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THE LAW OF TRADE-MARKS.

The cases which have been decided upon the law of trade-marks, says the *Law Times* (London), are so numerous, and additions are growing so rapidly, that that branch of law is fast becoming one of large proportions. The decision of Mr. Justice Fry in the case of *Orr, Ewing & Co.* v. *Johnson & Co.* (40 L. T. Rep. N.S. 307) is one of the latest additions. The facts present no difficulty. The plaintiffs were manufacturers of Turkey red yarn. This they exported to Aden, Bombay, and other places. For many years they had affixed on the bundles in which this yarn was made up a ticket, which they said caused it to be known in the Bombay market as "Bhe Hathi," *i. e.*, two elephants' yarn. The ticket was of a triangular shape, and of a green color. On it was embossed in gold a triangular banner, supported at two corners by an elephant, and between the two elephants was a crown. The name of the plaintiffs' firm was printed on the banner, in Goozerattee characters. The defendants, too, were manufacturers and exporters of Turkey red yarn. Recently they had commenced using a ticket which was similar in shape and color to that of the plaintiffs. It had also two elephants on it in the same place as in the plaintiffs', but turned in the opposite direction. Between them was a figure of a Hindoo idol. There was a banner, as on the plaintiffs' ticket, but on it was the name of the defendants' firm in English letters. An application made by the plaintiffs to have their tickets registered was refused by the Court of Appeal (38 L. T. Rep. N. S. 695). An appeal to the House of Lords is pending. They claimed in this action an injunction to restrain the defendants from using the above ticket, and from otherwise imitating the plaintiffs' tickets. The evidence went to show that the native weavers in the country, who were the ultimate purchasers of the yarn, would probably be deceived. Mr. Justice Fry having answered in the negative the question whether a purchaser of ordinary caution and ordinary intelligence would be deceived so as to take one ticket for the other, even if the two tickets were not before him, went on to consider whether the defendants had taken a material and substantial part of the plaintiffs' ticket. To determine this his Lordship considered two things: first, whether a large part of the tickets which impressed the eye, or was a significant part of the tickets, had been taken; secondly, the mode in which the plaintiffs' goods have been accustomed to be sold, and what people have called those goods. He arrived at the conclusion that the defendants took that which was a material and substantial part of the plaintiffs' ticket, and that consequently the burden was thrown upon the defendants of showing that their ticket did not deceive purchasers. This is founded upon the statement of the law by Lord Justice James in *Ford* v. *Foster*: 27 L. T. Rep. N. S. 219. "The plaintiff makes the *prima facie* case that he has a plain trade-mark, a material and substantial part of which has been taken by the defendants. Then the onus is, under those circumstances, cast upon the defendants to relieve themselves from that *prima facie* liability." Mr. Justice Fry then proceeded to inquire whether the defendants had so appropriated the material part with due precautions to prevent error. For this enquiry, the authority of Lord O'Hagan in the *Singer Machine Manufacturing Company* v. *Wilson* (38 L. T. Rep. N. S. 303) may be quoted: "If one man will use a name, the use of which has been validly appropriated by another, he ought to use it under such circumstances, and with such sufficient precautions that the reasonable probability of error should be avoided, notwithstanding the want of care and caution which is so commonly exhibited in the course of human affairs. I do not say that the mere possibility of deception should suffice to make appropriation improper, but the chance of misleading should be jealously estimated with a view to this consideration, even though ordinary attention might have been enough to protect from mistake." This inquiry likewise was decided in favor of the plaintiffs, and an injunction was accordingly granted. Struggle was made on behalf of the defendants for the recognition of the principle that where there is no actual identity of trade-

mark, the court will require proof of actual deception; but, as the learned judge put it, the point against the defendants was that they were alleged to have taken that part of the plaintiffs' mark which had given a name to the plaintiffs' goods. No objection to the plaintiffs' claim by reason of the refusal to permit the registration of his mark appears to have been insisted upon. By the Trade-marks Registration Act 1876 (39 & 40 Vict. c. 33), the right of traders to take proceedings to protect their trade-marks which had been in use, as the plaintiffs' had, previously to the passing of the Act of 1875, is left as if the Trade-marks Registration Act had not been passed.

NOTES OF CASES.

SUPERIOR COURT.

MONTREAL, December 30, 1878.

SMART v. WILSON et al.

Sale of Land for taxes—Proprietor described as "Inconnu" where proprietorship was uncertain—Proprietor reinstated.

JOHNSON, J. The plaintiff says he has been dispossessed of his property by the defendants under colour of law, and he wants to get it back. It appears that the county municipality and the village municipality, defendants, were parties to certain proceedings, resulting in a form of sale, or what was intended to be so, to the other defendant, Wilson (who makes default), of part of two lots of land belonging to the plaintiff, on the pretext that municipal taxes were due upon them, and that the owner was unknown. The corporation of the village (Hochelaga) pleads 1st, by denying everything, 2nd, by denying specially that the plaintiff is proprietor, and setting up a by-law of the 9th of May, 1864, and then alleging an assessment made on the plaintiff in 1865, on eight lots, and one made on his son (John Smart), on some other lots, and that when payment was asked of the one, he shifted the debt on the other. Then, the making of a new roll in which the plaintiff's lots were put as belonging to an *inconnu*, the amount due being $21, and that, therefore, under the 19th Section of the Act, the Secretary and Treasurer made a list of the lots in arrears and sent it to the County Treasurer, who sold them conformably to Section 71. They then say that the plaintiff was present at the sale, and could have opposed it or set it aside within the two years; and that the municipality acted in perfect conformity with the law. The County Corporation pleaded that the plaintiff had already brought his action against them, which had been dismissed; and consequently they pleaded that everything had been done according to law.

The plaintiff has gone very fully into his case, and supported every part of it by precise evidence. The defendants have, neither of them, adduced any evidence beyond formal extracts of their official proceedings, and have not even cross-examined the plaintiff's witnesses. All the essential allegations in the declaration, therefore, are proved; and the question is merely whether the plaintiff's land being entered in the roll as belonging to an *inconnu* or absentee, while the proprietor is well known, and living as the plaintiff did here for forty years on the other side of the Papineau road just opposite to these lots, can authorize a sale of it in this manner so as to be effectual against his right of property. I cannot shut out the impression that these municipal bodies considered this a short and clever way of deciding who was to pay the taxes. They were uncertain whether it was the father or the son; so, to cut the matter short, they said it was neither, but a total stranger. This was not the meaning of their by-law, which evidently contemplated proceedings against persons who could not be found. Here it was not the difficulty of finding the owner, but the difficulty of selecting between two owners, both of them present, and which they might have done at any time. It was merely the *embarras du choix*. The plaintiff's pretentions have been decided in his favour in numerous and well-known reported cases that were cited, and not answered, because they could not be answered. Then the idea that the plaintiff could lose his right of property from the fact of his presence at the sale is quite untenable. If any one should assume without right to sell my estate, it would surely not validate his act or give a title to another because I stood by and treated him as a lunatic, and his proceedings with

entire disregard. It was urged for defendants that there was difficulty about the exact designation of the land. Now, the defendants cannot justify, as they have done, without admitting they have no interest in showing that they sold in a legal manner unless their proceedings related to this land now sought to be recovered; besides, the description is word for word the same as that in the receipt on which the action is founded, for there appears to be no deed. The judgment in a previous case could, at most, only affect one of the parties, and it does not appear by the judgment that it was the same land. The case of the *Corporation of Yamaska* v. *Rheaume*, 12 L. C. R. p. 488, settles the main principle in this case. The relation of the parties to one another was not quite the same; but the invalidity of a sale, under the circumstances, is already shown.

A. & W. Robertson, for plaintiff.
Doutre, Branchaud & McCord for defendants.

COMPAGNIE DE NAVIGATION UNION v. CHRISTIN; and CHRISTIN, plff. *en gar.* v. VALOIS et al., defts. *en gar.*

Evidence—Garantie—Parole Testimony.

JOHNSON, J. The merits of the action *en garantie* are before the Court in this case now. The plaintiff *en garantie* alleges that the defendants *en garantie*, who were directors of this Company, got him to subscribe the stock on an express guarantee by them that they would take merchandize in payment. The only point is whether this guarantee—a *garantie formelle* for some $3,000—can be proved by parole. The learned Judge before whom the motion to revise the ruling at *enquête* was argued, maintained the objection made to such evidence; so do I. The action, therefore, is dismissed with costs.

Beique & Co., for plaintiff and defendants *en gar.*

Lacoste & Co., for defendants and plaintiffs *en gar.*

BRUNET v. PINSONEAULT et al.

Prescription—Interruption by acknowledgment—Acknowledgment declared on.

JOHNSON, J. This is an action by a builder against the heirs of the late Mrs. Pinsoneault, to recover a balance of two hundred and seventy-six dollars and some cents. The account extends from April 1869 to April 1872; and credits are given in 1870 and 1871, amounting to $551.50. The plea offers $3.20 as being all that is due under the account, and and $8.55 costs as in a Circuit Court action; and as to the rest, the defendants plead the five years' prescription. There is only a general answer to this plea, and the evidence of the agent offered to prove an acknowledgment of the debt in 1873 is objected to, and must have been overruled, if that were all; but I see the declaration sets up as the ground of action this very promise; therefore, it is no longer a question of interruption of the prescription pleaded by the debtor; but proof of the allegation on which the action is based. I can see nothing in a case like this to prevent the plaintiff from recovering, if he alleges an acknowledgment and undertaking to pay, within the five years, and proves it. Therefore, I maintain the action, and dismiss the plea and the motion to reject evidence.

Roy & Bouthillier for plaintiff.
Lacoste & Co., for defendants.

THE PROPOSED CRIMINAL CODE OF ENGLAND.

[Concluded from p. 24.]

The great publicity given to the Bradlaugh prosecution for alleged obscene publication, and the question of how far the defendants were liable, if they acted in good faith and for what they believed the general interest, attracts attention to the law as sought to be defined in the code.

The jury in that case found the book published was calculated to deprave public morals, but exonerated the defendants from any corrupt motives in publishing it. The Lord Chief Justice said this amounted to a verdict of guilty. The code declares the law as thus defined to be that a person is justified in an obscene publication, if it was, in the opinion of the jury, for the public good or advantageous to science, provided the publication is not made in a manner to exceed what the public good requires; and the motives of the publisher are immaterial.

The offence of unlawfully disinterring bodies is subject to the mild sentence of two years' imprisonment. This crime has been rare in Great Britain since the days of Burke, and less attention has been drawn to its enormity than, unfortunately, is the case here.

Common nuisances are broadly defined. Making any loud noise or offensive smell, in such manner as to annoy any considerable number of persons, is a nuisance, and the necessities of trade are no defence. The tendency to extend the law of nuisances, shown by the courts, receives the sanction of the code. A county judge in England lately held, indeed, that an organ kept and played in a chamber, which caused such a noise in a room near by that its occupant could not pursue his literary work, was "intolerable, but not actionable." But the decision was much questioned, and few things intolerable can safely rely on being not actionable. The Philadelphia church bells would be under the ban of the prohibition thus broadly laid down in this statute.

The provisions as to the negligent causing of death suggest some questions that have lately been discussed. After a strict provision for the punishment of those who cause death or injury by the failure to perform any duty imposed by law or assumed by contract, unless the neglect is held not culpable by a jury, it enacts that no one commits an offence by causing death, even intentionally, by omitting anything which it is not his legal duty to do. The principle is stated in Sir James's Digest in so trenchant a form as to seem questionable. "A. sees B. drowning, and is able to save him by holding out his hand. A. abstains from doing so, in order that B. may be drowned; and B. is drowned. A. has committed no offence."

The requirement that death must ensue in a year and a day to constitute murder is abolished, and also the unjust rule that any killing, however accidental and unintentional, if it occurs in the commission of a felony, is murder. It is murder in England if a man shoot at a barn yard fowl with intent to steal it, and by the merest accident some person is killed. But if he was shooting to show his marksmanship, or was shooting at a pheasant, then it is not murder. Such anomalies will be rare, if this code takes effect. The degrees of murder and manslaughter which perplex many American courts and juries are not recognized by the code. Murder is unlawful homicide with an intention to cause death or grievous harm to any person, or with knowledge that some act or omission will probably cause death or grievous harm, though accompanied with indifference as to the result. Manslaughter is unlawful homicide not amounting to murder; and homicide is unlawful when the death is caused by an act done with intent to cause death or grievous harm, or known to be likely to produce such a result, or from culpable omission to perform a legal duty, or in any unlawful act. As an instance of brevity in legislation, five sections of existing statutes, forbidding specifically seven ways of attempting murder, and generally all other attempts, are condensed into one line of the code: "Every one shall be guilty of an indictable offence who attempts to commit murder."

These brief sections, like most simple definitions, seem to contain a more satisfactory rule than the many labored and confused provisions as to these crimes which encumber most American statute-books. A wide range of punishments in manslaughter, depending on the various circumstances of the case, is secured by the broad discretion vested in the judge trying the case.

The offence of bigamy is committed, although by the fraud of either party the form used would not constitute a valid marriage. A similar rule is laid down in 25th N. Y. Reports, where the witty reporter thus heads the case: "It seems that a married man intending to effect seduction may blunder into bigamy."

Among the most valuable changes made by this statute are those in reference to theft and its kindred crimes. The refinements that especially flourish as to these crimes are summarily disposed of. Very lately, a gamekeeper in England, who had killed and was selling eighteen of his employer's rabbits, was decided by the Court of Criminal Appeal to be an innocent man; because wild rabbits could not be a subject of larceny, and as they were not received by the keeper as his master's property, but were taken with the original intent of stealing, the offence could not be embezzlement. So the prisoner, having avoided the Scylla of larceny, and weathered the Charybdis

of embezzlement, was set at liberty, to exercise further his talents for legal crime and innocent theft.

By the proposed statute, the offence is put in an attempt to misappropriate, which covers theft, breach of trust, including embezzlement and obtaining money under false pretences. The objects of theft are defined so that title-deeds and things which savor of the realty are no longer an absurd exception. The taking which constitutes theft includes taking with the owner's consent, if that is obtained by fraud, and whether the owner is in possession or not. Of average commercial morality the codifier seems to have a low opinion, as the section as to obtaining money by false pretences contains this rather remarkable and confusing exception: "provided that it is not obtaining property by false pretences to persuade any person to transfer his proprietary right in any such property, either by a promise not intended to be performed, or by such untrue commendation or depreciation of a thing sold as is usual between buyers and sellers." This elastic exception might confuse sagacious juries, and, were the customs of some parts of the world to be received in evidence, might make criminal false pretences impossible.

Fraudulent misappropriation is made an indictable offence. This offence includes theft, breach of trust, embezzlement, and obtaining property under false pretences. The danger of a criminal escaping, who, for instance, is indicted for theft, when the evidence just brings him safely within the line of embezzlement, is thus avoided.

Space does not allow us to review the provisions of the code as to many other forms of criminal action with which it treats. No changes are introduced of such importance as to be of any special interest to the American lawyer. As a specimen of accurate phraseology, of scientific legislation, of brief yet comprehensive definition, this act deserves to stand high among the great codes of the world.

Criminal procedure is next dealt with, and here many important changes are made. The remarkable feature of English law, that there is no public prosecutor, is left unaffected. That the public, by its legal representative, should not see to the punishment of crime, but it should still be left for the individual to pursue the offender,—as when vengeance was a private right, and the injured person or his kindred sought redress with their own hands, and when crime was an offence not against the State but the individual,—is a curious instance of survival even in England. No plausible reason has been or can be adduced against the existence of a public prosecutor, and it might have been hoped that Sir James, who does not lack courage, would have supplied this great lack. The vigorous measures of the last few years give good grounds to hope that such a change will not lag far in the rear.

By the changes which are now made, however, a vast mass of the mysteries of pleading, of the complicated practice, which, instead of being a means to the enforcement of justice, helps to narrow the great science of the law into an ignoble ingenuity and unfair artifice, carrying joy to the breast of Chitty, and regret to that of Bentham or Brougham, passes away to rejoin many special pleas, rejoinders, surrebutters, imparlances, avowries, repleaders, and pleas *puis darrein continuance*, which have already departed into the rest of endless confusion. The tedious and involved indictments which are still used in England and this country are a double evil. They do not furnish the prisoner with a plain statement of the offence with which he is charged, and the witnesses with whom he is to be confronted. On the other hand, they afford innumerable opportunities for a criminal who has the means to employ astute counsel to cheat justice by some technical defect. The law should see that every person charged with crime shall be convicted only on satisfactory proof, and after a fair trial. But the many chances which our criminal practice affords for the escape of an offender, save by the one means of a verdict of not guilty, are an encouragement to crime, an offence to law-abiding men, and of infinite harm to the community. Such failures of justice, if this code is adopted, will, in England, be rare.

In the first place, the useless law of venue is done away with. No proceeding shall be invalid because a trial took place elsewhere than where the court should have sat, or where the offence was committed, unless it appears that the defendant was thereby prejudiced. The defendant may be first arrested on a bench-warrant issued by a justice, and held by him

for trial in some proper court, the prosecutor being bound over to present a bill of indictment. The depositions taken on the examination before the justice, if the defendant had the opportunity of cross-examination, and the witness is dead, ill, or out of the kingdom, may be read on the trial. But, though a person should be thus committed by a justice, he must also be indicted by a grand jury, before he can be tried, unless an information is filed by the Attorney-General or the master of the crown office, or unless he is accused by an inquest taken before a coroner. No indictment can be presented before a grand jury, unless the defendant has been held by a justice, or unless the prosecutor serves upon the defendant, one month in advance, a copy of the indictment to be presented and of the affidavits of the witnesses to be called; and the prosecutor, in the latter case, may be required to give security for costs. In every case, therefore, the defendant can be aware of the evidence to be given against him, so far, at least, as it is adduced before the justice or the grand jury. In case of an information filed, which can only be for an offence for which the defendant could be sentenced to death or penal servitude, a copy of the information and of the affidavits of witnesses to be called, containing the substance of their evidence, must be served on the defendant.

To guard further this important right, it is provided that no witness shall be called by the prosecutor, unless the defendant has reasonable notice of the intention to call him, stating his name and address, and substance of the evidence which he will give. The court decides what notice is reasonable, under the circumstances; and no notice is required, if the prosecutor first becomes aware of the evidence the day the witness is called. Variances between the evidence and the notice can also be disregarded, in the discretion of the court.

The provisions as to indictments are very sweeping. Any defect in an indictment may and shall be remedied, at any stage, provided only the defendant is not thereby prejudiced in his defence, and is not subject, on conviction, to a severer punishment than under the indictment as it stands. No such amendment ordered before or after a verdict shall affect its validity.

The form of the indictment is so simple, that amendments will be little needed. The following is the example given of an indictment for murder. After a caption stating the court, name of defendant, date of indictment, &c., the body of the indictment is as follows:—

Offence.	Particular of Offence.
The Criminal Code, 1878, § 140.	The defendant murdered B. at ——, on ——.

The following is given as an example of an indictment for seditious libel:

Offence.	Particular of Offence.
The Criminal Code, 1878, § 56.	The defendant published a seditious libel. The libel consists of a pamphlet entitled ——, a copy of which is hereto annexed, and marked A. The passages alleged to be seditious occur at pages ——, and are marked in said pamphlet by lines on the margin.

No variations between the facts proved and the statement of the offence in the indictment shall be material, unless the court thinks the defendant has been thereby misled. If this is so, he may be discharged, or the court may allow an amendment, discharge the jury, and order a new trial.

Though the onerous duty of prosecution is still, for the most part, imposed upon a private person, some amendments are made. The rule as to compounding a felony is modified, by providing that to agree for a compensation not to prosecute shall be an indictable offence, provided it is done without an order made by a court or judge of the Supreme Court of Justice. Subject to such direction, therefore, the many cases where satisfaction to the person injured should satisfy the public, and where now he is deprived from obtaining it, lest he may be accused of compounding a felony, can be arranged for the best interest of the public and the parties concerned. The rule, also, that in certain cases one could not sue for a private remedy until he had first prosecuted the offender criminally, is abolished.

The judge may, on conviction of an offender, besides the punishment imposed by law, also award to the person injured any sum not exceeding one hundred pounds, which shall be a judgment debt against the offender.

The costs of the prosecutor may be ordered paid by the court; and they generally are. This, however, is not always done. But very lately, Chief Justice Coleridge excited some unfriendly criticism by refusing to order paid the costs of the prosecutor on a conviction for poaching, saying, that as the law protected the amusements of rich people, they must pay for its enforcement. The costs of the defendant, if he is acquitted, may be ordered paid by the prosecutor.

The question of whether the defendant shall be allowed to testify in his own behalf has been much discussed of late, and the matter was finally left to be disposed of by the proposed code. That provides that the defendant shall be allowed to make any statement he desires, and may be examined by his counsel, and is subject to cross-examination. He is not to be sworn, and is not subject to any penalty for false evidence. Sir James Stephen's view, as he has before expressed it, is that the defendant should have an opportunity to make any explanation he can of the charge, and that, if he is unable to give a satisfactory explanation, his conviction should thereby be the more certain. The refusal to allow an alleged criminal to give his own statement is an injustice to the few innocent, and an advantage to the many guilty. On both grounds, the defendant should be heard, that he may be justly acquitted or justly convicted. An oath adds no effect before a jury, when a man is testifying for his life or liberty. The rule thus laid down seems, therefore, the most just that can be established. Husband and wife are, however, still left incompetent to testify in each other's behalf.

General jurisdiction is given the Superior Courts for the trial of all offences, and a limited jurisdiction to the Courts of Quarter Sessions. A motion for a new trial may be made upon a conviction before the judge trying the case, and a new trial granted on the evidence, and an appeal can be allowed to the Court of Appeal in Criminal Cases. Save in misdemeanors, heretofore no motion could be made to set aside a verdict in a criminal case. In 1867, in *R.* v. *Bertrand*, it was held that a new trial could not be granted in any case of felony, though an error on the record might be a ground for a reversal. Save, therefore, on the most technical grounds, in the most important questions that can come before a court, no right of review is now given. Nor is the condition of those convicted in the courts of the United States any better.

The proposed code has been referred to a committee, of which Lord Blackburn, Mr. Justice Lush, and Sir James Stephen are members. Of its ultimate passage there is no doubt.

It combines skilful codification and great reforms. As the Attorney-General said in bringing in the bill, "The law is now for the first time drawn completely from its hiding-places, and laid bare to the public view." Its author may well claim the praise promised by one of his great predecessors in legal reform to him who could say that he found the law a sealed book, left it a living letter; found it the two-edged sword of craft and oppression, left it the staff of honesty and the shield of innocence.—*J. B. Perkins, in American Law Review.*

GENERAL NOTES.

"Lady's Law." The following are some extracts from this rare old work:—

Page 46: "A man steals his wife against her friends' consent, and after sues in equity for her portion, but denied relief by Egerton, Chancellor, who said, *He that steals the flesh, let him provide bread how he can.*"—Cary's Rep.

Page 175: "A *feme covert* purloined her husband's goods and money, and put the money into other men's hands, who bought lands to her use therewith. The heir and executor of the husband sued in equity to have the land or money restored. But Egerton, Chancellor, denied relief. He said he would not relieve the husband were he living, *for he sate not there to give relief to fools or buzzards who would not keep their money from their wives.*"

"Elopement, says a writer of antiquity, by the sound of the word and nature of the offence, seems to be derived *a lopex*, a fox; for it is when a woman goes away from her husband and seeks her prey far from home, which is the fox's quality."

Page 27: "A promise of matrimony must be mutual; and, therefore, if the man say to

the woman, I do promise that I will marry thee, but the woman makes no promise to the man; or, contrariwise, the woman doth promise, but not the man; this is a *lame* contract, and not of any force in law; neither is the silent party in this case (being present and hearing the same) taken for a consent and approbation; but it is otherwise, if any other person than the parents promise for the child."—Swinb. Matr. Cont., p. 5.

Page 31: "If a promise of marriage be made without any limitation of time, then (if there appear not any weighty cause of stay) if both the parties are resident in one province, the woman may, after two years, marry to whom she pleases; but if the man does not reside in the same province, it is said she must tarry three years."

Page 39: "By our law, marriage being once lawfully solemnized, and without impediment, by one of the Holy Orders, all the world cannot dissolve it, let it be at what time and place it will."—Sid. Rep., 64.

FIRE CAUSED BY SPARKS FROM LOCOMOTIVE:—The case of *Powell* v. *Fall*, in which judgment was given by the Court of Queen's Bench Division on Wednesday, raised an important point as to the liability of a party for an injury caused to another by doing something authorized and in the way prescribed by an act of Parliament. It was an action brought by a farmer to recover a sum of £53 in respect of injury done to a rick of hay upon a farm of the plaintiff adjoining a public highway, and which was caused by sparks escaping from the fire of a traction engine of the defendant's as it was being propelled by steam power along the highway. The engine was constructed according to the provisions of the acts regulating the use of locomotives on turnpike and other roads, and at the time it caused the injury was not travelling beyond the maximum speed prescribed by the acts, nor was the injury caused by any negligence on the part of the defendant's servants managing it. By section 13 of 24 & 25 Vict., chap. 70, it is provided that "nothing shall authorize any person to use upon a highway a locomotive engine which shall be so constructed or used as to cause a public or private nuisance," and by section 12 of 28 & 29 Vict., chap. 83, that "nothing shall affect the right of any person to recover damages in respect of any injury he may have sustained in consequence of the use of a locomotive." The defendants contended that the effect of the statutes being to authorize the use of locomotives on public highways, if constructed and managed according to the provision of the statutes, was to exempt the owners from liability unless some improper construction of the engine was shown or some negligence in the use of it. The court, however, held a contrary view, deciding in favor of the plaintiff, and holding the case to be governed by the principle established by the case of *Fletcher* v. *Rylands*, viz., that when A brings or uses a thing of a dangerous character on his own land, he must keep it in at his own peril, and is liable for the consequences if it escapes and does injury to his neighbor. "The authority conferred by the statute," the court said, "to use locomotives on highways, is not an unqualified authority, but is qualified and does not extend to protect the defendant from liability to damages in respect of any injury he may have occasioned in consequence of the use by him of a locomotive engine on the highway. The recent case of *Jones* v. *The Festiniog Railway Co.*, L. R., 3 Q. B. 734, is to this effect, and appears to govern the present; and, indeed, in this case the right to recover damages is expressly reserved by the statutes, and so it is a stronger case than that cited." This decision is certainly in accordance with reason and common sense as well as with strict law.—*Law Times.*

THE BABYLONIANS.—Of law in Babylon the *Irish Law Times* says: With all their superstition, the Babylonians were a shrewd and practical people. Law and commerce flourished among them, and an Acadian code of laws, the oldest known code in the world, is remarkable for the mildness and justice of some of its regulations. Even the slave is protected against his master, and there are probably some at the present time who would wish to revive the clause that "whatever a married woman incloses shall be her own." Precedents seem to have been as much honored as in our own law, and fine or imprisonment awaited contempt of court. We learn from an old table of moral precepts addressed to Kings at the time when Sepharvaim, Nipur, and Babylon were under one government, that royal judges existed throughout the kingdom and prisons were erected in all the towns.