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BAR OF MONTREAL.

The Annual Report of the Council of the Bar for 1867 shows that the Act of 1866 has already had a marked effect upon the number of admissions to practice and to study. The admissions to practice during the year ending May 1st, 1868, were thirty in number, and the admissions to study only twenty-one. The receipts for the year were $2,690.20, and the disbursements $2,053.81, leaving a balance of $636.90. The number of books added to the Library was 239, at a cost of $885.

One portion of the Report has an unfavorable appearance, namely, the statement that seven complaints had been brought before the Council of the Section against nine members of the profession. One of these complain to was rejected *in limine*, on the ground that the charge did not impugn the professional conduct of the accused. Another charge was discontinued, and a third was still pending. The remaining four had been decided on the merits. In one case the defendant was suspended from practice for the term of two years. In two other cases the defendants were acquitted, but condemned to pay the costs, in consequence of certain discreditable facts disclosed by the evidence. In the fourth case, one of the defendants was acquitted, but condemned in costs for the same reason; and the other defendant was condemned to be censured by the Batonnier, and deprived during three years of the right of voting or being present at the meetings of the Secti n.

At the semi-annual meeting on the 1st of May, Mr. A. Cross, Q.C., was elected Batonnier.

JUDICIAL PENSIONS.

In the Canadian House of Commons, on the 14th of May, the principle of the new Pension Act was carried by 105 to 35. The new Act permits judges who have served fifteen years, or who are disabled by infirmity, to retire on a pension equal to two-thirds of their salary. This is a measure which puts the Lower Canada judges on the same footing as the Upper Canada judiciary, and will, we believe, have a most salutary effect. The certainty of a pension is really equivalent to a very considerable increase to the salaries of the judges. Incompetent or infirm judges must not expect now that their shortcomings will meet with the same tolerance as hitherto. They have no pretext now for not moving off the arena while better men are pressing forward.

ADMISSIONS TO PRACTICE.

On the 17th of June it was decided by the Committee of Examiners for the Montreal Section, that candidates who had not attained the age of twenty-one would not be admitted to examination. It appears that, in one or two instances, a candidate under twenty-one has been examined, the diploma being granted on his coming of age. The words of the statute are: "No person shall be admitted to practice as an advocate, attorney, solicitor, and proctor-at-law, unless he has attained the full age of twenty-one years." This clearly prevents a person under age from practising; and as the examinations are held every three months, there does not appear to be any hardship in requiring the candidate to be of age before presenting himself for examination.

IMPEACHMENT OF JUDGES.

In the latter part of the Session a petition was presented to the House of Commons for the impeachment of Mr. Justice Lafontaine. This is but a renewal of the charges referred to in the 2nd volume of the *Law Journal*. The matter will be investigated by a Committee during the next Session.

A petition was also presented by Mr. Chamberlin, signed by Mr. T. K. Ramsay,

Q.C., to impeach Mr. Justice Drummond. This petition, however, was withdrawn in accordance with the wish of the majority of the House, in consequence of certain charges in it being supposed to cast reflections on the whole Court of Queen's Bench.

LAW REFORM IN ENGLAND.

Under the title, "A few Observations respectfully submitted to the Royal Judicature Commission," Mr. F. S. Hull has published the following suggestions in regard to law reform. It will be noticed that nearly all the changes suggested are in actual practice in Lower Canada:—

1. I see no reason why the courts of common law and equity may not be fused into one, all questions of pure administration being worked out in the office of the registrar (or master or clerk), and all matters requiring judicial inquiry, or the verdict of a jury, being sent into open court, on issues raised in the manner after-mentioned.

2. I see no reason why bankruptcy should not be joined with law and equity, provided the functions of the court be limited to those of administration only.

3. I think that Admiralty cases require to be submitted to a judge and jury (or substitute for a jury) of a special training.

4. The business of Probate seems to me to be purely administrative, unless some dispute arises, and then there seems to be no difficulty in bringing the disputed issue to a hearing in the manner after-mentioned.

5. Suits should be commenced in all the courts by a written statement, setting out all the material facts on which the plaintiff rests his case; and the defendant should set out his defence in like manner.

6. Experience shows that one practitioner sets out a plain story even of complex matters, admitting the truth of adverse facts he believes to be true, whilst other practitioners, in a long and confused statement, distort the facts of a very simple story. This grievance can only be remedied *by the infliction of costs.*

7. A large discretion should, therefore, rest with the judge and taxing master, enabling them, whatever may be the result of the suit, to make the costs fall on the party who shall assert the truth of a material fact which turns out to be untrue, or who puts the other side to the proof of a fact the truth of which is known to the party requiring the proof.

8. I think this course of proceeding may be adopted in all the courts.

9. The real tussle would thus be the preparation of the case of each side *on paper*, the taxing master visiting the defaulter with costs.

10. I see no reason why various circles of business, including a bar, should not be created in districts having judges visiting these districts in circuit, and having the appeals heard in London at set terms in the year.

11. I think the distinction at present existing between the bar and the attorneys should be broken down, and the American system adopted, namely, that an attorney should be permitted to enter the ranks of the bar on his passing examinations showing that he is competent to act as an advocate. And if so competent, I see no reason why he should cease to practise as an attorney. An advocate so circumstanced would be more strictly bound to keep within the truth of his case. I see no reason why the present members of the bar should not practise as attorneys without any further examination.

STATUTES OF QUEBEC—31 VIC.

The statutes passed in the first session of the legislature of the Province of Quebec form a volume of 167 pages, comprising 59 Acts.

Cap. I. An Act for granting to Her Majesty certain sums of money required for defraying certain expenses of the civil Government, for the 18 months ending 31st Dec., 1868, and for other purposes connected with the public service.

Cap. II. An Act to amend certain Acts therein mentioned, and further to provide in reference to stamps. Sec. 6 enacts that

certificates of registration or search shall be ineffectual unless stamped; and requires every registrar to keep an entry of searches made in his office.

Cap. III. An Act respecting certain duties on licenses. This Act imposes further duties on licenses issued to pawnbrokers, auctioneers, &c.

Cap. IV. An Act respecting the office of Speaker of the Legislative Assembly. This provides that the Speaker of the Legislative Assembly may call on a member to take his place when obliged to leave the chair.

Cap. V. An Act respecting the indemnity to members of the Legislature, and the salary of the Speaker of the Legislative Assembly. Here the local Legislature has enacted the old 30 days' provision of the late Parliament. If the session lasts thirty days, the remuneration to members is $180, $6 per day, but if it lasts 31 days, each member gets $270 for the thirty-first day, as he then becomes entitled to $450 for the session. The Speaker's salary for the year 1868 is fixed at $2,400.

Cap. VI. An Act respecting the statutes of this Province. This Act regulates the printing, distribution, &c., of the statutes.

Cap. VII. An Act respecting the interpretation of the statutes of this Province.

Cap. VIII. An Act respecting the organization of the Civil Service.

Cap. IX. An Act respecting the Treasury Department and the public revenue, expenditure, and accounts.

Cap. X. An Act respecting the office of Minister of Public Instruction. Sec. 4 provides that the Minister of Public Instruction shall be eligible to the Legislative Assembly, and shall be a member of the Executive Council.

Cap. XI. An Act respecting the department of the Secretary and Registrar of this Province.

Cap. XII. An Act respecting the appointment of an assistant to the Law Officers of the Crown. Sec. 1 provides that the Lieutenant-Governor may appoint an officer under the Attorney-General and the Solicitor-General, to be called the assistant of the law-officers of the Crown.

Cap. XIII. An Act respecting the office of Queen's Printer for this Province, and the publishing of the "Quebec Official Gazette." This Act provides for the appointment of a printer and the publication of an official Gazette. This appointment has not yet been made.

Cap. XIV. An Act to continue for a limited time the several Acts therein mentioned.

Cap. XV. An Act respecting the appointment of Justices of the Peace.

Cap. XVI. An Act to diminish the expense of summoning Jurors in Criminal cases, and for other purposes. This Act is intended to prevent the Sheriff from unnecessarily summoning persons who are exempt from serving on juries.

Cap. XVII. An Act to provide for the paying over, in certain cases, of moneys received by Sheriffs, Prothonotaries, and Clerks of the Circuit Court.

Cap. XVIII. An Act respecting the proof of the laws and official publications of the other Provinces of the Dominion. This Act provides that copies of Acts, printed by a Queen's printer, of the other Provinces shall be received in evidence.

Cap. XIX. An Act respecting Colonization roads.

Cap. XX. An Act to encourage settlers. Sec. 1 exempts lands conceded to settlers from seizure (except for the price thereof) for any debt contracted previous to the concession.

Cap. XXI. An Act to amend the Gold Mining Act, and the Gold Mining Amendment Act of 1865.

Cap. XXII. An Act to provide more effectually for the support of schools in certain cases, and for other objects therein mentioned.

Cap. XXIII. An Act respecting Inspectors of Prisons, Hospitals, and other institutions.

Cap. XXIV. The Joint-Stock Companies General Clauses Act.

Cap. XXV. An Act respecting the incorporation of Joint-Stock Companies. The last two Acts appear to embody the provisions of the former Acts of the Province of Canada.

Cap. XXVI. An Act to amend the Game Laws of this Province.

Cap. XXVII. An Act respecting the storage of gunpowder in and near the cities of Quebec and Montreal. Sec. 2 provides that no powder magazine shall be kept within the limits of said cities, nor within five miles thereof. Sec. 3 provides that the Lieutenant-Governor in Council shall make regulations for the storage, &c., of gunpowder.

Cap. XXVIII. An Act to amend chapter 18 of the C. S. L. C.

Cap. XXIX. An Act to annex a portion of the Seigniory of Bélair to the Parish of St. Ambroise, and another portion thereof to the Parish of St. Catherine.

Cap. XXX. An Act to divide the municipality of the township of Percé, in the county of Gaspé, into two separate municipalities.

Cap. XXXI. An Act to legalize, in certain respects, the proceedings of Boards of Notaries.

Cap. XXXII. An Act to provide for the appointment of a Fire-Marshal for the cities of Montreal and Quebec, and to define his powers and duties. This is the famous Act under which Messrs. Austin and Desnoyers have been appointed for the city of Montreal. The Act contemplated the appointment of only one person in each city, the singular "an officer," "a fit and proper person," being used; but it has been thought proper to make it a joint office in Montreal. The validity of this Act has been attacked, and it has also been alleged that the Act as passed contained words (requiring the Marshal to be present at every fire in person or by deputy) which are omitted in the printed bill.

Cap. XXXIII. An Act further to amend the Act to amend and consolidate the provisions contained in the Acts and ordinances relating to the Incorporation of city of Quebec, &c.

Cap. XXXIV. An Act to amend the Act 12 Victoria, c. 282, and to provide for a further increase of the capital stock of the Quebec Gas Co.

Cap. XXXV. An Act to incorporate the "Quebec Curling Club."

Cap. XXXVI. An Act to amend the Act of Parliament of Canada, 23 Vic., c. 70, respecting interments in a certain burial-ground in the city of Quebec.

Cap. XXXVII. An Act to amend the Acts relating to the corporation of the city of Montreal, and for other purposes. We do not see anything about a public park in this Act; but sec. 26 authorizes a special loan of $250,000 to build a new city hall, the debentures for which loan are to bear seven per cent interest, payable semi-annually.

Cap. XXXVIII. An Act to incorporate the members of the "Synod of the Diocese of Montreal," and to merge "The Church Society of the Diocese of Montreal" in such Synod.

Cap. XXXIX. An Act to amend the Act incorporating the Montreal City Passenger Railway Company.

Cap. XL. An Act to incorporate "The Canadian Building Society of Montreal" a Permanent Building Society.

Cap. XLI. An Act to incorporate the Building Association of Montreal.

Cap. XLII. An Act to incorporate the Montreal Manufacturing Co.

Cap. XLIII. An Act to incorporate the Montreal Caledonia Curling Club.

Cap. XLIV. An Act to incorporate the Association known as "*La Société des Commis-Marchands de Montréal.*"

Cap. XLV. An Act to amend the Act incorporating the Massawippi Valley Railway Company.

Cap. XLVI. An Act to incorporate the Chambly Hydraulic and Manufacturing Co.

Cap. XLVII. An Act to incorporate the Canada Marine Insurance Co.

Cap. XLVIII. An Act respecting the Rockland Slate Co.

Cap. XLIX. An Act to amend Act 22 Vic., c. 106, incorporating the town of St. John's.

Cap. L. An Act to incorporate the "St. Jean Baptiste Society of the town of St. John's."

Cap. LI. An Act to amend the Act incor-

porating the "St. Joseph's Union of St. Jean d'Iberville."

Cap. LII. An Act to amend the divers Acts incorporating the town of Lévis.

Cap. LIII. An Act to incorporate the Society called the "Union St. Pierre du Village Bienville de Lévis."

Cap. LIV. An Act to incorporate the Society called "L'Union St. Joseph à St. Sauveur de Québec."

Cap. LV. An Act to authorize the Ministers of the Church calling themselves the "Catholic Apostolic Church," in the Province of Quebec, to solemnize matrimony, and to keep registers of baptisms, marriages and burials.

Cap. LVI. An Act to authorize the Sisters of Charity of the General Hospital of Montreal to acquire property to a certain value, and to dispose of the same.

Cap. LVII. An Act respecting the minutes of the late Theodore Doucet, in his lifetime of the city of Montreal, Notary-Public. This Act permits the minutes referred to to remain in the hands of the son of deceased under certain conditions.

Cap. LVIII. An Act to facilitate the partition of the estate of the late John Coffin.

Cap. LIX. An Act to authorize the Montreal board of Notaries to admit, after examination, Norbert D. D. Bessette to practise as notary.

THE LAW OF MARRIAGE.*

The law regulating marriage is a subject which has of late attracted considerable attention in various quarters of the globe, and not least in both Upper and Lower Canada. In the pamphlet before us, consisting of articles which appeared a short time ago in the *Nouveau Monde*, Mr. Girouard has taken up the subject with great vigour and animation, and advocated his views with his usual ability and eloquence. We cannot at present enter into a detailed notice of the various points considered by Mr. Girouard, but will briefly state some of his conclusions, with a few extracts from his argument. Mr. Girouard seeks to show that as well under the Code as previously, the marriage of Catholics should be celebrated, "1. En face de l'Eglise. 2. Par le propre curé des parties. 3. Après publication ou dispense de Bans. 4. Il ne doit exister aucun empêchement non dispensé par leur evêque." He contends that the marriage of Protestants should also be celebrated by their own minister, publicly, after the publication of bans; unless there be a marriage license, in which case it is sufficient that the marriage be celebrated by the minister of the parties. The marriage of a Catholic with a Protestant should be performed in the same manner, according as it is celebrated by the priest or minister of one or other of the parties. The marriage of Catholics in holy orders, or of persons civilly dead, he maintains to be null.

Referring to the case of *Perry* v. *Lighthall*, recently decided, the writer deplores the facility with which some clergymen unite in matrimony persons who come to them with a license. "Que doit donc exiger la loi pour la célébration des mariages, pour empêcher les abus déplorables que nous venons de signaler? La réponse à cette question est simple est courte; le mariage, pour être valablement contracté, doit être célébré par le propre prêtre ou ministre des parties, ou avec son autorisation écrite." The author would read the 128th article of the Code, "Marriage must be solemnized openly, by a competent officer recognized by law," with the following addition, "suivant les usages et les règles de l'Eglise des parties."

In some parts of his observations, Mr. Girouard departs to some extent from the strict province of the lawyer. Thus, he regrets the restriction imposed on the Pope's power of dispensation: "Il est surtout regrettable que le code ait innové à l'ancienne jurisprudence quant au droit du Pape de dispenser de l'affinité au degré prohibé, comme entre beau-frère et belle-sœur, changement qui pourrait avoir des résultats désastreux; car personne n'ignore

* Considérations sur les lois civiles du mariage, par Desiré Girouard, Avocat, Montréal.

que de tels mariages ont été contractés, en vertu de dispenses du Pape, depuis la mise en force du code. L'amendement que nous suggérons semblerait mettre fin à ce spectacle immoral et dangereux d'un homme innocent devant l'Eglise, mais coupable devant l'Etat." This would seem to involve a right of supreme control on the part of the Head of a Church, which the author, we feel confident, would strenuously resist, if an attempt were made by the head of any other denomination to exercise it. The tendency of the present age is to separate Church and State, and restrict the authority of the former within narrower limits. Catholic as well as Protestant States are taking steps in this direction. Thus, we read in this morning's paper, a Papal Allocution of 22d June from which we infer that Austria, though a staunch upholder of the Catholic faith, is following the example of other countries. The following is an extract:

"Moreover the same law suppresses entirely the validity of the promises which the Catholic church with reason and with the greatest justice, exacts and prescribes absolutely before the celebration of mixed marriages. It makes apostasy itself a civil law both as regards the Catholic religion and the Christian religion generally; it suppresses all authority of the church over cemeteries, and Catholics are bound to allow the bodies of heretics to be buried in their churchyard if they have not any of their own. Moreover, the same Government on the said 25th day of May of this present year, did not hesitate to promulgate a law on marriage which entirely cancels all the enactments agreed to in the convention already alluded to; this law restores the former Austrian laws, which are contrary to the laws of the church; it admits, and even confirms, that form of marriage absolutely condemnable, called civil marriage, when the authority of any confession whatever refuses the celebration of the marriage on grounds which are not admitted as valid or as legal by the civil authorities. By this law the same Government has suppressed all the authority and jurisdiction of the church on matters relative to marriage, as also of all competent ecclesiastical tribunals on the subject."

We cannot quite concur with the author in lamenting that marriages not contracted according to prescribed forms are not absolutely null. "Pourquoi encore," he asks, "a-t-on changé ces dispositions de la loi qui frappaient de nullité les mariages contractés sans les formes prescrites? Dans ce pays où le lien conjugal est indissoluble, il est surtout nécessaire qu'il ne puisse être contracté qu'après mûre considération; il importe que les parents et amis des parties intéressées puissent raisonner avec elles; et la stricte observance des conditions et des formalités du mariage est la plus sûre garantie pour elles-mêmes et leurs familles." It seems to us that an apt answer may be found in the emphatic words of Bishop, in a recent work, with reference to the marriage of very young people, "The law does not approve of the marriage; it merely, in some instances, keeps its fingers out of other people's messes."

In conclusion, we would commend the pamphlet under notice, to the attention of our readers. It contains a number of points that we have been unable to notice, and is written in a style so spirited that additional interest is given to the subject.

PERRY *V.* TAYLOR.

This is a case which has attracted general attention, both from the public and the legal profession. The defendant, the Rev. Dr. Taylor, is a minister of the Canada Presbyterian Church, who had married the son of the plaintiff, a lad of 16, to a widow, aged 49. The parties presented themselves before Dr. Taylor with a license, and the boy being asked his age by the clergyman, declared himself to be 22 years of age. This marriage was annulled by the Superior Court in a previous suit brought by the plaintiff for that purpose, the ground of nullity being the want of consent on the part of the parents of the minor. The action *Perry* v. *Taylor* was instituted for the recovery of damages for the illegal marriage. Mr. Justice Monk, on the 9th of July, after reviewing the facts appearing

in evidence, expressed the opinion that the reverend gentleman should have done more than merely ask the age of the minor, the disparity of age and other circumstances being such as to awaken suspicion. He considered that a want of proper care had been manifested by the defendant, and on this ground he condemned the defendant to pay $100 damages, and the costs of the action as brought.

This decision seems to have been pretty generally approved by the public, as far as we have observed. It is certainly desirable that clergymen should not be in any uncertainty as to their responsibility in respect to the parties whom they marry.

BEAUDRY *V.* WORKMAN.

It is not surprising that attempts should be made to override or evade a statute which rigorously deprives an unsuccessful litigant of the right of appeal. Accordingly, notwithstanding all the decisions recently given, to the effect that, where the law has given no appeal, there is no right of revision, another attempt was made, in the case of *Beaudry* v. *Workman,* in the June term, to obtain the revision of a judgment in a case in which there was no appeal. A distinction was attempted to be drawn between final judgments and interlocutory judgments, it being contended that it was from a final judgment that there was no revision. This attempt, though supported by an able and ingenious argument, proved unsuccessful, the majority of the Court holding that there is no right of revision in the case of an interlocutory judgment in municipal cases. Mr. Justice Mondelet, however, dissented, as did Mr. Justice Smith, on a former occasion, and Mr. Justice Monk has several times given a reluctant assent to the principle established by previous decisions, so that we may expect to have the point presented again. We may add that the Court of Review called the Prothonotary's attention to a previous order directing him not to receive inscriptions for review in these cases.

WIGGINS *V.* THE QUEEN INSURANCE COMPANY.

On appeal by the plaintiff, the judgment rendered in this case by Mr. Justice Berthelot (3 C. L. J. 128), has been unanimously reversed by the full Court. This judgment does not touch the correctness of the verdict. The judges in appeal do not say that the jury were justified by the evidence in finding the verdict they did. This question did not come before them. They simply decide that the verdict found was really a verdict for the plaintiff, and not for the Company. They hold the words "but not in due form," inserted by the jury in one of their answers, to be mere surplusage and of no effect, and that their other answers constituted a good finding for the plaintiff.

EX PARTE GARNER.

The decision given in this case by Mr. Justice Drummond on the 15th of July, is deserving of some attention. It would appear that the police authorities in Montreal, having received certain information which led them to imagine that Garner could be extradited for an offence supposed to have been committed by him in the United States, caused him to be apprehended without any warrant being issued. Detective Cullen was in charge of the party that made the arrest, and this officer went so far as to tell Garner that there was something against him on the score of Fenianism. Garner accompanied the constables quietly at first, but on the way to the station, being asked by Cullen why he kept burglar's tools in his house, he shook off his captors and retreated some distance. Cullen having covered him with his revolver, and demanded his surrender, Garner fired his revolver at the detective and severely wounded him. Garner was recaptured, but no attempt was made to take proceedings against him under the Extradition Treaty. He afterwards made application to be admitted to bail, the detective having by this time recovered from his wound which was at first thought to be mortal. The application was rejected by

Mr. Justice Badgley, who considered the prisoner as a bird of passage, without domicile here, and, moreover, a man found in possession of burglarious tools. The application was then renewed before Mr. Justice Drummond. Our law requiring such fresh application to be based on new facts, affidavits were put in that Garner had acquired a domicile here by purchasing real estate, and that he was not aware that the tools were in his house. Judge Drummond considered these new facts sufficient to give him jurisdiction, and then taking into consideration the whole case, as though the application had been made before him in the first instance, he considered himself bound to admit the prisoner to bail. The report of the judgment in the daily papers is not sufficiently connected to enable us to follow the judge's reasoning, but if the reports are at all to be relied upon, his Honour seems to have gone very far indeed in his justification of the act. We cite one passage:—"The police have no power to arrest unless the prescribed forms have been complied with. If the seven men who went to make the arrest at Garner's house, had been resisted by him, *and he had shot them all, would any lawyer say that it would not have been justifiable?* It was legal for him to resist; if the police had no right to arrest, they had no right to detain their prisoner. There was no doubt that Garner was justified in shooting Cullen if the latter raised his revolver first. But there was no proof of his intent to murder, for even if Garner raised his revolver first, it was done when he was retreating. Cullen says 'Garner tried to escape, and I tried to prevent him.' As to a chance of Garner being convicted, I don't see that any jury would bring in a verdict against him."

CIRCUIT COURT, QUEBEC.

JUNE TERM, 1868.

SCOTT ET AL. *v.* ALAIN ET AL, and ALAIN, Opposant.

Held, that a Sheriff or bailiff executing a writ of *fieri facias*, is bound, under Art. 570, C. C. P. Q., to give immediate *written* notice of the time and place of the sale to the defendant.

In this case the plaintiffs caused a writ of *fieri facias* to issue against the chattels of the defendants, which was put into the hands of a bailiff for execution, who seized certain property of the defendant Alain, and duly advertised it for sale in a French and English newspaper of the city of Quebec. He also notified Alain, at the time of making the seizure, of the time and place of the sale—this verbally. On the day fixed for the sale, an opposition *afin d'annuller* was put in by Alain, on the ground, among others, that he had not been notified of the sale until the day previous; and this was supported by the usual affidavit. The bailiff entrusted with the execution of the writ of *fieri facias* upon this returned it into court, together with his *procès-verbal*, which set forth that he had seized the effects of the defendant Alain, and had given him immediate notice of the time and place of the sale.

The opposition was contested, and the case brought to trial. No further proof than the *procès-verbal* of the bailiff, and the affidavit of the opposant, was produced on either side.

For the opposant it was urged that, inasmuch as no proof had been adduced that any immediate *written* notice of the time and place of the sale had been given to the defendant, *main levée* should be ordered with costs.

For the plaintiffs contesting, it was maintained that, inasmuch as the *procès-verbal* of the bailiff stated that "immediate notice" had been given, that instrument being an *acte authentique*, ought to override the affidavit of the opposant, and his opposition be dismissed.

Taschereau, J. I consider that the notice given was not sufficient under the Code, which intends that it should be a written one: the opposition is therefore maintained with costs.

Ivan T. Wotherspoon, for Plaintiffs.

J. Malouin, for Opposant.

SUMMARY OF RECENT QUEBEC DECISIONS.

Bornage—Fence.—Held, 1. That in an action *en bornage*, the existence of a fence between the two properties for upwards of thirty years before action brought, entitles the defendant to claim such fence as the legal boundary or division line between the properties. 2. Although such fence be so constructed as to form an irregular encroachment on the plaintiff's land, to the depth of about seven feet by about forty-eight feet only in length, along a portion of the line of division between the properties, and although the title deed of the defendant and the title deeds of all his *auteurs* show the line of division between the properties to be a straight line, throughout its entire length, and are silent as to the encroachment; and although defendant's possession only dates back a little over four years, he nevertheless can avail himself of the possession up to the fence, of all those from whom he derives title to the property described in the deeds. 3. Verbal evidence to the effect that the fence had been for upwards of thirty years in the same line as it was at the time of the action, is sufficient, although it be proved that such fence was entirely destroyed by fire, and remained so destroyed for upwards of a year, and none of the witnesses testify to having seen a vestige of the old fence after the fire, or to having been present when the new fence was built.—*Eglaugh* v. *The Society of the Montreal General Hospital*, 12 L. C. J. 39.

Insolvent Act—Assignment.—Held, that a voluntary assignment made by an Insolvent under 29 Vic., cap. 18, sec. 2, to a duly appointed official assignee, is valid, although the assignee is not resident within the district within which the Insolvent has his place of business.—*Exparte Smith*, 12 L. C. J. 51.

Possession—Wild Animal.—A person pursuing a wild animal is considered to be the possessor while the pursuit lasts, and another person will not be allowed to take possession of the animal; if he does so, he must pay the value.—*Charlebois* v. *Raymond*, 12 L. C. J. 55.

Practice—Admissions.—Held, that an admission by the defendant's attorney of the existence of a will referred to in plaintiff's declaration, and a consent that an authentic copy thereof should be considered as filed in the cause as plaintiff's exhibit, is null and void, and of no effect.—*Hynes* v. *Lennan*, 12 L. C. J. 53.

Sale of encumbered land—Trouble.—Held, 1. That where a party is sued for the price of land which is burdened with hypothecs beyond the price claimed, and the party sued has demanded before action that such hypothecs should be discharged, or good and sufficient security given against all possible trouble arising from such hypothecs, and the plaintiff has failed to cause the hypothecs to be discharged, or the required security to be given, his action ought to be dismissed purely and simply. 2. That mere personal security in such a case is insufficient. 3. That although in such an action, the defendant, by her plea, only prays for the dismissal of the action, in case the necessary security be not given within a delay to be fixed by the judgment, and although the judgment in the Court of original jurisdiction be rendered according to the conclusions of said plea, and such judgment be confirmed in Review, the Court of Appeal, on an appeal instituted by the plaintiff only, and without any cross appeal by the defendant, and although the respondent prays, in her answers to the reasons of appeal, and in her *factum*, for the confirmation of both judgments, will nevertheless reform these judgments and dismiss the original action purely and simply.—*Dorion* v. *Hyde*, 12 L. C. J. 49.

Shareholder—Calls on Shares—Compensation.—Held, that compensation takes place *pleno jure* of the debt due (unpaid stock) by a shareholder in the Montreal and Bytown Railway Company, incorporated by 14 and 15 Vic., cap. 51, with a debt due by the Company to the shareholder for arrears of salary as President of the Company. *Delisle* v. *Ryland*, 12 L. C. J. 29.

Usufructuary.—Held, that the *donataire universelle en usufruit* by contract of marriage is bound to advance the *frais d'inven-*

taire of the effects subject to her usufruct. 2. That the fees of a notary employed by the heirs of the deceased, to make the will in conjunction with the notary chosen by the usufructuary, form part of these costs.—*Prévost* v. *Forget*, 12 L. C. J. 54.

PROVINCE OF ONTARIO.

IN RE TRUEMAN B. SMITH.

Extradition—Counterfeiting—Forgery.

A prisoner was arrested in Upper Canada for having committed in the United States "the crime of forgery, by forging, coining, &c., spurious silver coin," &c.

Held, (1) That the offence as above charged does not constitute the crime of "forgery" within the meaning of the Extradition Treaty or Act. (2) That it certainly is not the crime of forgery under our law, and therefore the prisoner could not be extradited.

This was an application by a prisoner to be discharged on a writ of *habeas corpus*, on the ground that the charge under which he was in custody was not within the Extradition Treaty or the Act of Canada giving it effect.

The charge or complaint was, that "Smith, at the town of Toledo, —— county, State of Iowa, on or about the 21st March, 1867, did commit the crime of forgery, by forging, coining, counterfeiting, and making spurious silver coin of the stamp and imitation of the silver coin of the United States of America of the denomination of 5 and 10 cent pieces, with implements and materials which he produced for the purpose of carrying on the business of coining such spurious money."

ADAM WILSON, J. The Statute of Canada (cap. 89) applies to the crimes of murder, or assault to commit murder, piracy, arson, robbery, *forgery, or the utterance of forged paper*, committed within the jurisdiction of the United States (see also 24 Vic. c. 6,) and the question is, whether the charge above stated as explained of forging and counterfeiting spurious silver coin, &c., constitutes the offence of forgery within the meaning of the treaty and statute. I am of opinion it does not; it is unquestionably not forgery by our law here; nor from the evidence given can I assume it to be forgery according to the law of the State of Iowa, or of the United States of America, if that would make any difference. The statute declares that the offence charged must be such as would, according to the laws of this province, justify the apprehension and committal for trial of the person accused, if the crime charged had been committed here, so that, if not an offence of the character charged according to our law, the person is not to be apprehended, committed, or delivered over to the foreign government; no comity shall prevail in such a case. *In re* Windsor, 6 New Rep. 96; 10 Cox C. C. 118; 11 Jur. N. S. 807.

Forgery is defined in 4 Bl. Com. 247, to be "the fraudulent making or alteration of a writing to the prejudice of another man's right;" and this is substantially the definition accepted and approved of in *Reg.* v. *Smith*, 1 Dearsley & Bell, 566, in which counsel have arrayed the definitions of different authors of this offence, to which may be added, Bac. Abr. "Forgery."

There is no case where the making of false coin has been determined to be forgery, and it is not so by our statute. Such an offence is here a misdemeanor for the first act, and a felony for the second, but it is not the offence of forgery at all. The decision of *Re Dubois, otherwise Coppin*, 12 Jur. N. S. 867, shows that this is the mode in which the treaty and the statute are to be interpreted, and our own statute reciting the treaty is almost conclusive evidence that the "forgery" referred to is the offence of that name well understood in the United States and in this province; and, to make it plainer, it relates also to "the utterance of forged paper." The prisoner must be discharged.—*L. J., Toronto.*

REPORT OF PARLIAMENTARY COMMITTEE ON BANKRUPTCY.

(*Continued from page* 52.)

With regard to the oath of the Insolvent, whether its efficacy for the desired object be great or otherwise, it is already fully provided for by the Act, in every form. The

Insolvent may be examined on oath at any moment before the Judge, at which examination his creditors may be present, if they think proper, and he may be examined before the Assignee at the first general meeting of his creditors; and again, when he applies either for his discharge, or for its confirmation. The adoption of a form of declaration under oath, which some propose, is an inefficient substitute for an open interrogation, and moreover, too frequently degenerates into a formality which is gone through with as a matter of course.

The policy of treating any act of concealment of property, or any collusion with excessive ranking, as a crime, has found favour in many systems of bankruptcy. In France a fraudulent bankrupt is treated as a criminal, and though the punishment of *banqueroute frauduleuse* has been gradually relaxed from the penalty of death, which was once inflicted for being guilty of it, through the perpetual mark of infamy involved in the compulsory wearing of the *bonnet vert*, down to the comparative humanity of the present commercial law of France, yet, in it, the policy of treating and punishing dishonest conduct as a crime, has been retained and preserved.

In England, the Act of 1861 defines eleven specified acts, each of which is made a misdemeanour, punishable by imprisonment for not more than three years. The acts of the bankrupt thus made criminal are such as tend to prevent his own examination; to permit of excessive ranking on his estate; to deprive the creditors of any part of his estate, or of the use of his books of account, and to create unjust preferences.

Even this strictness, however, and the careful definition of crime contained in the statute, have failed, in some classes of cases, to reach the evil sought to be checked; and in the bill recently introduced by Lord Cairns, an attempt is made to improve upon the old statute in one important particular, in which the Act of 1864 is also found insufficient. One of the most prolific sources of complaint against insolvents, both in England and in this country, has been the contracting of debts within a short period of the failure,—the debtor in such cases in fact floating his business forward at the risk and expense of his most recent creditor. Both in England and Canada a remedy was sought against this practice, but in both countries the burden of the proof of fraudulent intent being left upon the creditors, it has been found practically impossible to obtain a conviction, even in the most glaring cases. In the bill introduced by Lord Cairns, it is proposed that the debtor's discharge shall be suspended if he has contracted a debt without a reasonable expectation of being able to pay it; and proof of such reasonable expectation is made to rest on him. It is considered that if a man is in a position indicating a presumption that he had not a reasonable expectation of being able to pay a debt contracted by him, and he contends that such presumption is unfounded, the facts on which he rests are within his own knowledge, and he can have no difficulty in establishing them. If this theory be approved of, it would appear to offer the means of checking and of punishing one of the most numerous of the classes of fraudulent acts charged against insolvent debtors.

In Scotland, the fraudulent bankrupt is reported to the Lord Advocate for prosecution. The Bankrupt Act in force there does not contain definitions of the offences regarded as exposing the debtor to punishment under criminal process, but the principle that the fraudulent debtor should be subjected to such punishment is fully recognized.

In the recent United States Bankrupt Act no provision whatever is made for the punishment of fraud or concealment, otherwise than by the refusal of his discharge. It is possible that a difficulty in enacting such provisions may have occurred in respect of the jurisdiction of the Federal Government to legislate upon offences of that description.

The majority, therefore, of the leading commercial countries regard and punish fraudulent acts by a bankrupt as a crime;

and in the answers received by your committee, there is evidence to show that the absence of more stringent provisions for the punishment of such acts, is regarded as a defect in the Insolvent Act of 1864.

The fourth branch of enquiry, as to the efficiency of the provisions of the Act in respect of the insolvent and of his discharge, has elicited a considerable mass of evidence as to their operation, and numerous suggestions for their improvement.

The discharge of the insolvent may be obtained in three ways:—

First, by the consent thereto of a certain proportion of the creditors.

Second, under a deed of composition and discharge assented to by a similar proportion of creditors.

Third, by an order of the Judge, which may be made at any time after the expiration of a year from the date of the insolvency.

The first and second of these modes of obtaining a discharge are not generally objected to, though some changes are suggested in matters of detail. For instance, it is suggested that it should be made clear that to be considered and computed as a creditor, a claimant should have proved his claim; that no doubt should have been allowed to remain as to the validity of a composition, the payments or some of the payments of which are to be made at a future date, or which is conditional upon such payments being regularly made; that the assignee should be capable of contesting the confirmation of a discharge when authorized to do so by the creditors, and the like. And it is probable that many of these suggestions, being the result of the experience of the writers, may be found useful in remodelling the law.

But as to the third mode of discharging insolvents, great difference of opinion exists, and many objections are made to it. It is urged that the power of discharging the debtor should rest absolutely with the creditors, or with the majority of them required by the Act. That if a debtor has acted honestly and properly, he can always obtain the consent of a sufficient number to discharge him; and that his being unable to do so should be regarded as conclusive evidence of his misconduct. And in fact that the creditors ought in justice to have the right of deciding in the last resort whether their debtor should be discharged or not.

On the other hand, it is said that men are frequently by misfortune alone reduced so low, that their estates cannot pay such a dividend as is expected by creditors; that from feelings of disappointment and mortification alone, creditors will frequently refuse to discharge their debtors; and, moreover, that if they have really valid grounds for doing so, they can place them before the judge, who will thereupon act further in refusing them a discharge.

It would appear from the evidence, that the complaint that the power given to the judge to discharge a debtor, has operated injuriously to the creditors, is not altogether without foundation. The expense which is risked by a creditor who contests the application for discharge, the trouble and labour involved, and the paucity of successful contestations, have no doubt combined to facilitate the granting of many discharges to which the debtor was little entitled. And in proportion as he could hope for a discharge independent of the will of his creditors, the inducements to consider their rights, and to make a complete surrender of his estate would of necessity diminish. But although no doubt the power of the judge to grant a discharge is open to objection, the proposition to leave the debtor entirely in the hands of his creditors is by no means free from difficulty. The theory of every Bankrupt Law involves the discharge of the honest bankrupt in exchange for the free deposition of his entire estate; and it would be directly opposed to this idea to place it in the power of his creditors to strip him of everything, and afterwards to leave him entirely dependent upon their caprice for permission to begin the world anew.

The objection which rests upon the risk and the inconvenience involved in a contestation by a creditor, may be in a great

measure removed by giving power to the creditors to contest at the expense of the estate, either through the assignee or by means of one of their number deputed for the purpose.

The chief difficulty, therefore, appears to lie in deciding upon the extent to which the disapprobation of creditors should be permitted to obstruct the discharge of a debtor, when no breach of the law can be charged against him sufficiently grave to warrant a contest. They might be granted the power of suspending the discharge for a limited time, or of classifying the discharge to be granted as second or third class; such powers to be exercised by means of a writing signed by the same proportion of creditors as is required for the validity of a discharge. As has been suggested, they might have the power in a similar manner of absolutely refusing a discharge.

But while your committee find evidence before them that there should be some modification of the judge's power in respect of discharge, they do not consider that he should be entirely deprived of it, either absolutely or only by the will of the creditors on certain conditions. They consider that nothing less than fraud should deprive the debtor of his right to a discharge, upon the complete surrender of his estate; and that he should not be held to be guilty of fraud, or be made to suffer its penalties, unless the fraudulent act can be described and proved. And in that case it cannot be supposed that the judge would grant a discharge.

There are, however, many cases in which the insolvent has been blameable, but in which his misconduct is not susceptible of exact definition, and therefore could not with propriety be made the subject of penal enactment. Extravagance, overtrading, undue speculation, are all more or less censurable, but it would be difficult to fix the precise limits, beyond which expenditure, trading, or speculation may properly be described by those terms. Probably it is in such cases as these that the disapprobation of creditors might be allowed weight, independent of any formal charge against the insolvent, and that they might be authorized to suspend the insolvent's discharge, or class it as second or third class, or both; leaving, however, similar powers with the judge in the event of a case being made out before him for their exercise.

A further class of suggestions having reference to the insolvent's discharge, tend to an addition of the number of circumstances under which the judge is bound to refuse it, or to refuse its confirmation when granted by the creditors. At present these consist of fraudulent preferences; fraud in procuring the assent of creditors; fraudulent concealment or retention of assets; misconduct on examination; neglect to keep a cash book and other suitable books of account; and refusal of delivery of such books. It is proposed to add to these—the neglect or inability to account for losses, and the non-payment of a dividend exceeding 10s in the pound. It is undoubtedly of much importance that the debtor should so keep his books, as to enable him to show from them in what his losses consisted; and that he should be encouraged to place his estate in the hands of his creditors before he has depleted it by exorbitant discounts, forced sales, and all other modes of depreciation to which a failing trader is subjected. But in the present condition of the country it is, to say the least, doubtful whether there are not numerous country traders who not only do not, but cannot keep systematic books of account, showing accurately their gains and losses during a series of years. And, although the plan of refusing discharges, unless dividends reach a fixed point, has found favour in the United States, and has been embodied in the recent Bankrupt Act there, it has been rejected in England upon the obvious ground that it is not only possible but probable that persons may in many ways be suddenly rendered insolvent, and unable to pay any named dividend, without any fault, and even without any imprudence of their own, while a debtor may so manage

his estate as to pay ten shillings in the pound, and yet may have largely benefitted himself or his friends at the expense of his creditors.

Your Committee, therefore, do not consider that the operation of the law would be improved by the addition of these two grounds to those which now render imperative the refusal of the insolvent's discharge.

There is yet another point connected with the discharge of the insolvent, which has been mentioned in a small number of the answers, and which deserves consideration. It is proposed that the discharge shall not be final, but that the debtor shall always be subject to a further contribution towards his indebtedness to be levied under an order of the judge. This idea has been adopted in framing the Bankrupt Bill now under discussion in England, and appears to be considered an important and advantageous innovation upon the old system. In this view your Committee find it difficult to concur. In Canada the Bankrupt or Insolvent Law has always been regarded, both as a matter of public expediency, and as resulting in individual benefit. It has been thought to be expedient to offer the honest but unfortunate debtor an inducement to remain in the country and recommence his career, rather than force him to seek a new field of action elsewhere. And while this was a matter of interest to the country generally, it was an act of humanity to the debtor and to his family. Your Committee believe that the energies of the debtor would be cramped, the avenues of credit would be closed to him, and neither the public nor the private benefit expected from an Insolvent Law would be attained, if the power of depriving the debtor by operation of law, of any part of his earnings in his new career, were made the condition of his being permitted to enter upon it.

Upon the last subject of enquiry to which the attention of your Committee has been directed, they have to report that a very considerable majority of the answers they have obtained affirm the beneficial character of the Insolvent Act of 1864; and that in that view the persons and institutions of a commercial character from whom answers have been received unanimously concur. The Boards of Trade of the different cities appear to have given the subject very earnest attention, and while they agree in opinion as to the general effect of the law, they have furnished in their answers many of the most valuable of the suggestions which your Committee have had under consideration.

In addition to the more prominent of the suggestions which have been considered by your Committee, many minor points have been brought under their notice by the answers. But they have not thought it necessary to report upon them in detail. The evidence will afford all the requisite particulars of them, and will doubtless be found to contain much information of a character in the highest degree valuable in the preparation of any Bill that may be thought requisite. But the attention of your committee has been forcibly called to two points of very great importance in the operation of any Bankrupt Law which may be enacted in the Dominion, which they submit deserve the earnest consideration of your Honorable House. It has been brought to the knowledge of your committee that persons resident in a Province have obtained discharges from liabilities incurred while trading in that Province, under the English or Scotch Bankrupt Acts, and this, as your committee have been led to believe, without having any real domicile in Britain. And it is stated to be doubtful whether a discharge obtained under an Insolvent law here would relieve the debtor from liabilities incurred in England or Scotland. If these be the actual results of the Bankrupt Laws of the two countries, your committee believe that it is of the utmost importance to take such steps as may be necessary to terminate so anomalous a state of things, and define in a more equitable manner the operation of each law within the ordinary limits of the jurisdiction of the other.

In conclusion, your committee submit

as a summary of the result of their enquiries, that no complete system of Bankruptcy or Insolvency is in force in any of the Provinces, except the Insolvent Act of 1860. That the operation of that Act has been found to be defective in the following respects:—

1. In permitting delay in divesting the debtor of his estate in voluntary assignments; and, when a proceeding was adopted which was not open to this objection, leaving the choice of the assignee to the debtor.

2. In imposing any restriction either dependent on residence or official character (if, in fact, such be its correct interpretation) upon the choice of an assignee by the creditors.

3. In not providing a more convenient means by which the creditors could exercise a constant control of and supervision over the assignee, by means of inspectors, of a supervising committee or otherwise.

4. In requiring too long a period to intervene before real estate can be sold, dividends declared, or meetings of creditors validly held.

5. In not permitting the assignee, with the authority of the creditors, to sell the entire estate of the insolvent in one lot, either for a fixed price, or for a percentage upon the liabilities.

6. In not providing for the punishment of fraudulent acts as crimes.

7. In abridging to too great an extent the power of the creditors over the debtor's discharge.

8. In not granting power to the judge and the creditors to mark disapprobation of the conduct of the debtor by granting a discharge of an inferior class.

9. In not making more ample provision for facilitating compositions, particularly with respect to compositions for time payments.

10. In not authorizing the contestation, at the expense of the estate, of the discharge, or confirmation of the discharge, of a debtor.

11. In several minor details as to procedure, chiefly in the Province of Ontario, which the answers of professional men sufficiently elucidate.

J. J. C. ABBOTT,
Chairman.

BISHOP ON LEGAL STUDY.

FIRST BOOK OF THE LAW, by Joel Prentiss Bishop. Boston: Little, Brown & Co.—This work is intended, as the title indicates, to be placed in the hands of young men who are proposing to adopt the profession of the law. "Its object is," says the author, "first, to enable all young persons to decide for themselves the question, whether the law offers to them the pursuit for life which is best adapted to their natural capacities and tastes; secondly, to teach all, who may choose to read it, something concerning the nature of the law, how it has come to us, what is legal authority, and so on, in order to qualify them the better to discharge the duties of citizens in a free republic; thirdly, and chiefly, to teach the student of the law how to study it, and to furnish him with various incidental helps in the study. It is not written upon the plan of teaching a little law upon every legal topic, therefore of necessity conveying to the mind of the young reader no really correct and perfected image of anything; but its object is to prepare the way for a thorough and profound study of the law, viewed both as a science and an art, in other books."

The plan of Mr. Bishop's book is to a considerable extent original. He endeavors throughout to impress upon the student the importance of *looking and thinking* for himself. "He (the student) should early acquire the habit of determining for himself, whether the particular decisions he reads in the books are *correct*, and their conclusions are the *law*. No greater mistake can be made, than for him to take it for granted, and as of course, that everything he reads in his books, or hears from his preceptor, is to be laid away in his memory as being the law. To make this mistake is to stumble at the outset; and in such a stumbling there is often a fatal fall. It is the great error of the legal edu-

cation of the age. A few days ago, the writer of these pages was in conversation with an old man, whose prime of manhood had been spent in such triumphs at the bar as were the envy and delight of all his juniors and contemporaries, and who for a time occupied with the highest honor a seat upon the supreme bench of his own State; and, the topic turning to this book, he said: "I wish you to tell the young men of this country that they must *think*. The want of thought is the great want of the professional mind in the present age." Sections 105, 6. And again, in section 126: "In all the field of the law, there is nothing which presents to any lawyer, young or old, so good an opportunity for useful enterprise, as *thinking* and *looking*, where the mass of professional men close their eyes and their understandings. It is true that when one suggests a simple thought which had not occurred to another, he receives no *immediate* credit for it; but it strengthens his mind, prepares him for labors following; and, in the end, it pays."

Mr. Bishop would entrust a good deal to the student, even as respects the course of study. In sec. 240, he says: "Again, as to the law school, there are some young men of such mental conformation that they would do best not to enter the school at all. At a school of any kind, there is necessarily a prescribed course of study. And, although it will not harm an intelligent mind to study anything, or to read the law in any order, yet there are some so constituted that they will reach the end more quickly, and with greater advantage to themselves, if they mark out their own course and pursue it. Even the particular advice of an eminent lawyer is not always so good for the student as to follow what the 'judicious' adviser would term his 'own wayward will.' The vast majority of young men do best when led by others, because God has wisely withheld from them the faculty to lead themselves. But to those who are by nature qualified to listen to the divine instinct speaking within, and who are willing to listen and obey, a leader is a great obstruction." In sec. 317, we have a repetition of the same opinion: 'It is a great mistake to attempt to help students too much, and in the wrong places. Young men are not machines; they have powers of their own; and, for a young man who is reading law, there is nothing more serviceable than to examine books for himself, and choose out of them such as are adapted to his own needs. Even if he commits an error in this, the harm to him will be of the most profitable kind."

Few readers will be prepared to accept without qualification all that Mr. Bishop says on the subject of leaving the student to choose for himself. Yet, there is no doubt that many a promising student has been injured for life by an attempt to tie himself down to a rigorous and uninterrupted course of study. "Mr. Warren, in his Law Studies, recommends particular books, and extends his lists to great numbers. Mr. Hoffman, the American writer, does the same. A young man," adds Mr. Bishop "even though a rapid reader, must be very extraordinary in every other respect, if, after reading, within the longest time allowed for law studies, all the books mentioned by these writers, he finds any mental power left within him, of any sort whatever." (Sec. 381.)

Mr. Bishop has a good deal to say about reviewers in his book. We cite one rather curious instance. In sec. 494, he refers to the following remark in an article in the American Law Review: "We cannot pass without notice the insufferable practice of spelling 'counsellor' 'counselor.'" Mr. Bishop remarks: "To most men things of this sort appear as thin as the letter *l* itself; and each lawyer is permitted to have, in peace, his own way about them." But a little further on (sec. 505), Mr. Bishop devotes a whole paragraph to the most elegant mode of abbreviating the name Metcalf—whether it should be written Met. or Metc. "The former," he says, "is sufficiently plain; no one can doubt what it means. And it looks, written or printed, so much better than the latter, that it is now almost universally preferred. Indeed,

the latter of these forms is in very bad taste. A small, low letter, like the letter *c*, should not end an abbreviation, unless there is some special reason for it; and, in particular, it should not do so when the preceding letter is a tall one, like *t*. The reason is simply that it is not in good taste." Now, it might be suggested that there is as much room for the exercise of good taste in orthography as in the proper sequence of small, low, and tall letters; and we hope it is not because it is deemed a matter of indifference that "Council of Law Reporting" is, in the note to section 582, spelt "*Counsel.*"

The most valuable part of Mr. Bishop's work, exclusive of the alphabetical list of books at the end, is probably his oft-repeated injunction to the student to think for himself. It is lamentable to observe the confusion of mind into which a student of average mental calibre is thrown by attempting to learn the law by rote. One who follows Mr. Bishop's advice will advance upon safe ground, and the mental strength acquired will enable him to pursue his way with unabated ardour.

RECENT ENGLISH DECISIONS.

Admiralty.—Under a statute giving the Admiralty jurisdiction "over any claim of damage done by any ship," the Admiralty has jurisdiction of a cause of damage for personal injuries done by a ship. — *The Sylph*, Law Rep. 2 Adm. & Ecc. 24.

Award.—A cause and all matters in difference were referred by an order which provided that the costs of the reference should abide the event of the award. The arbitrator decided the cause for the defendant, and with regard to the matters in difference, awarded that the plaintiff had a valid claim against the defendant, and the defendant a valid claim against the plaintiff of larger amount, and directed the plaintiff to pay the defendant the difference. The claims were unliquidated, and could not have been set off against one another in an action. *Held*, that the event of the award was wholly in the defendant's favour, and that he was therefore entitled to the costs.—*Dunhill* v. *Ford*, Law Rep. 3 C. P. 36.

Banker.—Whether by virtue of the relation between banker and customer, any legal duty is imposed on the banker not to disclose his customer's account, except on a reasonable and proper occasion, so as to give a cause of action without special damage, *quære.*—*Hardy* v. *Veasey*, Law Rep. 3 Ex. 107.

Bankruptcy.—A husband covenanted in a deed of separation to pay an annuity to his wife, the annuity to cease in the event of future cohabitation by mutual consent. *Held*, that the value of the annuity was not capable of calculation, and that the annuity was therefore not provable under the Bankrupt Acts. — *Mudge* v. *Rowan*, Law Rep. 3 Ex. 85.

Club.—The rules of a club authorized the committee to call a general meeting, "in case any circumstance should occur likely to endanger the welfare and good order of the club," and provided that any member might be removed by the votes of two-thirds of those present at such meeting. On a bill by a member so removed, praying to be reinstated, *held*, that as, in the judgment of the court, the meeting was fairly called, and the decision was arrived at *bona fide*, and not through caprice, such decision was final, and the court could not interfere.—*Hopkinson* v. *Marquis of Exeter*, Law Rep. 5 Eq. 63.

Conflict of Laws.—On a bill of exchange payable to order, drawn, accepted, and payable in England, the contract of the acceptor is to pay to an order valid by the law of England; and an indorsee can sue the acceptor in England, under an indorsement valid by the law of England, though the indorsement was made in France, and by the law of France gave the indorsee no right to sue in his own name, and though the indorser (who was also drawer and payee) and the indorsee were, at the time the bill was made and indorsed, domiciled and resident in France.—*Lebel* v. *Tucker*, Law. Rep. 3 Q. B. 77.

Contempt.—In a suit for having removed

human bones and portions of the soil from a churchyard to a field belonging to the defendant, the Court of Arches issued a monition, directing the defendant to replace, before a certain day, the bones and earth removed. The defendant failed to comply with the order, alleging that he was unable to do so, because said field was no longer in his occupation or possession. *Held*, that his conduct amounted to contempt of court.—*Adlam* v. *Colthurst*, Law Rep. 2 Adm. & Ecc. 30.

Custom.—One who employs a broker to sell shares for him on the stock exchange or other general market, impliedly authorizes him to deal according to the general and known usages of that market, though he himself be not aware of their existence. But the usage relied on must be proved to exist, and to be so general and notorious, that persons dealing in the market could easily ascertain it, and must be presumed to be aware of it; and, to bind persons not aware of it, it must also appear to be reasonable.—*Grissell* v. *Bristowe*, Law Rep. 3 C. P. 112.

Damages.—Where, on the sale of a chattel, the buyer intends it for a special purpose, but the seller supposes it is for another and more obvious purpose, though the buyer cannot recover, as damages for non-delivery according to the contract, the loss of profit which might have been made from the purpose for which he intended it, he can recover the loss of profit which might have been made from the purpose supposed by the seller, provided he has actually sustained damage to that or a greater amount. —*Cory* v. *Thames Iron Works Co.*, Law Rep. 3 Q. B. 181.

Embezzlement.—A statute provides that it shall be sufficient to allege the embezzlement to be of money, without specifying any particular coin or valuable security, and that such allegation shall be sustained if the offender shall be proved to have embezzled any amount; though the particular species of coin or valuable security of which such amount was composed shall not be proved. *Held*, that, under this statute, an allegation of the embezzlement of money was not sustained by proof that a cheque only had been embezzled, if there was no evidence that the prisoner had cashed it.—*Reg.* v. *Keena*, Law Rep. 1 C. C. 113.

Frauds, Statute of.—On a purchase of flour, J. W., an agent of the defendant, made the following entry in a book belonging to N.: "Mr. N., 32 sacks at 39s., to wait orders. J. W." In an action by N. for non-delivery of the flour, this entry was proved, and it was proved by parol evidence that N. was a baker, and the defendant a flour merchant; and a correspondence subsequent to the purchase was put in, relating to the delivery of the flour by the defendant to N. *Held*, that the entry was a sufficient memorandum to satisfy the Statute of Frauds; for that the parol evidence of the relative trades of the parties was admissible, and, independently of the correspondence, showed that the defendant was the seller, and N. the buyer, of the flour. *Vandenburgh* v. *Spooner*, Law Rep. 1 Ex. 316, considered. —*Newell* v. *Radford*, Law Rep. 3 C. P. 52.

Insurance.—A policy of fire insurance provided that the insurers would not be liable for loss or damage by explosion, "except for such loss or damage as shall arise from explosion by gas." In the insured premises, which were used for the business of extracting oil, an inflammable and explosive vapor, evolved in the process, escaped and caught fire, setting fire to other things; it afterwards exploded, and caused a further fire, besides doing damage by the explosion. *Held*, (1) that "gas" in the policy meant ordinary illuminating gas; (2) that the exemption of liability for loss by explosion was not limited to cases where the fire was originated by the explosion, but included cases where the explosion occurred during a fire, and that the insurers were not liable either for the damage from the explosion, nor for that from the further fire caused by the explosion.—*Stanley* v. *Western Ins. Co.*, Law Rep. 3 Ex. 71.

Malicious Wounding.—A prisoner may be convicted under a statute punishing the malicious "wounding" of cattle, though

the wound was inflicted by the prisoner's hands, without any instrument.—*Regina* v. *Bullock*, Law Rep. 1 C. C. 115.

Production of Documents.—To an action by executors to recover damages for the death of their testator, caused by the alleged negligence of the defendants, the defendants pleaded not guilty, and that the deceased had accepted £75 in discharge of all claims against them. The defendants had sent a clerk and their medical officer to see the deceased, ascertain his state, and negotiate as to the compensation to be made him. *Held*, that the plaintiffs were entitled to have inspection and copies of the reports made to the defendants by these officers of their interviews with the deceased.—*Baker* v. *London and S. W. Railway Co.*, Law Rep. 3 Q. B. 91.

Sale.—The plaintiff sold to the defendants goods, to be paid for in cash or "approved bankers' bills." The defendants paid for them by an "approved banker's bill." The bill was subsequently dishonoured. The defendants were not parties to the bill, and received no notice of dishonour. In an action for the price of the goods, *held*, that the defendants' liability was not more extensive than it would have been had they indorsed the bill, and that they were therefore discharged, not having received due notice of dishonor.—*Smith* v. *Mercer*, Law Rep. 3 Ex. 51.

RECENT AMERICAN DECISIONS.

Agency—Order by Principal to pay Creditor.—If a debtor, having funds in the hands of his agent, verbally orders him to pay a creditor, and the agent promises to execute the order, and the creditor accepts and relies upon the agent's promise, the debtor's power to control so much of the funds as is necessary to redeem such promise is gone.—*Goodwin* v. *Bowden*, 54 Me.

Bailment.—Goods were taken from a carrier by legal process. It was a question whether the parties to whom they were delivered or the bailors were the true owners, although the former were regarded as such by the judge who delivered the opinion. The bailors were promptly notified of the taking. *Held*, a good defence to an action by the bailor.—*Bliven* v. *Hudson* R. R. R. Co., 36 N. Y. 403.

Bills and Notes.—"Due I. H., or order, the sum of $3,928, for value received of him, and settlement up to date. C. V. Meador." *Held*, a promissory note, payable immediately.—*Huyck* v. *Meador*, 24 Ark. 191.

Check.—A check drawn upon a bank for more than the amount of the drawer's funds on deposit, creates no lien upon and gives the payee no right to the actual balance, until the bank has agreed to pay it *pro tanto*.—*Dana* v. *Third Nat. Bank in B.*, 13 Allen 445.

Confession.—The prisoner, a slave, made a confession to his master that he had killed another slave at a certain place. Being asked how, he answered, "I cut her throat." After some other questions and answers, his master stopped him, and would not hear any thing more. *Held*, that, as the confession was prevented from being complete, it was not admissible.—*William* v. *State*, 39 Ala. N. S. 532.

Damages.—When a loss of cargo for which the carrier is responsible occurs at the port where it is laden, and before the voyage begins, the carrier is liable for its value at such port. But when the loss happens after the voyage has been begun, he is liable for the value on board ship at the port of delivery, before payment of duties, and less the freight.—*Krohn* v. *Oechs*, 48 Barb. 127.

Factor.—A factor received goods to sell, on which he made advances. Said goods were attached in his hands by creditors of his principal. The value of the goods was falling, and they were afterwards sold by him. *Held*, that the power to sell was not arrested by the attachment, and that the factor was only liable for the excess of the value of the goods, at the time of the sale, over his claims and advances prior to the attachment.—*Baugh* v. *Kirkpatrick*, 54 Penn. St. 84.

Frauds, Statute of.—A party verbally

guaranteed another's debt, at his request, to a third party, who thereupon gave credit to the principal creditor. The guarantor paid the debt when it was due, and claimed the amount from his principal. *Held*, that the Statute of Frauds was no defence. The provision of that statute is for the benefit of the guarantor exclusively. —*Beal* v. *Brown*, 13 Allen 114.

Insurance.—1. An agent authorized to take applications for insurance filled one out for the plaintiff, which the latter had signed in blank. The plaintiff gave all proper information, but the application contained a material misstatement. It was argued that the agent was acting for the assured in filling up the application, and that the defendants were discharged by the false warranty. *Held*, that the defendants were liable.—*Rowley* v. *The Empire Ins. Co.*, 36 N. Y. 550.

2. A common carrier has an insurable interest in goods in his charge to the extent of their value. In case of loss, the measure of damages is the value of the goods at the time of the loss. —*Savage* v. *The Corn Exchange Ins. Co.*, 36 N. Y. 655.

3. The policy of insurance declared on contained a proviso to the effect, that, if any specific parcel of goods should, at the time of the fire, be insured in that or any other office, said policy should "not extend to cover the same, excepting only so far as relates to any excess of value beyond the amount of such specified insurance, which said excess is declared to be under the protection of this policy, and subject to average as aforesaid." Goods covered by said policy were burned, with a loss of $274,192. There was also a specific insurance on said goods to the value of $324,192. This action was brought to recover a *pro rata* amount of the loss in proportion to the amount insured. *H ld*, that the defendants were only liable for a loss over and above the amount of the specific insurance.—*Fairchild* v. *Liverpool and L. F. and L. Ins. Co.*, 48 Barb. 420.

4. A policy of insurance contained a condition that, in case of loss, it should be optional with the insurers to rebuild or repair the building, giving notice of their intention so to do within thirty days after having received the preliminary proof of loss. The building insured was burned, and the plaintiff at once began to build a different kind of building from that destroyed. Within the said thirty days, the defendants gave notice of their election to rebuild. The plaintiff refused to allow them to do so, finished the building himself, and sued for the value of the property destroyed. It was argued that plaintiff's said refusal only subjected him to the loss of interest, and that, at most, the defendants could only reduce damages by showing that they could have rebuilt for less than the sum insured. *Held*, that the plaintiff could not recover. The contract by the defendant's election became a contract to build simply, as if there had been no insurance; and the plaintiff had by his own act prevented the defendants from performing it.—*Beals* v. *Home Ins. Co.*, 36 N. Y. 522.

5. The defendants insured the plaintiff on a stock of goods such as are usually kept in country stores. A printed clause in the policy made it void while certain articles, specified as hazardous, were stored on the premises; among others, turpentine and gunpowder. These articles are usually kept in country stores, and were kept by the plaintiff. *Held*, that the defendants were liable. The written clause governed the printed.—*Pindar* v. *King's County F. Ins. Co.*, 36 N. Y. 648.

6. *Suicide by Insane Person.*—The condition in a policy of life insurance, "that in case the insured shall die by his own hand, or in consequence of a duel, or the violation of any state, national or provincial law, or by the hands of justice, this policy shall be null, void and of no effect," does not include suicide by an insane man in a fit of insanity.—*Easterbrook v. Union M. Life Ins. Co.*, 54 Me.

7. A policy of life insurance contained a proviso, that, if the insured should die "in the known violation of any law of these States," said policy should be void. The insured was shot by a person whom he had previously struck. *Held*, that if the blow

amounted to an assault, and the shooting was a part of the same continuous transaction, and took place in consequence of said assault, the policy was void. *By a majority of the Court*, it is not essential that the deceased should have had reason to believe his criminal act might expose his life to danger.—*Cluff* v. *Mutual Benefit Life Ins. Co.*, 13 Allen 308.

Master and Servant.—1. Subordinate servants of a railroad company, injured by the negligence of a servant of superior grade,—*e. g.*, a laborer, injured by the negligence of the superintendent of the road in starting a train at an unusual time,—can recover of said company.—*Haynes* v. *East Tenn. & Ga. R. R.*, 3 Coldwell, 222.

2. A flagman employed by a railroad corporation was an habitual drunkard, and was usually intrusted with the management of a switch, which by the rules of the company it was the duty of another person to manage. These facts were, or by the use of due care might have been, known to the officers of the corporation. The flagman, through intoxication, failed properly to adjust said switch, in consequence of which a fellow-servant was injured. *Held*, that the corporation were liable for the injury, and this, although they employed a special agent to hire and superintend servants, who must have been negligent to have kept the flagman in said employment.—*Gilman* v. *Eastern R. R. Co.*, 13 Allen, 433.

Murder.—Plaintiff in error was a private soldier, and in June, 1865, was detailed by his superior officer as one of a scouting party. A lieutenant and ten men were added to the party on the march. Some of the soldiers of the party shot a man, and the plaintiff in error was indicted and convicted of murder in the second degree. *Held*, that the proof being unsatisfactory that the plaintiff aided or abetted in the unlawful act of killing, his presence did not make him criminally liable. The detail was on its face a lawful order, and the soldier had no right to enquire of the officer the purpose of the detail.—*Riggs* v. *The State*, 3 Coldwell, 85.

Negligence.—1. A child seven years old, while on a railway track, unattended, was killed by a train. *Held*, that this was such negligence on the part of his parents as to prevent a recovery for the death, it not having been caused wilfully.—*Pittsburgh F. W. & C. R. Co.* v. *Vining*, 27 Ind. 513.

2. The deceased was compelled by the conductor of the defendants to stand upon the platform of a crowded car, and while there was thrown from the car by another passenger getting off in haste and carelessly, and was killed. *Held*, that the defendants were liable for his death. The wrongful act of a third party did not excuse the defendants' wrong.—*Sheridan* v. *B. & N. R. R. Co.*, 36 N. Y. 39.

3. A horse-car, with its inside and platform full, was stopped for the plaintiff, who got on and stood upon the steps, there being no room elsewhere. While there he was injured. The conductor had taken his fare. *Held*, that the defendants were liable. The above facts rebutted any presumption of the plaintiff's negligence.—*Clark* v. *Eighth Avenue R. R. Co.* 36 N. Y. 135.

4. Defendants' servant let down the chain which guarded the passage way from a ferry boat to the landing, before the boat was properly secured to the bridge, in consequence of which act the plaintiff's leg was crushed between the boat and the wharf. *Held*, that this was negligence for which defendants were liable.—*Ferris* v. *Union Ferry Co.* 36 N. Y. 312.

Promissory Note.—A promissory note being presented by one bank at another bank where it was made payable, was certified to be good, and was then stamped "paid" by the presenting bank, but on the same day the maker's want of funds being discovered, notice was given to the presenting bank, which, however, declined to cancel the certificate. The certifying bank then paid the amount, took the note and re-presented it at its own counter, had it duly protested and notified the indorsers. *Held*, that the facts did not amount to payment of the note, and the bank was entitled to recover from the indorsers.—*Irving Bank* v. *Wetherald*, 7 Am. L. R. 352.

Telegraph—1. A telegraphic message was

erroneously transmitted to the plaintiff by the defendant company. The blank on which the original message was written, contained, among other stipulations, one to the effect that the company would not be liable for an error in transmission, unless the message was repeated back from the station to which it was sent, as it might be for half the cost of first sending. The message received by the plaintiff was written on a similar blank, but was not repeated back as aforesaid. The plaintiff brought an action of tort. *Held*, that said stipulation was reasonable, and that, unless the said error would not have been prevented by the repetition of the message, the plaintiff could not recover.—*Ellis* v. *American Telegraphic Co.*, 13 Allen 226.

INTERESTING FEATURES IN RECENT ENGLISH LAW.

I.—It is not, perhaps, generally known to the American Bar with what degree of formal ceremony the different terms of the superior courts are opened, at Westminster Hall. The judges, all in full court dress, small-clothes and dress sword, and *chapeau bras*, and full-bottomed wigs, and the counsel of every grade, from the Queen's Advocate and the Attorney-General, down through the several degrees of sergeants and Queen's Counsel, to the humblest barrister, called to the bar but yesterday, all repair to the dwelling of the Lord Chancellor, to make their respects to the highest judicial dignitary of the realm. After a formal breakfast, near mid-day, in solemn procession, they take possession of the old hall, where the Aula Regis held its sessions almost from the time of the Conqueror. After formal opening of the several courts, an adjournment for the day follows, and all prepare for business on the next morning, at ten o'clock, or earlier if need be. The late Lord Justice Knight Bruce never attended these ceremonious openings of the term, from an invincible aversion to appearing in small-clothes. We conjecture some of his successors are coming to have similar feelings.

It is at Lincoln's Inn, where, after the ceremonious opening of the term by the Lord Chancellor at Westminster Hall, the Courts of Chancery continue their ordinary sessions, and where all chancery causes are heard and determined. It may not be known to all American lawyers, that all the Courts of Chancery, with the exception of that of the Rolls perhaps, are but departments of the Court of Chancery, where the Lord Chancellor's authority is the paramount one. For instance, the three Vice Chancellors are, in contemplation of law, sitting merely as assistants to the Lord Chancellor. So, too, in the Court of Chancery Appeal, which, in point of fact, is generally held by the Lords Justices, the Lord Chancellor may preside and claim the assistance of the two Lords Justices. But in that case the Lords Justices sit in the Lord Chancellor's court-room, having another court-room in which they hear appeals by themselves. The mode in which the point is determined how many of the judges of Chancery Appeal shall sit upon any particular appeal, seems rather singular and unique to all Americans. It seems to depend upon the choice of the appellant. He may carry an appeal from one of the Vice Chancellors, or the Master of the Rolls, to the full Court of Chancery Appeal, when the Lord Chancellor will call to his aid the Lords Justices, to hear the appeal in the Court of Chancery, when the three judges will be present during the hearing and more commonly give judgments *seriatim*. Or if the appellant, in such cases, for any cause, prefer his appeal should be heard by the Lord Chancellor only, he may take it into that Court, to be heard by him alone. So also he may elect to bring his appeal to hearing before the Lords Justices alone, which is the more common course.

Appeals to the House of Lords may be taken direct from the Vice Chancellors, or the Master of the Rolls, or the party may go first, to any one of the Courts of Chancery Appeal, but he cannot appeal from one Court of Chancery Appeal to another, or from the Lord Chancellor, or Lords Justices, to the full Court of Chancery Appeal, or from the Lord Chancellor to the Lords Jus-

tices, or *vice versa*. Each of these Courts, in contemplation of law, being considered identical with the others, and hence it has recently been determined that one Lord Justice may hear appeals, and this is now becoming quite common. The English bar seem to have much less confidence in the number of judges than is common with us.

Appeals are taken too, as is well known, in a very different manner, and with very different effect, in the English Courts of Chancery, from what is allowed in most of the American States. All interlocutory decisions are appealable, and the proceedings in the case are not necessarily thereby interrupted. In theory, in a chancery cause pending before one of the Vice Chancellors, or the Master of the Rolls, an interlocutory decision may be appealed to the Lord Chancellor, or the Court of Chancery Appeal, and may be thus progressing, while the cause itself is at the same time making progress in the original court. And at the same time another interlocutory decision may be appealed direct to the House of Lords, and may be there on trial, while other portions of the cause may be on trial in two or more different courts. But this is not the usual course perhaps. This is accounted for partly by the fact that different members of the Chancery bar practise in different courts, and it is not unusual to have a cause argued in different courts by entirely different counsel; but this is by no means always the case. Senior counsel of eminence, like Sir Roundell Palmer, more commonly follow an important cause through all its stages—and by consequence the proceedings in the court below are more commonly stayed by consent, during the pendency of the appeal.

II.—Some very important questions have, within the last few weeks, come before the superior courts in Westminster Hall and Lincoln's Inn. The astonishing discoveries, in regard to railway management, or, perhaps more properly, mismanagement, within the last few months, have brought out the question of the right of the directors to declare and pay dividends, out of anything but the net earnings of the company.

In countries where joint stock companies are owned to a considerable extent by mere speculators and adventurers, it would be not unnatural to expect, that the shareholders would more readily acquiesce in having dividends paid out of capital—and even out of capital borrowed for the express purpose—than in countries where such stocks are held, to a large extent, by those who desire to retain them, as a means of investment, and for permanent income. In the latter case, and this seems the only view with which any such stock could fairly be created—it would at once destroy the credit of the stocks and defeat the just object of their creation, if dividends, to even the slightest extent, were permitted to be paid out of capital, whether borrowed for the occasion or not. There cannot be a practice more disingenuous, or fraudulent in its character, than this. If permitted in any case, or to the slightest extent, it would at once subvert the entire system of fair dealing, in the shares of joint stock companies. So far has this cardinal principle of finance been carried, that any State, or government, which allows the interest upon its capital, or funded debt, to be paid by new loans—which is but another name for new capital—will at once lose credit; and cannot expect the confidence of capitalists to be continued under such a practice.

But this practice in the case of a government, or State, might be justified under some special crisis or emergency. For the payment of interest, in such cases, is not so exactly the measure of the resources of the debtor, as in the case of a joint stock company. The State, or government, in one sense possesses unlimited resources--or such as are measured only by the productive industry of all its inhabitants. In this case the fact of paying interest by new loans, is only a symptom of bad management and thoughtlessness; or of unwillingness to impose the just weight of the due and exact responsibility and current cost of the government upon the resources of the State. And the opposite course, of raising current interest annually, is indispensable as an undoubted expression of willingness, on the part of the State, in its aggregate capacity,

to meet its just responsibility, in the present tense.

But in the case of a joint stock company, the resources of the company are of necessity limited, and can only be measured by the sole and unerring standard of its net earnings, that is, the income remaining over and above all outgoes. If the directors are allowed, under any pretence or excuse, to tamper with this cardinal measure of character, there is no longer any standard or measure of character remaining. The payment of dividends and interest upon its capital, whether in shares—ordinary or preferred—or in bond and mortgage, or in any other form, is as indispensable to determine the success or failure of joint stock companies, as the prompt meeting of one's promises is with a natural person. And, while the flexible morality of trade allows some discretion to the unfortunate dealer, in calling in the temporary aid of friends, in order to defer the inevitable day of ultimate failure, or, if possible, to help escape from its disheartening disaster, no such discretion is, or can be, allowed to the managers and directors of a joint stock company, like a railway.

There are, unquestionably, some uncertainties in regard to railway management, whereby it becomes difficult, if not impracticable, in all cases, to know precisely how much to charge to current expenses. The repair and renewal of permanent structures —like the roadway, bridges, and, to some extent, stations and machine shops, which are constantly deteriorating, and must ultimately be renewed by an outlay far beyond the cost of ordinary repairs, calculated on the most liberal scale—these and some other perplexities and uncertainties, naturally attending railway management, in the most competent and watchful hands, will always plead for some allowance for occasional failures and shortcomings. But beyond this there is an invariable and inflexible rule of railway management, from which the English courts will allow no departure.

In a recent case before Vice Chancellor Wood, where the minority of shareholders sought for an injunction, restraining the directors and other shareholders, in whose interest they were acting, from borrowing money on a temporary loan, or applying money already borrowed, to the purposes of paying the regular semi-annual dividends upon the shares, in advance of realizing some suspended sources of income, the learned judge granted the injunction without hesitation. And the principle is so unquestionable that an appeal would offer no reasonable hope of obtaining any modification of the order, and was not attempted, we believe.

But we fear there has been a very great amount of railway management, both in England and America, which would be found, on careful examination, far more flagrant than this. It is to be feared that, in the great majority of instances, dividends have been paid, without any very strict regard to the precise rule of measuring them by the exact amount of net earnings. And that if any surplus has been laid by for extraordinary expenditures, it has been sometimes for the very questionable purpose of "legislative expenses," which, if not wholly illegal and inadmissible, were clearly so, when carried to the enormous extent, and for the questionable objects, which too many recent developments indicate. And in other cases dividends have been paid, out of borrowed capital, for the mere purpose of misrepresenting the real state of the productiveness of the business, when afterward it was found that the disclosure of the exact facts of the case must seriously have reduced the price of the shares in the market, thus in effect making the directors accessory to the false representations under which the stock would be or might have been offered for sale. Such conduct, while it might be quite innocent on the part of sellers, is scarcely less than felonious on the part of the directors, and should be visited with condign punishment.

We have been accustomed to commend the fairness and faithfulness of English railway management, but it now appears that rust and rottenness have been gathering at the heart of it for many years, and

that it is, if possible, even more hollow and fallacious than in our own country. And it has been done so covertly and under the guise of such fair pretensions, that it has misled even the most wary. It seems baser, if possible, for one whose reputation stands at the highest point, to abuse this accumulated capital of credit and fair repute to the accomplishment of some nefarious scheme of iniquity, than for one who is new in the market, and has only his fair promises to draw upon, to attempt the same thing. And it is certain the former will be much more sure of success than the latter. It is this which seems to create such fierce indignation against almost all the English railway directors just at the present moment. For as one after another comes to be probed, the same disgusting rottenness at the core is brought to light, so that, at present, there is really no firm ground to stand upon, so far as the credit of railway capital is concerned. It is to be hoped we shall profit by the example of our English cousins, and while we imitate their excellences, avoid their errors.

III.—The trial of the case Wason *v.* Walter, before the Lord Chief Justice of England and a special jury, at the sittings after Michaelmas Term, was one of considerable interest to the proprietors of the press. The defendant is the proprietor of the Times newspaper, the chief organ of popular sentiment in England, which, like one leading paper in America, is always sure to echo popular sentiment, if sufficiently developed to be comprehended. The plaintiff is a member of the English bar, and a former member of Parliament from one of the country constituencies, where the election thirty or more years ago, was contested by Sir Fitzroy Kelly, the present Chief Baron of the Court of Exchequer. At the time of his promotion to the bench, his former competitor saw fit to present a petition to Parliament against the appointment, charging that Sir Fitzroy Kelly, in some trial before a committee of the House of Commons, had been guilty of perjury, in denying all knowledge of acquaintance with one person, who had canvassed for him during the election, and in doing so had been guilty of bribery—on which ground the return had been avoided. But the charge was promptly met by the Lord Chancellor and Lord St. Leonards, who effectually vindicated the Lord Chief Baron from all suspicion of guilt, on account of the charge, showing, beyond all question, that the charge had been preferred, and clearly refuted, at or near the time the offence was said to have been committed, and that Mr. Wason had remained silent during all the previous stages of the learned Baron's promotion to be solicitor and attorney-general, until his call to the bench; and that the charge was now brought forward at a time and under circumstances, as it was claimed by these noble Lords, clearly indicating some wrong motive, and stating many facts and circumstances in confirmation of their views, which Mr. Wason naturally regarded as libellous.

But as members of the House of Lords were privileged for all words spoken in debate, the aggravated party could obtain no redress in that quarter. But as the Times had published detailed reports of the speeches made by the noble Lords, and had inserted also leading editorial articles, extensively discussing the same grounds of defence against Mr. Wason's charges, and repeating, to a considerable extent, the charges which Mr. Wason regarded as libellous, he very naturally sought redress against the proprietor of the Times, to whom he did not suppose the privilege of Parliament could extend; or if by possibility it might be claimed to extend thus far, for any purpose, he expected it would, at all events, not be carried beyond that of giving a report of the actual proceedings in that body. What then must have been his disappointment, not to say consternation, to hear and feel the learned Chief Justice hewing down and cutting away the very last timber in the platform upon which he felt that he stood so securely. One cannot help feeling a certain degree of sympathy, if not of actual commiseration, for the sad condition in which the plaintiff thus unexpectedly found himself. And it seems, so

far as we can judge from the newspaper reports of the case, to have operated so severely upon the plaintiff, at the time, as nearly to deprive him of that iron, not to say leaden, self-possession, which he preserved so imperturbably, until that critical moment—when all he could utter was, that he did not expect his Lordship to have given the jury any such charge, and he trusted it would not be regarded as disrespectful or out of place that he should take exception to the same, and ask to have it revised, in banc.

But here, again, the redoubtable suitor, who seemed to have verified the truth of the maxim, applied to counsel who conduct their own causes, was so seriously embarrassed by the peculiar juncture of affairs, that he failed to make up any bill of exceptions to the charge (as given), which could fairly be construed as any objection to its most damaging and destructive current. For, after the learned judge had utterly demolished the entire superstructure of the plaintiff's case, the jury, instead of retiring and remaining out a reasonable time, so as to show at least some compunctious regrets at the utter lawlessness of the liberties accorded by the learned judge to the press—not only in the matter of parliamentary reports, but of commentaries thereon, however damaging or offensive to personal pride and self-respect: instead of this only decent regard for the plaintiff s embarrassed position, the jury did not retire at all, but after a deliberation of less than two minutes announced themselves as ready to give a verdict in the case, for the defendants, of course. All this transpired in less time than is required to write it, and long before the plaintiff had sufficiently recovered from his very natural surprise, not to say horror, at the perplexing circumstances by which he found himself surrounded.

And now, to cap the climax of his embarrassment, the noble and distinguished Lord Chief Justice of all England, instead of allowing the perplexed suitor time to recover himself, and draw up formal and effective exceptions to the terrific charge, required it to be done, *instanter*, and before the verdict should be delivered. This was, indeed, to require a man to go through the detail of a dress parade, not only in the face of the enemy, but at the very mouth of a battery of cannon, from whose fatal and destructive discharge there could be no escape, either by advance or retreat. What wonder, then, that the exceptions should be found fatally defective?

This is the more to be regretted, since the men of the press, although well satisfied to find in the chief judicial officer of the common-law bench of England so decided and unwavering a champion, would certainly feel more sure of their ground if the question had been so placed upon the record as to enable the defeated party to carry it to the court of last resort. And it is even now competent for the learned judge to certify the main features of the charge, for revision by his brothers of the same court, where, if regarded as involving serious doubt, it would be sure to be ordered into the Court of Exchequer Chamber, and might readily be brought to the House of Lords, for final indorsement or reversal.

The main features of the charge were: That any publisher of a daily paper, or any other publisher, was justified in giving fair and faithful reports of the proceedings and debates in either house of Parliament, and that no action of libel could be maintained for anything contained in such report, provided it were honestly and fairly put forth, for the *bona fide* purpose of giving information of what passed in Parliament. And that, as to leading articles, newspaper publishers had, to a certain extent, privilege of discussing such public questions as they might fairly consider the public felt an interest in hearing discussed; and in doing so they might put forth such views and maintain such con-tructions as they deem just and right, and that they were not responsible for the entire and absolute truth and justice of all they might utter, provided they acted in good faith and without malice.

In the present case, the defendants hav-

ing pleaded the general issue, and there being nothing before the court to show the truth of all the matters of fact contained either in the report of what passed in the House of Lords, or in the defendant's comments in his leading articles thereon, it must be assumed that any portion of the same which was libellous might also be false. It could only therefore be justified upon the ground that the defendant's privilege extended to the publication of all which passed in Parliament, and to such comments thereon and such repetition and amplification of such charges as come fairly within the scope of an editor and publisher, actuated by the honest and *bona fide* purpose of instructing and informing the public in regard to such matters of public concern as he may properly consider that they have a *bona fide* interest in correctly understanding, provided he be actuated solely by the motive of rendering his paper a fair and faithful instructor in regard to and commentator upon such matters, and not by any sinister and malicious motive toward those thereby exposed to opprobrium. This is, indeed, a very broad shield, a privilege scarcely less than that of the member of parliament. But we do not well see how it could be much narrowed, without restricting it within such limits as to render the privilege of no avail. It is well, perhaps, that the freedom of the press should cover all matters of public concern, where the publisher is actuated solely by a desire correctly to instruct the public mind, and by no spice of personal malice.—*Letter of Judge Redfield in American Law Register.*

LORD BROUGHAM.

This distinguished jurist, statesman and author, died on the 7th of May, at the advanced age of 89. The following sketch of his career is from the *Pall Mall Gazette*:—

"The services, which for five-and twenty indefatigable years Henry Brougham rendered to the popular cause, to liberal ideas, and to beneficial reforms, were signal enough to cover a multitude of sins, if, as some insist, there were a multitude of sins to cover. He had some failings, no doubt, which on one or two notable occasions led him far astray—failings unworthy of his vast powers and noble qualities; failings which, in a fair estimate of his character, it is impossible to pass over in silence. His temperament, like his oratory, was vehement, impetuous and passionate; his vanity and ambition were alike insatiable; his *amour propre* was terribly irritable; he could never forgive a slight, seldom even opposition or thwarting where successful, seldomer still, it is said, the triumph or precedence of a fortunate rival, even when that rival was a friend. His animosities were as fierce as his affections were warm and strong; there was at times something sadly rancorous in his enmity. Indeed, everything about him bore the impress of that tendency towards the violent, the excessive, the unmeasured, which was his predominant constitutional characteristic. There was, in truth, something volcanic in his nature; there was a dangerous look about the man, indicative of a central fire ever smouldering within, and liable to break out, as it not unfrequently did, at unseasonable moments, and in unseemly shapes. It was once keenly said of him, 'If he was a horse with that eye, nobody would buy him.' His prudence was often at fault; his self-command sometimes. Hence it was, that even at the height of his power and popularity, and when he was almost the idol of the people, his colleagues never felt quite sure of him, or quite at ease with him; they mistrusted his judgment; they dreaded his mental and moral intemperance; they recognized something untrustworthy and incalculable in that fierce and susceptible temper. He was like one of the explosive forces in nature, mighty and almost resistless, but containing within itself unknown possibilities of mischief. He inspired no enduring or reposing confidence. Indeed, he kept every one who had to deal with him in perpetual hot water,—the attorneys who entrusted to him their clients' causes, the party with whom he acted, adorned and strengthened, and for a time led, in Parlia-

ment, and the colleagues who sat with him in the Cabinet. For some reason of this sort, doubtless sufficient, but never fully explained, when the Whig Government was reconstituted after its summary dismissal in 1834, he was not asked to rejoin it, or to re-assume his old position as Lord Chancellor,—a slight which he felt acutely and deeply resented.

The truly glorious and productive period of Henry Brougham's life, the only period which we are specially concerned to remember, was that which elapsed between 1810 and 1834. Before the first of those years, he was chiefly occupied in preparing for and attaining that forensic and literary celebrity and power of which he afterwards made so brilliant a use. After the last of those years much occurred which we would fain forget. But for four and twenty years he was indefatigable in useful works. He was foremost in every beneficial and honorable struggle; and it was then he earned that indefeasible title to the gratitude of his country, which no after lapse or frailty can efface. Those were gloomy days for the Whig party and the liberal cause; every battle was an uphill fight against superior forces; every advantage won for good government or popular rights was painfully and slowly wrung from the reluctant grasp of ascendant and often very stupid Toryism. In 1810, Henry Brougham entered Parliament for the borough of Camelford, having already attained a considerable position on the Northern Circuit, of which he afterwards became the leader. He first distinguished himself by procuring the repeal of those suicidal 'Orders in Council' by which our Government sought to retaliate on Bonaparte for the Milan and Berlin decrees, which he had launched in the hope of crippling British commerce. He took a prominent part in all debates upon the corn laws, and always, of course, on the right side. Some of his finest speeches were made on the question of Catholic emancipation. On all party topics he was, perhaps, the most powerful combatant in the Whig ranks; and his magnificent defence of Queen Caroline (in which he showed extraordinary tact and sagacity, as well as eloquence and courage) raised him at once to the summit of popularity. But the marked feature of his parliamentary career, and that which most needs and deserves to be brought out into strong relief, was that his chief attention and devotion were given, not to those great party contests which afforded the best opportunities for the display of such brilliant powers as he excelled in, and which therefore might naturally have been most attractive to one so gifted and so vain, but to those questions, many of them till then almost neglected, which most deeply concerned the improvement and the elevation of his poorer countrymen, which involved much dry and obscure labor, and in which practical success was the only reward to be looked for. He preferred philanthropy to mere politics; he chose useful and urgent, rather than showy topics. We believe he was inspired, in his unresting toil, by a genuine passion for the well-being of his fellow-men; and his spirit boiled over at the sight of cruelty and oppression. Of all the anti-slavery orators, he was about the most indefatigable and indignant. He contributed, perhaps, as much as any man of his day, even Lord John Russell, to sweep the last vestiges of religious persecution from the statute book. His services in the great cause of parliamentary reform are still fresh in the memory of all of us. His efforts in regard to Chancery and general law reform, though it has been the fashion to speak slightingly of them, and though probably his mastery of the subject was by no means thorough, nor his view always sound, have, beyond all question, been among the most effectual aids to the very considerable amendments that have been made in that direction; and though his judgments as Lord Chancellor were not always regarded with confidence or acquiescence, he was able to say, when he left the woolsack, what probably not one of his predecessors could have said, that 'he had not left a single appeal unheard, or a single letter unanswered.'"