of the county of Pictou, there being also four incorporated towns within the county limits, and it did not specifically appear upon the face of the warrant that the place where the offence had been committed was within the municipality of the county of Pictou. The Nova Scotia statute of 1895 respecting county corporations (58 Vict. ch. 3, s. 8) contains a schedule which mentions Hopewell as a polling district in Pictou county entitled to return two councillors to the county council.

Held, that the court was bound to take judicial notice of the territorial divisions declared by the statute as establishing that the place of the offence mentioned was within the territorial extent of the police division.

Held also, that the jurisdiction of a judge of the Supreme Court of Canada in matters of *habeas corpus* in criminal cases is limited to an inquiry into the cause of imprisonment as disclosed by the warrant of commitment.

HISTORIC COLLISIONS BETWEEN BENCH AND BAR.

"Good feeling," says Mr. Oswald in his work on "Contempt of Court," "nearly always exists between the bench and bar, and when it is interrupted the reason for it may generally be found to exist on both sides. There is scarcely any instance upon record in the superior courts of a conflict between the bench and bar becoming so acute as to lead to the committal of an advocate for contempt while conducting his client's cause. Even Chief Justice Jeffreys (who is said to have browbeaten and sometimes threatened counsel) does not appear to have put in force the power of committal against counsel. And during the progress of the once celebrated *Reg* v. *Castro*, or Tichborne case (which in its hearing occupied the time of the court for a longer period than any other trial on record, except that of Warren Hastings), although there were frequent conflicts between bench and the advocate for the "claimant," and several reminders to him by the judges of the weapon with which the law armed them, the court never went to the length of depriving the client of the services of his advocate. The natural disinclination of the court to interfere with counsel in such a way as to take his services from his client ought to form a strong reason for counsel not assuming too great a license." This passage may be taken as a good, short exposition of the true position, and of a correct appreciation of what the proper relations should be.

It is difficult to find a clear case of a barrister being punished for contempt while actually pleading for his client in court. *Re Pater* is, however, such a case (12 W.R. 823). Of two other cases cited by Mr. Oswald, where both persons committed were litigants, and apparently solicitors, *Carus Wilson's case* (7 Q.B. 984) may be, for the present purposes, worth loooking at; in the other (*Reg.* v. *Jordan*, 36 W.R. 589), Mr. Justice Cave said that the observation, "That is a most unjust remark," however said, is a gross insult to any court of justice, and if not withdrawn amounts to a contempt. *Re Pater* does not help us much. Mr. Pater, a barrister practising at the Middlesex Sessions in 1864, feeling himself aggrieved by certain interruptions on the part of the foreman of the jury, remarked in his speech for the defence, "I thank God there is more than one juryman to determine whether the prisoner stole the property, for, if there were only one, and that one the foreman, from what has transpired to-day, there is no doubt what the result would be." For this he was ultimately fined £20. On appeal to the Queen's Bench Chief

Justice Cockburn said: "It appeared that Mr. Pater was fined for certain words uttered in his address to the jury, and I quite agree with Mr. Pater's counsel (Denman, Q.C., McMahon, and Kenealy) that the words in themselves are words which any counsel might have uttered in the honest discharge of his duty, and if they had been so uttered, though they might have been harsh and unpleasant to the party affected, that could not have been construed into contempt. But, on the other hand, if, though used in the course of his address to the jury, they were not used for the purpose of inducing the jury to come to a conclusion in favor of his client, but for the purpose of wantonly insulting one of the jurors, then I say they are an abuse of the privilege of counsel, and properly punishable as contempt of court."

The court refused any relief. It will be noticed here that the contempt was not for words uttered to the bench, but the deputy assistant judge stated in his affidavit that, on his imposing the fine, Mr. Pater said:—"This shall not rest here. I will bring the subject under the notice of Sir George Grey, and very probably your removal from the bench will be the result." With other instances of barristers punished (by fine or commitment) for contempt on grounds totally different to those in question, there is no need to deal here.

There are some historic precedents of impassioned dialogue between the representatives of the two orders. To begin with, there is the classic story of Wedderburn in 1757. Lockhart, being against him in the Inner House at Edinburgh, showed "even more than his wonted rudeness, and superciliousness," and called him "a presumptuous boy." "When," says Campbell (Life of Lord Loughborough in the Chancellors, vol. 6, p. 47), "the presumptuous boy came to reply, he delivered such a furious personal invective as never was before or since heard at the Scottish bar." Wedderburn's language, reported by Campbell, was an outrage on decency. Lord President Craigie, being afterwards asked why he had not sooner interfered, answered, "Because Wedderburn made all the flesh creep on my bones." But at last his Lordship declared in a firm tone that "this was language unbecoming an advocate and unbecoming a gentleman." Wedderburn, now in a state of such excitement as to have lost all sense of decorum and propriety, exclaimed that "his Lordship had said as a judge what he could not justify as a gentleman." The president appealed to his brethren as to what was fit to be done, who unanimously resolved that Mr. Wedderburn should

retract his words and make a humble apology, on pain of deprivation. All of a sudden, Wedderburn seemed to have subdued his passion, and put on an air of deliberate coolness, when, instead of the expected retraction and apology, he stripped off his gown, and, holding it in his hands before the judges, he said: "My Lords, I neither retract nor apologize; but I will save you the trouble of deprivation; there is my gown, and I will never wear it more—*virtute me involvo.*" He then coolly laid his gown upon the bar, made a bow to the judges, and, before they had recovered from their amazement, he left the court, which he never again entered."

Another Scotchman, who also rose to be Lord Chancellor of England, played a nobler part in his contention with the bench. In 1784 the Dean of St. Asaph was indicted at Shrewsbury for seditious libel, and he was defended by Thomas Erskine. The jury found him "Guilty of publishing only." Buller, J.: "If you find him guilty of publishing, you must not say the word "only." Erskine: "By that they mean to find there was no sedition." Juror: "We only find him guilty of publishing. We do not find anything else." E.: "I beg your Lordship's pardon, and with great submission. I am sure I mean nothing that is irregular. I understand they say, "We only find him guilty of publishing." Juror: "Certainly, that is all we do find." B.: "If you only attend to what is said, there is no question or doubt." E.: "Gentlemen, I desire to know whether you mean the word "only" to stand in your verdict." Jurymen: "Certainly." B.: Gentlemen, if you add the word "only" it will be negativing the innuendoes." E.: "I desire your Lordship, sitting here as judge. to record the verdict as given by the jury." B. "You say he is guilty of publishing the pamphlet, and that the meaning of the innuendoes is as stated in the indictment." Juror: "Certainly." E.: "Is the word "only" to stand part of the verdict? Juror: "Certainly." E.: "Then I insist it shall be recorded." B.: "Then the verdict must be misunderstood; let me understand the jury." E.: "The jury do understand their verdict." B.: "Sir, I will not be interrupted." E.: "I stand here as an advocate for a brother citizen, and I desire that the word "only" may be recorded." B.: "Sit down, sir, remember your duty, or I shall be obliged to proceed in another manner." E.: "Your Lordship may proceed in what manner you think fit; I know my duty, as well as your Lordship knows yours. I shall not alter my conduct." (Campbell, *Ibid*, p. 432).

The verdict was finally entered "Guilty of publishing, but whether a libel or not we do not find."

Valuable as this precedent is, the comment of Campbell, himself a judge and Lord Chancellor, is equally precious: "The learned judge took no notice of this reply, and, quailing under the rebuke of his pupil, did not repeat the menace of commitment. This noble stand for the independence of the bar would of itself have entitled Erskine to the statue which the profession affectionately erected to his memory in Lincoln's Inn Hall. We are to admire the decency and propriety of his demeanor, during the struggle, no less than its spirit, and the felicitous precision with which he meted out the requisite and justifiable portion of defiance. The example has had a salutary effect in illustrating and establishing the relative duties of judge and advocate in England."

Another hot forensic *mêlee* is recorded about 1817 (2 Law and Lawyers, 357). Serjeant Taddy was examining a witness in the Common Pleas, and spoke of the plaintiff "disappearing" from the neighbourhood. Park, J.: "That's a very improper question, and ought not to have been asked." T.: That is an imputation to which I will not submit. I am incapable of putting an improper question to a witness." P. (angrily): "What imputation, sir? I desire that you will not charge me with casting imputations. I say that the question was not properly put, for the expression "disappear" means "to leave clandestinely." T.: "I say that it means no such thing." P.: "I hope that I have some understanding left, and, as far as that goes, the word certainly bore that interpretation, and therefore was improper." T.: "I never will submit to a rebuke of this kind." P.: "That is a very improper manner for a counsel to address the court in." T.: "And that is a very improper manner for a judge to address a counsel in." P. (rising very warmly): "I protest, sir, you will compel me to do what is disagreeable to me." T. "Do what you like, my Lord." P. (sitting down): "Well, I hope I shall manifest the indulgence of a Christian judge." P.: "You may exercise your indulgence or your power in any way your Lordship's discretion may suggest, and it is a matter of perfect indifference to me." P.: "I have the functions of a judge to discharge, and in doing so I must not be reproved in this sort of way." T.: "And I have a duty to discharge as counsel which I shall discharge as I think proper, without submitting to a rebuke from any quarter." Serjeant Lens was about to interfere. Taddy protested against any inter-

ference, but Lens said, "My brother Taddy, my Lord, has been betrayed into some warmth. "I protest," said Taddy; "I am quite prepared to answer for my own conduct." P.: "My brother Lens, sir, has a right to be heard." T.: "Not on my account; I am fully capable of answering for myself." P.: "Has he not a right to possess the court on any subject he pleases?" T.: "Not while I am in possession of it, and am examining a witness." "Mr. Justice Park then, seeing evidently that the altercation could not be advisably prolonged, threw himself back into his chair, and was silent."

Lord Brougham mentions a strange scene, of which he was witness, amusing rather than of good example. At Durham (about 1810) a cause was being tried before Baron Wood. "There was heard an undergrowl on the other side from the Serjeant (Cockell), abusing Topping for his insolence and ingratitude, and the Baron for his ignorance and partiality, and calling for his clerk to bring him some of the stomach tincture, which he knew would console him, as it was generally brandy with some water added, to give it a name rather than materially alter its nature." (Works, vol. 4, p. 384).

Something has been said about Kenealy's case above. As a matter of fact, his utterances in court never formed the subject of inquiry by any professional tribunal, but the important point to notice is that it was his Inn, Gray's, which set the Lord Chancellor in motion (on account of his editorship of the *Englishman*), with the result that he was dispatented, and which disbenched and disbarred him on the same ground.

It will be clear from all the instances that no formula can exactly define to what length of retort or freedom of speech in addressing a judge counsel may with propriety—(as to safety, there is practically no question)—go. Obviously, a genuine instinct of self-respect will inspire an advocate with the exact measure of what is due to himself and what is due to his professional superior, just as it will antagonists in any other controversy. This is what Campbell called in Erskine, "The felicitous precision with which he meted out the requisite and justifiable portion of defiance." Without that instinct it matters little at the bar, or anywhere else, on which side the merits of the dispute are; it cannot be conducted in a seemly way by him that lacks it.

Perhaps the true "rule" may be collected from a dictum attributed to Curran *arguendo*. He offended Judge Robinson, who exclaimed furiously, "Sir, you are forgetting the respect

that you owe to the dignity of the judicial character." "Dignity? my Lord," said Curran. "Upon that point I shall cite you a case from a book of some authority with which you are perhaps not unacquainted. "A poor Scotchman, upon his arrival in London, thinking himself insulted by a stranger and imagining that he was the stronger man, resolved to resent the affront, and taking off his coat, delivered it to a by-stander to hold. But having lost the battle he turned to resume his garment, when he discovered that he had unfortunately lost that also—that the trustee of his habiliments had decamped during the affray." So, my Lord, when the person who is invested with the dignity of the judgment-seat lays it aside for a moment to enter into a disgraceful personal contest, it is in vain, when he has been worsted in the encounter, that he seeks to resume it—it is in vain that he endeavors to shelter himself behind an authority which he has abandoned." Robinson exclaimed, "If you say another word, I'll commit you." "Then, my Lord, it will be the best thing you'll have committed this year." The judge did not do as he threatened, any more than was done in any of the cases already mentioned, or indeed in any recorded; but it is instructive to read that "He applied to his brethren to unfrock the daring advocate," but they refused. The true principle may be adduced from Curran's apologue. So long as a judge speaks in that capacity be he right or wrong, he is entitled to all respect of demeanor and all courtesy of language. The moment he descends to personalities, invective or criticism not warranted or required by his duty to the court, that is, to the public, he strips himself of his judicial function, and the person aggrieved by his language is entitled to speak to him as man to man, a relation which, of course, still includes that of gentleman to gentleman.

In such a competition the judge, of course, starts with everything in his favor; if he is worsted, or reduced to silence, it must be his own fault. That some judges have succeeded in being severe without being insulting, may be seen from Roger North's account of his brother, the chief justice (about 1675). "There were yet some occasions of his justice, whereupon he thought it necessary to reprehend sharply. As when counsel pretended solemnly to impose nonsense upon him, and when he had dealt with them and yet they persisted—this was what he could not bear—and if he used them ill, it was what became him, and what they deserved. And then his words made deep scratches; but still with salve to his own dignity, which he never exposed by impotent chiding.—*The Law Times (London)*.

FAREWELL WORDS OF AN EMINENT JUDGE.

On Nov. 15, there was a large attendance of the Bench and Bar in the Lord Chief Justice's Court, when Lord Esher, the ex-Master of the Rolls, took leave of the Bar.

The Attorney-General addressed Lord Esher as follows, all the members of the Bar standing: My Lord Esher,—Your lordship has been good enough to be present here to-day in order that I, on behalf of the profession of which you have been for so many years a distinguished ornament, might bid you a few words of farewell. My lord, recognizing in you another of those distinguished advocates who trace no small part of their success to the fact that they joined the great Northern Circuit, I doubt not that you owe some of your keen appreciation of clear and incisive argument to the fact that you had among your competitors and rivals such men as Edward James, Stephen Temple, and George Mellish, and some of us who were privileged to practise in the old Court of Admiralty remember well the distinguished position you attained there when Dr. Lushington was its judge, a position which has made its mark on many judgments delivered during the last twenty years. But, my lord, interesting to you and to us as may be references to your lordship's career at the Bar, it is upon your lordship's position as a judge that I desire for a few moments to dwell. When, my lord, in 1868 you relinquished the high position of Solicitor-General to become one of the judges of the old Court of Common Pleas, there were not a few who thought that you had somewhat abruptly terminated what might have been a great parliamentary or forensic career. But, my lord, a few months were sufficient to satisfy all that in undertaking the great responsibilities of a judge you were accepting the duties of an office which you were well qualified to fulfil. My lord, many of us remember the great commercial years of prosperity and the Guildhall Sittings unshorn of any of their ancient glory, and can remember the trial of many causes in which your lordship's business knowledge and acquaintance with commercial affairs came out in strong relief. My lord, your lordship's translation to the Court of Appeal in 1876, and your lordship's selection as Master of the Rolls, following one of the quickest thinkers who has ever adorned the English Bench, are steps in your career which met with universal approval and approbation. I pause not to consider whether the twenty-nine years during which your lordship has occupied high judicial position is without precedent, but this I say, without fear of criticism, that from the day when your lordship first sat upon the Bench until the day of your retirement your career has been one of continuous and increasing success. Your lordship made your Court a tribunal for business men in which mercantile usages and mercantile customs were grasped and appreciated, and while, my lord, you endeavored to bring to bear to the case which you had to decide all the legal knowledge at your disposal, you never permitted any legal technicalities to interfere with what you believed to be substantial justice. My lord, we at the Bar have

winced at times under the searching criticisms of our arguments —criticisms which led us to stand up, as your lordship would have wished us to stand up, against the interlocutory comments, for the moment perhaps adverse to the views which we were expressing on behalf of our clients. But your lordship's comments left no sting behind, and on reflection we felt that your great object was first to ascertain the facts, and then to endeavor to see that justice should be done. My lord, I have but one more word to say. There is one feeling to which expression must be given, and that is the conviction which has rested in the hearts of every member of the Bar of your constant and unswerving loyalty to our profession. My lord, though you were far above us, you still wished to be one of us; you respected our wants and our aspirations; you have shared our joys and our sorrows. My lord, it is this feeling which made it impossible that you should be allowed to retire in silence; it is this feeling which will link you with us in the future as it has in the past; it is this feeling which will make you carry with you a wealth of good wishes of far more value than any feeble words in which I have expressed them; it is this feeling which makes it so difficult for me to say the word which can scarcely be uttered by friends—I mean, farewell.

Lord Esher replied: My dear Attorney-General, and all of you here, I have had some difficulty in coming to a determination as to the character in which I was to address you. I am no longer a judge, and I hardly, for a time, was able to determine what I am. I am still one of you, as I think. I am a serjeant-at-law. I am a barrister of more than ten years' standing. I am capable of being appointed a County Court judge, or to sit as a commissioner to hold an assize. I am therefore now what I have always tried to be, and what I have always tried to make you feel that I was during the whole time I was a judge—namely, one of you, and only one of your equals. It is true that on the Bench, when I was in the position of an officer on the quarter-deck, I had and was obliged to give occasionally words of command; but the moment one leaves the deck one is nothing but a fellow-officer, and I have been nothing but a fellow-barrister with you always. It is in that character, therefore, that I desire to speak to you today. Now, next came to my mind what should be the tone which I should adopt—Shall it be the tone of sadness as of a last dying speech and confession, or shall I say that which I feel—that I am as happy as a man can feel under the circumstances in which I now am? I have been a judge assisted by you all, by most of you who are here present, by almost all the profession, for twenty-nine years and some months. I believe myself it is the longest period ever known during which a judge has sat on the Bench as a judge. I believe so, but I am not quite sure. I have ceased to be a judge, and the Queen has given me an unusual mark of approval, and that mark and your presence here to-day, and saying what you have said, have made me not only happy, but as happy as a man can possibly be. You have mentioned

the mode in which, or the circumstances under which I became a judge. Well, all I will say to all of you is this—I became a judge because I had made up my mind and will from the beginning that I would be a judge. But do not suppose that I had no checks, and that there were not occasionally times when I thought that I was what people call "passed over," which never really exists, as there is nothing to pass over because we are all equals; but what I said to myself was, "Never mind, this is a check, but I will go on and I will get to the top if it is possible to do so." I recommend that to you all. There is another circumstance which I hope exists with many of you—that whenever there came a check, or whenever there came a difficulty, I had one by my side who assisted me with affection and with wise counsel, and who is the principal cause of my success in life. On this happy occasion, then, let me speak, not sadly, but with joy. I retire, not because I think I am totally unable now to continue to act as a judge—I think I could go on a little longer—but I thought it right, considering the age to which I have attained, that there should be a period of absolute rest in order to prepare for the next stage. Now, in considering what the Attorney-General has been good enough to say, I may consider it as if I were his client. He has said many things of me which, as his client, I can only say have been as happily said as could be said. He has been speaking of me as a judge. I can only say that for once he has not convinced me, by what he has said, that what he has said is correct. I may say this as to my own method since I was a judge—I feel confident that never on any one single occasion at any period of my judicial career have I done anything except try, from the beginning of each case until it was ended, to get at the truth of the matter. I have never allowed my attention to be called to anything else in Court. I have listened to witnesses; I have listened to arguments, and I have tried to test them and to consider them as they went on; and my great desire was, first of all, to come to a right determination as to what was the truth of the case in respect of which the parties were in dispute. I speak, of course, of civil actions. I have never been an enemy to the preliminary mode of investigation before the case comes into Court I have been a supporter of the means by which the parties can bring themselves to the real issue. I think that those means are sometimes, and not seldom, abused; that people will take objections and ask questions and insist on rights which are not wanted in the particular case. But, however that may be, when once the case has come into Court my desire and effort have been to get at what is the true state of things; and whether there has been a proper compliance with the preliminary steps at that moment has become entirely immaterial. I never could bring myself to think that a judicial tribunal ought to allow a person's rights to be overthrown because there had been some mistakes made in the preliminary steps or investigations by those who were his advisers. Well, having got, as I have tried to get, at the true facts of the case, I then had to consider what was the law. I am speaking, as I have said, of civil

actions and disputes between parties. The duty of the judge is to find out what is the rule which people of candor and honor and fairness in the position of the two parties would apply in respect to the matter in hand. That is the common law of England, and there is no other law. It is not only the common law, but if we go to equity it is the same thing. The law of England is not a science; it is a practical application of the rules of right and wrong to the particular case before the Court. And the canon of law is that that rule should be adopted and applied to the case which people of honor and candor and fairness in such a transaction would apply each to the other. Now if that be so, if any supposed rule of law is put forward which would prevent the rule of right being applied, the supposed rule of law must be wrong; and if it ever be alleged that the law will prevent the truth being established and oblige the Court to say that that is not true which is true—if ever any such rule of law is attempted to be put forward, it must be wrong, and I have always said so. Now, what the rules of right and wrong in the particular case are must be determined in each particular case; but nobody can have read the reports of decisions of great judges from the earliest times in England without trying to find in those reports the mode and manner in which those judges have stated the rule of conduct of the Court, and that is what is called authority. But no decision —at least, in my opinion—of any judge as to the rule of law other than in an Act of Parliament can compel any Court now to say that they were prevented from deciding that to be true which was in reality true; there is no such thing in the law as a rule which says that the Court shall determine that to be true which the Court believes and knows to be untrue. Now, those being the rules of conduct which I have laid down for myself, I have tried to carry those rules through. I have been assisted, as you must all know, by judges sitting with me whose aid has been to me inestimable. I have been fortunate enough to retire, as I say, with a mark, an unusual mark, given to me—a mark which I think has never been given to any judge for mere legal conduct since the time of Lord Coke. I have received that mark from the Queen, and that mark can leave nothing for me to wish. I now have received from you this kind greeting, and I have only one painful word, as the Attorney-General has said, to use from beginning to end, and that is to say to all of you, Good-bye.

His lordship then bowed to the Bar, and, having shaken hands with some of the judges, retired amidst hearty hand-clapping on the part of the Bar and others in Court.

"My first client," said M. Chaix d'Est Auge at the dinner table of a prosperous bourgeois, "was the greatest scoundrel unhung—a bad egg any way you took him. But I got him off. He was the black sheep of a good family, and his conviction would have made a great scandal." Towards the close of the dinner a pompous, important personage entered, and as the host was about to introduce him to the advocate, he said: "Oh, I need no introduction to M. d'Est Auge. I was his first client."

RECENT UNITED STATES DECISIONS.

Carrier.—An express company delivering a package of money to an imposter who represents that he is the consignee is held, in *Pacific Exp. Co.* v. *Shearer* (Ill.) 37 L.R.A. 177, to be not relieved by the fact that the imposter telegraphed for the money in the name of the consignee and himself received the reply, although the sender of the money believed the telegram came from the person whose name was signed to it. The authorities, which are somewhat in conflict, as to the effect of delivery by a carrier to an imposter, are reviewed in the note to the case.

Contract.—An agreement to establish a railroad dépôt at a certain place in consideration of a right of way is held, in *Texas & P. R. Co.* v. *Scott* (C. C. App. 5th C.) 37 L.R.A. 94, to be satisfied by maintaining the dépôt there for thirty-six years, although it is then removed on account of the exigencies of business.

A member of a club who shares in a "take out" or percentage of the winnings of gambling which the club receives from the games played there, and in which he to some extent acts as manager, is held, in *White* v. *Wilson* (Ky.) 37 L.R.A. 197, to be such a joint wrongdoer with the winner that he cannot recover on a note for money loaned for use in the game.

A contract by attorneys at law for services to prevent the finding of an indictment is held, in *Weber* v. *Shay* (Ohio) 37 L.R.A. 230, to be illegal and void, irrespective of their belief in the guilt of the accused.

Criminal law.—To constitute larceny of money found in a pocketbook the intent to appropriate it is held, in *State* v. *Hayes* (Iowa) 37 L.R.A. 116, not necessarily to exist at the time when the pocketbook was found, if the fact that it contains money is not then known. It is sufficient if the intent is formed when the money is discovered. The authorities on the rights and liabilities of the finder of property are reviewed in a note to the case.

Evidence.—The admissibility of declarations of a sick person to his physician is held, in *Williams* v. *Great Northern R. Co.* (Minn.) 37 L.R.A. 199, to be limited to statements of existing pain or of other existing symptoms, and exclusive of descriptions of past symptoms or past experiences. It is also held that statements to a physician by a person respecting his own virility are not admissible in evidence in his own favor, but are mere hearsay.

Insurance.—An agreement by an insurance broker that double lines of insurance shall not be taken in the same company by his principal is held, in *John R. Davis Lumber Co.* v. *Hartford F. Ins. Co.* (Wis.) 37 L.R.A. 131, to be binding on the principal—especially where he takes the benefit of the policy after knowledge of the facts.

Insanity.—An insane delusion is held, in *Re Kimberly* (Conn.) 37 L.R.A. 261, to be a false belief for which there is no reasonable foundation, and which would be incredible under the given circumstances to the same person if of sound mind, and concerning which his mind is not open to permanent correction through evidence or arguments. The numerous cases on the question what constitutes insane delusions are collected in a note to this case.

Lease.—A landlord's duty to use reasonable care to protect the property of his tenant from injury by the elements while repairing a roof or putting on a new one at his request is held, in *Wertheimer* v. *Saunders* (Wis.) 37 L.R.A. 146, to be one which he cannot delegate to an independent contractor so as to be relieved from liability if the contractor is negligent.

Partnership.—On the dissolution of a partnership by the death of a member, real estate is held, in *Steinberj* v. *Larkin* (Kan.) 37 L.R.A. 195, to be regarded as personal property for the purpose of closing up the business, and on a settlement it may pass to the surviving partner without any formal conveyance.

Schools.—A rule of the board of health excluding from public schools unvaccinated children who have the right to attend the schools is held, in *State, ex rel. Adams* v. *Burdge* (Wis.) 37 L.R.A. 157, to be void unless authorized by statute.

The liability of a school corporation organized solely for the public benefit, to an action for injuries caused by the negligence of its officers or agents, is denied in *Freel* v. *Crawfordsville* (Ind.) 73 L.R.A. 301, unless such action is expressly authorized by statute, or authority to raise money to pay such claims is given. In a note to the case are reviewed the authorities on the liability of a school district or school corporation to an action for damages from negligence.

Warehouse receipts.—So-called storage warrants issued by a furnace company which is not in the warehousing or storage business, for pig iron in its yard, are held, in *Geilfuss* v. *Corrigan* (Wis. 37 L.R.A. 166, insufficient to constitute negotiable warehouse certificates, although they are in the usual form thereof.

Water course.—The artificial state or condition of flowing water, founded upon prescription, is held, in *Smith* v. *Youmans* (Wis.) 37 L.R.A. 285, to be a substitute for the natural condition, such that parties may have a right to insist on the maintenance of the new condition. Therefore owners of land on the shore of a lake which has been raised by a dam so that their property has been benefited by covering swampy shores, are held to have an easement on their part after the owner of the dam has acquired a prescriptive right to maintain it, so that, so long as he does not surrender or abandon his easement to maintain the lake above its natural level, they may insist on his maintaining the dam at its full height.

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