The Legal News.

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In *Langlois* v. *Corporation of Montminy*, 13 Q. L. R. 302, 11 Leg. News, 72, the Court of Review, at Quebec, declined to be bound by the decision of the Court of Queen's Bench in *Tansey & Bethune*, M. L. R., 1 Q. B. 28, in regard to privileged costs, and ruled in a contrary sense. The inconvenience of such a course is all the more striking, inasmuch as the decision in Review, confirming the decision of the original Court, is not susceptible of appeal. Casault, J., observed :—"Cette conclusion est contraire à celle sus-citée de la Cour du Banc de la Reine, dans la cause de *Tansey & Bethune et al.* Mais notre confirmation du jugement le fait final et sans appel; et je ne crois pas, comme je l'ai déjà dit dans une cause de *Ross et al.* v. *Talbot*, que, parceque un tribunal intermédiaire d'appel a exprimé une opinion opposée, et la majorité des juges la composant a rendu une décision contraire, nous devons sacrifier notre opinion, pour prononcer mauvais et l'infirmer, un jugement que nous croyons bon et devoir être confirmé. Comme un juge, qui n'est plus et qui appartenait à la Cour du Banc de la Reine, a trouvé mauvais (*Demers & Germain*, 12 Q. L. R. 292) que ce qu'il appelait la jurisprudence de cette Cour n'eut pas été adoptée par la Cour de révision de ce district sur un point que le Conseil Privé n'avait pas approuvé, je crois devoir ajouter qu'il n'y a que les décisions des tribunaux d'appel en dernier ressort qui déterminent la jurisprudence. Ceux qui, quoique d'appel, ne sont que de ressort intermédiaire, qu'ils soient le second ou le troisième, n'obligent pas et ne règlent définitivement rien. La question qu'ils ont tranchée dans un sens est encore à débattre, et peut l'être dans un autre par un tribunal inférieur. La position de la Cour du Banc de la Reine n'est pas, sous ce rapport, différente de celle de la Cour Supérieure siégeant en révision. Leurs décisions n'ont que l'autorité qu'entraînent la science et l'expérience des juges qui y concourent, et les motifs sur lesquels ils les appuient."

Whatever may be thought of some of Mr. Joel P. Bishop's eccentricities, his papers are always suggestive and very readable. In these particulars his address on the common law as a system of reasoning, which appears in the January-February number of the *American Law Review*, excels, and may be perused with advantage. We give a portion of it in the present issue. Some of Mr. Bishop's propositions appear to us rather weak. For example, if no abstract doctrine can ever be settled by judicial decisions, it is difficult to see how "jurist work" can be accepted or approved by the courts so as to determine what are "the embodied principles of the common law."

THE LATE MR. JUSTICE MACKAY.

Death has come, of late, in the majority of instances, to judges and lawyers while actively engaged in the discharge of their duties. The decease of Mr. Justice Mackay, who passed away on the 23rd of February, is one of the exceptions. He retired from the bench about five years ago. We printed at the time (5 Leg. News, 337) what Mr. Justice Torrance jocularly described as his "oraison funèbre," but some further notice may be added on the present occasion.

Mr. Justice Mackay was born in Montreal in 1816, and was admitted to the practice of the profession in 1837. He is said to have taken an active part on the loyalist side in the troubles of 1837-8. In 1856 he was appointed a commissioner for the consolidation of the Statutes. While at the bar he was not subjected to the pressure of business which some lawyers have now to encounter. Legal affairs were then conducted in a more leisurely fashion. One clerk usually sufficed for even the most prominent firms. Mr. Mackay, though not gifted with eloquence, was characterized by a dignified bearing, and an earnest desire to get to the bottom facts of his cases. His partner was Mr. Austin, now Chief Justice of the Bahamas. The late judge was always of a studious habit, and an omnivorous reader of everything relating to his chosen profession.

In 1868, he was raised to the bench at the same time as the late Mr. Justice Torrance.

On the bench he displayed considerable vigour of mind, united with an almost feverish eagerness to keep pace with the business brought before him. In the delivery of judgments he displayed an impetuosity which led the late Mr. Ritchie to playfully style him the "Aurora Borealis." Withal, he continued to be a close student and a prodigious reader, and his judgments were not rendered without anxious consideration.

The learned judge had some foibles, innocent enough, which sometimes afforded amusement to the bar. One of these was the use which he made of scraps of paper. As he read through a case, he jotted down his impressions and conclusions on anything which came in his way—corners torn from sheets of foolscap, envelopes, even the backs of visiting cards, were pressed into service, and were afterwards pieced together, or fastened with a pin, and did duty as notes of judgment. This characteristic was also hit off by the late Mr. Ritchie, who dubbed him "scrap iron." His diction, though scholarly, was likewise peculiar, and his letters to journals, in which he was fond of indulging on all sorts of subjects, more especially after his retirement from the bench, could always be detected by those acquainted with the oddities of his style.

These were petty eccentricities, hardly worthy of mention except to complete the portrait of the man. In essentials, Mr. Justice Mackay was actuated by an exalted sense of honor, a high regard for the dignity of the Bench, and an abhorrence of all dubious practices. His opinions were usually sound, and dictated by an ample knowledge of the subject, as well as a profound insight into human nature. In his retirement from the judicial office, a rock upon which abler men are sometimes shipwrecked, he was unusually fortunate. Fond of art, fond of literature, fond of travel, keenly interested in public affairs, the five years of leisure and seclusion were among the happiest of his life. He even retained a lively interest in the law, and in judicial decisions, which, we think, is somewhat unusual on the part of retired judges. His own ample library was generously presented to McGill University; but he continued to receive the new issues of legal publications, and worked sedulously upon a treatise on the law of fire insurance, a subject of deep interest to him, but the results of his labours he seems to have abstained from producing. He was always a diligent reader of the *Times* Law Reports, and was in the habit, for some years back, of sending to us clippings of such matters in these reports as he deemed of interest. Even while travelling he did not cease to read, and it was no uncommon thing to find in the mail from England a little packet of clippings addressed to the editor of the *Legal News*. His health was usually excellent. Before his retirement he had an attack of vertigo, after having been engaged for many days in a keenly contested election case. The attack came on suddenly while he was walking out. He fell, and was so badly disfigured that his own servant, when he was carried to his residence, failed to recognize him. A return of this ailment cost him his life. He had left his house in the evening to go a short distance, and perceiving the symptoms of an attack, sat down in the snow, until he had somewhat recovered, and was able to return home. But the chill brought on congestion of the lungs, under which he sank, after about a fortnight's illness. Apart from this weakness, his health was very good, and as President of the Art Association and in other ways he kept himself in constant activity. In private his relations were honorable and happy, and his life without stain or reproach. The disappearance of his tall figure and dignified presence leaves another blank, besides those which we have too often had to lament during the past few years.

CIRCUIT COURT.

MONTREAL, March 5, 1888.

Before DOHERTY, J.

FOUCHON v. ONTARIO & QUEBEC RAILWAY CO.

Railway Company—Neglect to fence—Damages.

HELD :—1. *That Section* 13 *of the Railway Act respecting the responsibility of a Railway Company for damage done to cattle through neglect of the Company to fence its line, only applies to proprietors owning property abutting on or crossed by the railway line,*

whose cattle are injured through the neglect to fence in conformity to this section of the Railway Act.

2. *That in such case a railway company is only responsible for damage done to cattle on its railway by its trains or engines, and is not liable for accidents happening on another line of railway running parallel and contiguous to its line, even though the fencing of the first line might have prevented the accident.*

3. *That the damages contemplated by this section are actual damages, and the expense and trouble a proprietor of cattle incurs in herding his cattle before the accident, to prevent their escaping on to the railway line, on account of absence of fences, is not a damage that can be recovered from the Railway Company in a case such as the present.*

The action was tsken to recover $95, 1st, $45 for a cow killed; 2nd, $50 for damages on account of non-erection of fences, the plaintiff alleging that he incurred this expense and damage in being obliged to herd his cattle to avoid accidents on the railway crossing his property.

The facts, as proved at the *enquête*, established that the defendant's line of railway crosses Isle Perrot, and that the Grank Trunk track runs parallel with that of the defendants; the property of both railways being contiguous or near to each other for a short distance at this point; that the plaintiff owns an island which is separated from Isle Perrot by a creek, and that between this creek and defendants' railway are two properties, one belonging to Stocker, and the other belonging to the defendants, which was acquired from Stocker previous to the accident, both of these properties lying alongside of the defendants' right of way, and being divided by a public road which crosses the two railways by means of an ordinary highway crossing, and that further west the two railways cross the plaintiff's island; that on the day of the accident a cow belonging to the plaintiff escaped from the island, crossing the creek on to Stocker's property, and was driven back to the island by his wife, and recrossed the creek, making its way from Stocker's property on to the public road, then strayed as far as the public crossing, and crossed the two railway properties through the absence of fences dividing the defendants' right of way from the piece of land they own adjoining their right of way, and through the want of a fence dividing the lands of the two railway companies; that the cow was struck and killed on the Grand Trunk line, and was found lying on their property immediately after the accident; that the defendants' line was in process of construction and was not fenced at the point where the animal got on the track, nor was it fenced where the railway crosses the island a little further west of the public road crossing; that the plaintiff had gone to considerable trouble and expense to protect his cattle from getting on to the defendants' railway line at the point where the railway crossed the island west of the public crossing, and had *verbally* notified one of the engineers of the company to fence the line previous to the accident.

On behalf of the plaintiff it was contended that the Railway Company were responsible, as not having complied with the municipal law in connection with fencing their property, and that had they fenced their roadway and the piece of land they owned alongside of it the accident would not have occurred; that the plaintiff having notified the company's officials to fence their railway before the accident occurred, they had been put in default, and the railway was therefore responsible for the accident occasioned through their neglect to comply with the municipal law, and with the section of the Railway Act requiring railways to fence their property.

On the question of damages the plaintiff contended that after having been put in default the defendants were responsible for the expense and trouble the plaintiff had experienced in herding his cattle, in order to prevent them getting on to the railway track, where it crossed his island west of the public crossing.

The defendants on the other hand contended that although the fences were not constructed, either at the point where the animal got on to the track or at the point where the track crosses the island as above mentioned, at the time of the accident, yet they were not liable for the value of the animal killed, as Section 13 of the Railway

Act only makes them responsible for accidents to cattle belonging to the occupant of the land in respect of which such fences have not been made, and the plaintiff is not an owner of property contiguous to the railway line; that the animal not having escaped from its owner's property on to the railway through the neglect of the company to fence as against its owner, the section of the Railway Act did not apply, especially as by the proof it was shown that the animal was at large and straying before it got on to the railway track. It was also argued that the defendants were not liable for accidents that happened on the Grand Trunk line. On the question of damages, the pretension of the defendants was that the measure of damages contemplated by the section of the Railway Act above cited, was the value of the animal killed or injured by its trains or engines, and that the Act did not apply to such damage as plaintiff sought to recover.

The COURT considered that the plaintiff had failed to make good his action and to bring his claim for damages within the provisions of the law in that behalf, and that defendants had established their defence both in law and fact, and dismissed plaintiff's action with costs.

F. X. Archambault, Q.C., for plaintiff.

F. E. Meredith for defendant.

(R. T. H.)

THE COMMON LAW AS A SYSTEM OF REASONING, — HOW AND WHY ESSENTIAL TO GOOD GOVERNMENT; WHAT ITS PERILS, AND HOW AVERTED.

[American Law Review.]

The subject is too vast for a full treatment. But I do not forget that I am addressing gentlemen accustomed to thinking and reasoning, therefore capable of supplying for themselves my omissions.

Your familiarity with the common law renders needless any defining of it by me. But, looking at it as a system of reasoning, let me set it for a moment before you beside the civil law.

During the ages of Roman prosperity and glory, the civil law grew up as a system of reason. It had, to employ our common law forms of expression, its statutes and rules of court; and it had the writings of its jurists, corresponding to our treatises and commentaries. It lacked those masses of judicial decisions which overwhelm and almost crush out our reason. On the other hand, its jurists were real jurists, and not the sort of men, or theirs the sort of labor, whence have proceeded the greater number of our law treatises. And, beginning with no more authority than we accord to the books of our young lawyers seeking practice, and of our older ones who never had the capacity to acquire practice, they rose by their own merits to be the authority, and nearly the only authority except legislative. Thus the Roman law became a system of reasoning, as such, differing from ours in little else than the form of its growth and development. And as in the countries governed by the common law, so in those governed by the Roman, the statesmen and legislators were largely lawyers; that is, they were persons accustomed to reasoning upon legal, or governmental, things.

In the economy of human life and association, we have, as the fairest gifts of God, love, religion and reason. I need not say that the last is the greatest, for it includes the other two. Where reason, pure and perfect, prevails, all other good dwells; and the place whence it is banished is, whether in this world or the next, hell. "Let us reason together" is the command of Him from whom both we and reason proceeded. There is false reasoning; but true reasoning conducts to all light, to all prosperity, to all happiness.

Thus the affairs of Rome were controlled by men who, however lacking in many things, were accustomed to reasoning, and to the sort of reasoning by which alone the people could be well governed. And thus Rome grew and prospered, until she embraced the entire civilized world. Nor, while this reason remained with her, could she be overthrown. But, after many years, the eternal longing and sighing for laziness, the same which has wrought immense mischief in our jurisprudence, and which now threatens to destroy it, prevailed. Justinian, whom it is the fashion with us to adore, finished the work of mischief. In connection with what

we should term revising the statutes, doubtless an excellent undertaking, he collected what he chose to preserve of the writings of the jurists, altered the extracts as far as the new purpose required, and consigned all the remainder to eternal oblivion. Having done this, he shut down the gate, as far as he could, forever upon reason. Of necessity, the ship of state, "which, though so great, and driven of fierce winds," had theretofore been kept from foundering by the "very small helm" of reason, went down, and Rome and the world were overwhelmed by centuries of darkness and woe.

Let me anticipate my argument by reminding you that the world presents now an exact parallel to this. There is a little island upon which the angel of light as she flew over it dropped a spark. Spurning Justinian's folly, she accepted reason, named it the common law, and rose to a power and glory which mock the very brightest of Roman dreams. Her navies rule the seas, her colonies watch the sun in all his course around the world, her glory threw off in one of her flights these United States of America. But the longing of laziness has of late taken possession of her. And she threatens to substitute acts of Parliament for all her common law of reason; and make it possible for sluggards and fools to practice at her bar and preside in her courts. If she does it, it requires no gift of prophecy to foresee that her encompassing seas will weep upon the dripping rocks around that little island a more mournful requiem to her entombed empire than was ever before sung over fallen greatness and glory.

Philosophy of the common law.

Returning now to our own law, let us approach the more practical parts of the subject through a preliminary inquiry into the less obvious nature of that reason whence the palpable proceeds. In other words, employing an expression which may sound a little mystical, while it is not so in truth, let us call up to our comprehension the invisible innermost, or soul, of what the outward sight discerns as the body of the common law.

We see around us a universe, upon every part of which the Creator has made the impress of law. This earth wheels onward upon its axis in obedience to a law which man has been able to discover. But if you ascend the highest tower or mountain-peak, and in the loudest voice ask the earth why it moves thus, it can give you no answer. It does not know. In the earlier ages man did not know. Yet from the beginning it moved as it does now. Go to the seas and ask the fishes why their habits are as they are,—ask the codfish why he feeds upon the bottom, and the mackerel why he gets his food at the top and moves in schools,—ask any question of any fish and you get no answer. Yet there is not a fish that does not move in exact obedience to the laws which the Maker has impressed on its nature. Consult the birds and the beasts, and the same facts reveal themselves. Consult man, and the result is not essentially different. He has a partially dormant and partially active power of reason. Feebly, and as in the twilight, he distinguishes between right and wrong. Yet God has impressed upon him his particular nature, the same as upon the beasts, upon the birds, upon the fishes, and upon the physical earth. Ask the child why he claims a thing that has been given him as "mine," and feels wronged and cries if his right is denied, and he cannot tell you. His nature teaches him that it is so, yet his efforts at reasoning upon the question are as futile as those of the fish.

Following instinct, or conscience, or whatever else we call it,—in other words, moved by impulses from the nature given by God to man—he, while living as all must in society, establishes various customs and usages. After they become universal the court takes judicial cognizance of them as law. When statutes are enacted it takes the like cognizance of them also. But it does not stop here. It notices in the same way opinions which have become universal and uniform, the teachings of science when so diffused as to be known by all men, and whatever is understood of the nature of man and of the relations of society. Especially it takes judicial cognizance of reason, and of the fact that directly or indirectly it is the highest guide of man. It thus becomes the highest guide of the court, so that our law is denominated

a "system of reason." It accepts judicial decisions as guides for future cases, because reason teaches the importance of stability and uniformity.

But the facts of human life, while to the casual eye repeating themselves, are, when looked at more minutely, seen to be ever-changing. They resemble the growths of the physical earth. To the eye just opening a tree is a tree, and all trees are alike. Looked at more carefully, the trees appear in great varieties. We have the oak, the beech, the sycamore, and so on through a very long list. All differ. Looking more minutely at the oak, we find in all the world no two trunks, no two limbs, no two leaves, no two specimens of the fruit, exactly alike. And it is so with all the other trees throughout the world. No two leaves, no two of anything else, were ever discovered precisely identical in form and appearance.

It sometimes happens that the facts which are presented to the practitioner or court are the same which have transpired and have been passed upon before. But this can be only when the parties have dropped out something from their recital because of an instinctive feeling that it is unimportant. In truth, no two sets of facts were ever absolutely identical.

Now, for a court to decide a question differing from what has gone before, it must take cognizance of the law engraved, not by man, but by God, on the nature of man. In other words, it must take cognizance of what our predecessors have named the unwritten law, or common law. This law has already been discovered by juridical wisdom to consist of a beautiful and harmonious something not palpable to the physical sight, yet to the understanding obvious and plain, called principles. And the only way in which it is possible for one decision to be a guide to another involving facts in any degree differing is to trace the decision to its principle, and thence to pass downward to the new facts and inquire whether or not they are within the same principle. This process is termed reasoning. And because it is reasoning from things established in the law to those not yet established it is called legal reasoning, or the reasoning of the law,—in distinction, to quote the words of Coke, from "every man's reason." So that the reasoning of the law is a distinct thing from the personal reasoning of an individual judge or text-writer. Hence, also, judicious judges and text-writers do not in their work proceed on their mere individual reasoning, but upon the law's.

We see, therefore, that, however the people who established a custom, or the legislative body that enacted a statute, or the court that pronounced a decision, omitted to reason about it, or reasoned wrongly, still the custom, the statute, the decision, is deemed by the law to have proceeded on its just and true reason. And a knowledge of the law is simply and only a comprehension of such just and true reason. And what is termed the law's progress or growth consists, more than in anything else, in discoveries of its just and true reasons, and in correcting old mistakes as to them.

How qualifies for governmental work.

So that the practice or administration of the common law is a constant call upon the reasoning powers of those engaged therein, keeping them unremittingly active; and especially it compels an unceasing looking into those laws inherent in man and in society, without an understanding whereof no official person can properly discharge any governmental function.

In method and results the common-law lawyer resembles the scientist in nature. The latter, taking note of all natural phenomena, classifies them; and, looking down among them more deeply than the ordinary vision extends, discovers, and brings up to the view of his fellow-men, the laws, one by one as he is able to find them, on which the workings of Nature proceed. Aided by his labors those who provide for the physical wants are able to proceed intelligently; as, to build a bridge which will not fall in the using, a house that will stand, a locomotive that will draw the train of cars. The scientist is thus constantly adding to our knowledge of what always existed, and the physical world of man is progressing.

So it is under the common law. The lawyer, whether practitioner, judge, or writer, looking down among the numberless phenomena of his science,—noting human actions,

and investigating the decisions of the tribunals upon them,—discovers, one by one, the laws which always existed, though, it may be, never before understood, pertaining to the government of men in communities. The exigencies of practice constantly compel him to this, if he is a practitioner; the duties of office compel him, if he is a judge. Thus, while the law does not in any proper sense grow, the knowledge of it is a constant growth of beauty and usefulness. And so men are taught governmental things; the minds of those who administer the government are kept in training for their work; and the superior prosperity of the common-law nations is maintained and perpetuated.

But let us not be unjust in comparing the common-law nations with the others. Since the Justinian folly plunged the world into night, there appears to have been no attempt at its exact repetition, though more or less has been done resembling it. And to-day those nations which are governed by the civil law take it rather from the reason which preceded Justinian than from his attempted abolition of reason. And they have their jurists, while we have not ours except in imperfect semblances. So that, should we abolish our common law of reason by merging it in codification, as many among us seek to do, we should not be brought where continental Europe now is, but rather to that bath of night which Justinian prepared for her.

[To be continued.]

DISALLOWANCE.

To the Editor of the LEGAL NEWS:

SIR,—In a communication which appears in a contemporary journal, F. W. C., dating from Winnipeg, says that I was wrong in the conviction I expressed in my communication (10 Leg. News, p. 409), that the Dominion Government were bound to use every legal means in their power to give effect to their contract with the C. P. R. Company, confirmed by the Act 44 Vict., c. 1, declaring that it should "have effect as an Act of the Parliament of Canada." But I can find in his paper no reason for changing the opinion I then expressed, or the statement with which I concluded, that "there is no doubt that Parliament by the said Act grants and intended to grant the twenty-year monopoly, and that it was part of the consideration for which the company undertook to make the railway, and made it":—and if the line of the C. P. R., as defined in the Act 37 Vict., c. 14, passes, as I believe it does, through old Manitoba, it is clear that the monopoly clause applies to it.

I will not take up your space in arguing the question as to the right of a Province, under the B. N. A. Act, to authorize the construction of a railway *to* the national boundary line. I expressed my doubt modestly, and gave my reasons for it. Though I respect the judgment of the Chief Justice and Supreme Court of New Brunswick, in the case before them, I think they would not have given the same judgment in the case of a railway constructed in avowed contravention of the expressed will and intention of Parliament, and of the contract it had approved and confirmed as its Act. If I am wrong in so thinking, my error does not affect my position that the promise and pledged faith of the Government and Parliament of Canada must be kept. Parliament would *authorize* the construction of a railway, if it permitted Ministers to allow it. I earnestly wish that the monopoly complained of should cease, with the consent of the company on fair compensation to them, if thereby they sustain loss; and I have always thought that every possible facility should be given to Manitoba and the North-West Territories in consideration of the disadvantage at which they are placed by their very great distance from the sea-board, and have wished that the Finance Minister could see his way to some abatement in the duties on goods imported by sea for, and conveyed directly to them, from the port of entry, in consideration of the heavy expense of their transport. I thank F. W. C. for giving me the opportunity of saying this.

G. W. W.

PAYMENT OF CHEQUE ON FALSE ENDORSEMENT.

That is a very interesting, and so far as we know, a novel question put by a correspondent in another column, concerning the pay-

ment of a bank cheque upon a false endorsement. The exact question is, whether the payment by a bank of a cheque drawn upon up it, made payable by the drawer's mistake to a wrong order, but presented by a person of the exact name of the designated payee, will protect the bank. The *Journal of Commerce* answers this in the negative, upon the ground that it has been decided that a payment by a bank to a wrong person of the same name—"the wrong John Brown"—will not protect the bank. This was held in *Graves* v. *American Exchange Bank*, 17 N. Y. 207. One judge dissented in that case, and it has been severely criticized by Mr. Morse in his work on Banking. We do not know that such a holding is wrong. The drawer or drawee must lose; the drawer was not at fault, and so, although it is hard on the drawee, he should lose. But that is not this case. This is not the case of a payment to "the wrong John Brown." The payment was to a person answering the drawer's written direction, although not answering his intention. If the right man had endorsed the cheque in his proper name and presented it, he could not have got the money. How can the drawee dive into the mind of the drawer and ascertain his intention, especially when there is nothing to put him on his guard? Is not the drawer estopped by his mistake? We are inclined to think so, provided, of course, that there was no circumstance of suspicion nor anything calling for extraordinary inquiry. What more had the drawee a right to demand of the endorser than identification as a man of the designated name? Suppose we mean to draw our cheque in favor of William B. Astor, but instead of that we draw it in favor of Chauncey M. Depew; will any one say that the bank would not be justified in paying it to Depew, and that the bank rather than ourselves must get back the money from Depew? We are inclined to believe that it is a fair question of fact whether the bank made sufficient and reasonable inquiry, and if it did, that the drawer and not the bank must suffer the consequences of the drawer's mistake. The *Graves* case was put on the ground that title could not pass without endorsement according to the drawer's intention, but it seems to us that where the drawer has made a mistake he is estopped to deny the validity of a payment in exact accordance with his apparent intention. The nearest analogy we have found is *Lennon* v. *Brainard*, 36 Minn. 330, of which the syllabus is as follows: "Where a draft which was intended for 'C. A. R.' was erroneously endorsed payable to 'C. R.,' and was shown to have been enclosed in a letter duly addressed and mailed to 'C. A. R.' at his place of business in a distant city, but miscarried and was never received by him, and fraudulently endorsed and collected by a stranger, *held*, in a subsequent action to recover the amount of the draft by the true owner, that in the absence of any identification of the fraudulent endorser, or that any person bearing the name 'C. R.,' so endorsed, lived in or received his mail at the time in the city to which the letter was sent, the mistake in the original endorsement was not sufficient to raise an issue for the jury upon the question of plaintiff's negligence, and a verdict was properly directed." The court said that there was no evidence of "mistake or carelessness of the plaintiff," thus implying that if there had been, the result might have been different.—*Albany Law Journal.*

Mr. Edwin F. Palmer, of Vermont, writes to us criticizing some points of Mr. Justice Bowen's translation of the passage in Virgil about Fame. Being a reporter he may be deemed an authority on the great author of reports. He says "slumbering eye" is exactly contrary to the sense of the original, which is "*Tot vigiles oculi*," and that "slumbering eye" does not accord with "all-vigilant ears" and with "she never in sweet sleep closes her eyes." He is undoubtedly right. Therefore read, "sleepless" or "watchful" eye. Mr. Palmer continues: "Lord Coke quoted one of these celebrated lines of Virgil on Fame, in describing an estate in abeyance. In 4 Kent Com. 259, is the following note: 'And Lord Coke, in Co. Litt. 342b, said that an estate placed in such a nondescript situation had the quality of fame—*inter nubila caput.*' The original is—*et caput inter nubila condit.* John Locke, in his treatise on the Conduct of the Understanding, section 39, quotes line 175 as follows: 'To these latter one may for answer apply the proverb, 'use legs and have legs.' Nobody knows what strength of parts he has till he has tried them. And of the understanding one may most truly say that its force is greater, generally, than it thinks, till it is put to it. '*Vires que acquirit eundo.*' The line quoted by Coke is rendered by Lord Justice Bowen: 'With her forehead touches the Heaven;' and the line quoted by Locke, thus: 'And she gathers speed as she flies.' These two lines in their English dress hardly have any application to the subjects treated by Coke and Locke. It is true that this might not be a complete test, but I submit that the exact meaning of the original is not given by the translation." So we think, and we would suggest for the former, "she hides her head in the clouds," and for the latter, "and she gathers strength as she flies," or perhaps better, "and her stature grows as she flies"—the meaning being that rumors grow as they are circulated.—*Albany Law Journal.*