The Legal News.

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PRESCRIPTION OF BILLS AND NOTES.

We have been asked to insert a short report of a judgment rendered by the Circuit Court, Montmagny. We comply with the request, but we cannot do so without appending to the report a few remarks, because the suggestion of our correspondent is that the judgment is wrong. It may be a case of hardship for the plaintiff, but the law as laid down by the Court is in accord with previous decisions. The report is as follows:

CIRCUIT COURT.

Montmagny, Nov. 15, 1878.

Bossé, J.

FISET v. FOURNIER.

Held, that a debt originally due under a promissory note, and which has been prescribed by the lapse of five years from the making of such note, cannot be recovered at law, although the defendant may have acknowledged in the presence of a witness, after prescription accrued, that he was still indebted to plaintiff in the amount of the note, and have promised to pay, thus renouncing the benefit of the prescription accrued.

The plaintiff sued the defendant for $46.96, amount of a promissory note made by the defendant on the 17th May 1869, and plaintiff alleged specially that after the note was prescribed, to wit: in the month of June or July last, the defendant acknowledged in the presence of a witness that he owed the amount of the debt, and promised to pay when his means would permit him to do so. This fact was proved by the plaintiff's clerk. The Court dismissed the plaintiff's action with costs.

C. Pacaud for plaintiff.

A. J. Bender for defendant.

This is but following the doctrine laid down by the Court of Appeal in *Bowker* and *Fenn*, in which the Court held "that the prescription of five years, under the Promissory Note Act, c. 64, C. S. L. C., is so absolute, that no acknowledgement of indebtedness or partial payment will take the case out of the statute; and if no suit or action be brought on a note within five years after its maturity, it will be held to be absolutely paid and discharged." 10 L. C. Jurist, p. 120. That was a celebrated case, and attracted much attention from the bar. The question was whether a written promise to pay and payments on account had the effect of interrupting the prescription. The debtor, Bowker, had, in a series of letters to the plaintiff, formally and repeatedly acknowledged his indebtedness, but the judgment of the Court held the statute to be an absolute bar to the action. Judge Mondelet remarked that the statute was as stringent as the ordinance of 1510 with reference to actions brought for five years' arrears of *rentes constituées*. Such actions were to be dismissed if brought. Chief Justice Meredith, then a Judge of the Queen's Bench, said: "I am quite aware that a strict interpretation of the terms of our statute may, in certain cases, bear hard upon individuals; but the remedy is with the Legislature, and the result of the attempt made by the English Courts to exclude certain cases from the operation of their statute of limitations affords additional proof, if any were wanting, of the danger of attempting to modify a statute by judicial interpretation."

Then, under the Code, Art. 2267 says: "In all the cases mentioned in Articles 2250, 2260, 2261 and 2262, the debt is absolutely extinguished, and no action can be maintained after the delay for prescription has expired." And among the matters mentioned in Art. 2260, as prescribed by five years, are actions upon inland or foreign bills of exchange, promissory notes, &c.

It is true that Chief Justice Meredith remarked, in the case of *Bowker* and *Fenn*, that the law had been materially changed by the Code, which had just come into force. The case reported above falls under the Code, but we are not aware of any text of law or ruling of the Courts which would affect the correctness of Mr. Justice Bossé's decision. On the contrary, in the case of *Court* and *Thompson*, at Montreal, 8th July, 1876, Rainville, J., held, even where a short prescription was not pleaded, that the Court was bound to take notice of the fact that prescription had accrued, and the intervention of Court, Assignee, after the lapse of a year (C. C. 1040) was rejected. Art. 2267 C. C. mentions the cases in which prescription need not be pleaded, and the action of an Assignee is not included in the exceptions. The judgment in *Court* and *Thompson* was affirmed in appeal, and it seems to hold that the defendant cannot waive the benefit of prescription by any acknowledgement that he may make, and that the

Court is absolutely without jurisdiction in such cases. We would, therefore, retrench the last clause of the head-note as framed by our correspondent in the above report.

REPORTS AND NOTES OF CASES.

COURT OF QUEEN'S BENCH.

Quebec, Dec. 5, 1878.

Present: SIR A. A. DORION, C.J., MONK, RAMSAY, TESSIER, and CROSS, JJ.

DESJARDINS and HAMILTON.

Judgment dismissing Demurrer—Appeal—Damages for Libel—Compensation d'Injures.

This was a motion for leave to appeal from a judgment dismissing a plea on demurrer. The action was for damages for libel against the proprietor of the *Canadien*. The plea rejected set forth that Desjardins had not written the article, but that it was written by the editor, Mr. Tarte, and that Hamilton had since personally avenged himself by assaulting Mr. Tarte.

RAMSAY, J., dissenting, thought this was a good plea. There was compensation of damages resulting from any *injure;* that it appeared Desjardins and Tarte were jointly and severally liable, and that Desjardins had a right to set up what Tarte could plead.

SIR A. A. DORION, C.J., said the Court did not decide that there was no *compensation d'injures.* His own opinion was that there was no such defence; but the Court refused the appeal on the ground that it could be corrected on the merits if it appeared later that defendant had been deprived of a valid defence.

Motion rejected.

MARQUIS and VAN CORTLANDT.

Appeal—Record remitted to Lower Court to give Respondent an opportunity of showing, by way of requête civile, that a document in the record is faux.

A motion was made on the part of Respondent that the appeal be not heard until he can take proceedings in the Superior Court, by way of *requête civile*, to reject from the record a document alleged to be *faux*, and that for this purpose the record be transmitted to the Court below.

The Court granted the motion without expressing any opinion as to the proceedings Respondent proposed to take; but it appearing by affidavits that the document referred to was *faux*, it was proper that the Respondent should have an opportunity of showing that this document was *faux* as alleged, and this more particularly as the Appellant did not lose anything by the delay.

Motion granted.

GAGNIER and HAMEL.

Procedure—Notice.

Motion to reject appeal. The notice of motion served on Mr. Letendre was held insufficient, as he was Prothonotary, and consequently not a practising advocate.

Motion rejected.

SUPERIOR COURT.

Montreal, Nov. 30, 1878.

JOHNSON, J.

DUDEVOIR v. BRUCE.

Procedure—Party interested not in record.

JOHNSON, J. This is a revendication by the plaintiff of a piano in the defendant's possession. The plea is that the plaintiff is not the true owner; but that the piano belongs to Weber & Co.; and that it was to defraud them that there was a pretence of a sale by authority of justice to the plaintiff, who was in collusion with Nathalie Watts, the defendant in a case of Hamilton and Watts, in the Circuit Court, in which case the so called judicial sale took place, to defraud Weber & Co., who had leased it to her. That the instrument in question was seized in the present case in the possession of Weber & Co., and never was in defendant's possession at all. It is evident from these pleadings, and from a glance at the evidence, that the rights of Weber & Co. are those really at stake. The defendant can have no right to urge Weber & Co.'s interests. They ought to be brought into the case. In a case of Chapleau and Reilley, before Judge Jetté, the same order is to be made. Therefore it will be for the plaintiff to see to this, and the *délibéré* will be discharged so that he can take steps to bring the party interested into the case.

O. Augé for plaintiff.

Cruickshank & Co. for defendant.

THE NATIONAL INSURANCE CO. v. CHEVRIER.

Company—Subscription of Stock—Parole Evidence of Agent's statement.

JOHNSON, J. Action for three calls of 10 per cent each on the $1,000 of stock subscribed by the defendant. The plea was that the defendant's signature had been got by improper representations of the agent of the Company, a Mr. McDonald, and that in point of fact he was not held by his subscription. The evidence shows that although Chevrier may have subscribed incautiously and without sufficient enquiry, he did so deliberately and freely in the hope of profit, and it is no defence, of course, to say that the stock has turned out temporarily unprofitable. Now that is the proper effect of the evidence in this cause, for the verbal testimony of what McDonald said at the time of subscription cannot be received against the written consent of the party; therefore there must be judgment for the amount demanded, with costs.

Lunn & Co. for plaintiffs.

O. Augé for defendant.

JOHNSON, J.

Dame E. RICHLER, for certiorari, and JUDAH, Acting Recorder.

Quebec License Act, 1878—Revocation of certificate.

Section 92 of the Quebec License law of 1878, prohibiting the sale of liquor between 11 p. m. and 5 a. m., applies to the city of Montreal.

The Recorder has power, under section 102 of the Act, to revoke the certificate of a tavern-keeper.

JOHNSON, J. The writ in this case has brought up a conviction by the acting Recorder under the Quebec License law of 1878. The petitioner was convicted for having between 11 o'clock on the Saturday night of the 15th of June and 5 o'clock of the following morning, at the city of Montreal, sold two glasses of beer, she being at the time keeper of an inn situate in Craig street, and was condemned to pay a fine of fifty dollars and costs, or in default to go to jail for two months, and the certificate for her license was also revoked. The questions raised were whether the 92nd section applied to Montreal, and whether the Recorder's Court could revoke the certificate. The Court is against the petitioner on both points. The argument was that the 92nd section referred only to offences committed at the gold mines; but it clearly refers to two distinct offences. 1st, the offence of selling at this particular time in any inn; and then the offence of selling at those times at any restaurant or tavern at the gold mines. The Act had previously made provision for what were to be considered inns (see sec. 1 D.), and had also provided for what was a tavern at the gold mines, (same sec. I). It had further provided the terms on which licenses in all cases were to be obtained, and the 92nd section contains a prohibition in both cases to sell liquors between these particular hours. Section 94 gives the penalty, which has not been exceeded in the present case. It was said that there was a discrepancy between the English and French versions of section 94—the former saying that the penalty was not to be less than ten nor more than fifty dollars; and the latter having substituted fifteen for fifty. Such was, no doubt, the case in the Act of the first session of the present year; but it was set right at the next session (see 41-42 Vic., chap. iv., sec. 4), and this is in its nature declaratory and retroactive. As to the power of the Recorder's Court to revoke the certificate, section 102 gives that power to "the tribunal pronouncing "the sentence, or to the license commissioners." I am, therefore, of opinion that the conviction must stand, and the petition be dismissed with costs.

Doutre & Co. for the petitioner.

R. Roy, Q. C., for the prosecution.

Montreal, Aug. 6, 1878.

RAINVILLE, J.

LEDUC v. LABERGE, Jr.

Municipal Election—Qualification of Alderman—Real Estate owned by a firm.

Held, that the qualification of an alderman in the city of Montreal under 37 Vict. (Que.) c. 51, cannot be based on real estate owned by a commercial firm of which the alderman is a partner.

The election of Augustin Laberge, Jr., as Alderman for the St. Louis Ward in the city of Montreal, was contested on the ground that he was not properly qualified. The Quebec Statute, 37 Vict. c. 51, s. 17, enacts that an alderman must own real estate of the value of $2000, after deduction of his just debts. The petitioner proved that the property on which the defendant qualified was owned by the firm

of "A. Laberge & Fils," masons and contractors, of which the defendant was a member. It was contended that this was not a qualification such as the Statute required. In reply, the defendant alleged that the partnership between him and his father was a civil partnership, and that he could not be deprived of his share of the assets.

The Court held the qualification to be illegal: "Considering that by law, in commercial partnerships at least, one of the partners is not proprietor in common or *par indivis* of any part of an immoveable acquired by the firm, and cannot alienate or mortgage any part of such immoveable; and considering that even if the defendant was proprietor *par indivis* of half of the immoveable on which he qualified, it is proved that the said immoveable at the time of his nomination, was mortgaged for $5,600, and that the hypothec is by law indivisible, and affects each part of the immoveable for the whole, and that the value of a half is proved to be only $6,000."

Election declared void.

Lareau & Lebeuf for petitioner.

Lacoste & Globensky for defendant.

Montreal, Oct. 30, 1878.

MACKAY, J.

HAMILTON et al. v. ROY et al.

Compulsory Liquidation — Individual Estate of Copartners.

Held, where a writ of compulsory liquidation issues against the estate of a firm, the individual estates of the copartners vest in the official assignee as well as the copartnership estate.

The plaintiffs, on the 28th October, issued an attachment in compulsory liquidation against the defendants Adolphe Roy & Co., and John Fair, Official Assignee, took possession of the estate. On the 29th, La Banque Nationale issued a similar writ against the individual estate of Adolphe Roy, one of the defendants. Beausoleil, Official Assignee, petitioned for possession of the individual estate of Adolphe Roy, under the second writ.

Hatton, Q. C., for Fair, assignee, resisted the application, on the ground that the individual estates of the copartners vested in Fair, as well as the partnership estate, and cited: Clarke on the Insolvent Act, 1875, pp. 82, 304; In re Macfarlane, 12 L. C. J. 239; 2 Lindley, 1148; Lee on Bankruptcy, 436; Bedarride, tit. 13, No. 743.

MACKAY, J., sustained the plaintiffs' pretension, holding that the individual estates also passed. The application of Beausoleil was therefore rejected.

Application rejected.

Hatton, Q. C., for Fair.

C. A. Geoffrion for Beausoleil.

COMMUNICATIONS.

STENOGRAPHERS.

To the Editor of THE LEGAL NEWS:

SIR,—I must admit that I have been one of the promoters of stenography in our system of taking the evidence in open court. I am sorry to say that I am not satisfied with the working of the system; but my complaint is more against the practical way of taking notes than against the system itself, which is of great service to the profession.

By law, the stenographer is an officer of the court, he takes notes of the evidence after being sworn, he reads his notes to the witnesses, and he certifies himself to the testimony already taken by him by stenography.

As a matter of theory I have nothing to say against that, but the practice is a public danger.

I admit that the stenographer is an officer of the court, but he is a sphinx, as nobody but himself can read his notes, and he may read to the witness what *he* said and write afterward what *he* has not said, and file in court the pretended testimony of that witness, keeping in his pockets his notes, if not destroying them. Against this danger we have no remedy, the stenographer not being obliged to file his notes. And what would be the use of filing them if no one but himself could read them?

My system of reform would be:

1st.—That the notes of evidence be taken on a uniform system of stenography.

2nd—That a stenographer whose notes cannot be read by another stenographer, shall be incompetent to act as such.

3d—That the notes will be the exclusive property of the Court, be certified by the prothonotary and copied in a handsome hand-

writing and filed in the court-house, remaining there for reference if necessary.

4th—That the notes should be read to the witness in the presence of the Judge, and identified by him, or by the prothonotary.

5th—That the fees paid for stenography should belong to the Crown, and that the stenographer, as an officer of the court, be paid a salary at the rate of $2,000 per annum.

GONZALVE DOUTRE, D.C.L.,
Professor of Civil Procedure.

MONTREAL, 6th December, 1878.

A STENOGRAPHER'S VIEWS.

To the Editor of THE LEGAL NEWS:

SIR,—Although I do not wish to occupy an unremunerative space in your valuable paper, still, the subject upon which I desire to express an opinion is, *per se*, of such importance to myself and *confrères*, as to be an apology for requesting insertion of the following.

I have observed with satisfaction that the recent reduction of Stenographers' fees has not only drawn forth remarks as to the inadvisability of doing so, (if a standard of reporting is to be upheld), but that, also, your observations have been endorsed by many others, and even articles have been the result of your comments.

It may be said that my statement will be one of partiality, but cannot the same be said with respect to the Advocates who have shown themselves as rather desiring "cheap" than competent labour?

It is said by an "old Stenographer" "that it "is not an uncommon thing at all for the steno- "graphers' fees in a case to amount to half "the costs of the suit." Why is this? If an advocate takes a whole day by means of phonography to prove his case, how long would it occupy him were he to proceed by that ancient, peculiar, and anything but satisfactory *enquête* system, where a long-hand writer is but a mere tool in the hands of the lawyers, and, at times, what purports to be a deposition of a witness, is nothing more nor less than an indefinable concoction of the learned counsel. Again, an advocate's time is precious, at least, we are told so by them all, and they all concede that the stenographic system is advantageous and indispensable. For, where they would be occupied a week in taking evidence by long-hand, the same amount by short-hand could be taken in a day, if not less; and, then, the deposition *is* the evidence of the witness as the law and justice intends it should be. The lawyer, then, in the five days remaining over, by adopting the speedy method, is able to proceed with his other cases, or attend at his office and rake in his consultation fees.

Every one knows the life of a reporter is anything but one of the healthiest of occupations, and the strain on the nerves to sit through a case all day, and then at night the transcribing of his notes tends to anything but his longevity.

With regard to the fees being sometimes $30, $40, or even $50 in a case, I may say that a reporter would think himself lucky if he could calculate upon getting three or four cases a month at an average of $40. It may be said, that is too high a figure to pay a stenographer. Why, Sir, the gentleman may be married, with a family to support, and have the same appreciation of the necessaries and even the delicacies of life as a lawyer. Also, it is supposed by some lawyers that Reporters as students should not be rewarded with an equivalent to a lawyer's income. My pretension is this, if a reporter is competent to discharge the duties so onerously devolving upon him, a just *quantum meruit* should be his reward. Take, for instance, the reporting of an election case, where the slightest error or mistake would be prejudicial, if not fatal, to a man's interests, and is it not absolutely imperative to get the best available talent. In England, of course, there are a great many shorthand writers, but it is obvious that a shorthand writer may be anything but a *verbatim* reporter, which is essential to the correct and accurate photographing of a case. And in England the fees to a competent person are £1. 1s. a sitting, or £2. 2 0 if a long one, and 10d a folio of,—in some cases—76 and at most 100 words. In Montreal, among 176,000 people there are a greater number of able lawyers than *pro rata*, efficient phonographers. It must be borne in mind also that there is little or no work done in December, March, June and September, owing to the Court of Appeals sitting; January but three or four days; July and August is vacation, and the remainder of the year there are but about 16 days in each month where there is a chance of getting cases, and when they come to be divided up between each lawyer's office shorthander,

there remains but a small portion of the work amongst the competent outsiders. When there were lots of cases (which is not the case now compared with two years ago) a stenographer, the same as a flourishing barrister, made a good living; but, now the work has not only decreased one-half, the Court house become an asylum for men out of situations, but the fees are cut down a third, and it is but a scanty living compared with the remuneration he should receive for devoting years to bringing himself to a proficiency.

With regard to the number of words charged in a page, and which the page does not actually contain: I may say, as a rule, it is not the case for stenographers to overcharge. On the other hand, the long-hand writers who sit at a table, have no night work, and put but about 50 to 150 on a page, get 20c. therefor, and for 200 words the Stenographer, who is supposed to be so diligent as to seize every point, receives 40 cts. It was suggested that Reporters should at least receive the same equivalent as a deputy prothonotary. I may say, a deputy prothonotary's work is incomparable with the labours of a stenographer. Were two French and two English reporters appointed by Government, the consequence would be, the long-hand system would be annihilated, and all cases taken by stenography.

Lawyers in heavy or difficult cases, do not forget their retainer, but the reporter may be occupied for days in a case where objections are the chief part of the *enquête*, and he receives nothing but his 20 cents per 100 words, *full measure*.

I trust, Sir, my letter, or explication of the matter at such length will be excusable, as I think it but right that the public should know the whole truth.

STENOS.

LEARNED WOMEN OF BOLOGNA.

We take the following extract from an article published under the above title, in the *International Review*:

The atmosphere of that learned city, whose appropriate motto is *Bononia docet*, seems to have been peculiarly favorable to the development of female talent, while its university, unlike those of otherwise more favored lands, has freely and ungrudgingly bestowed its diplomas and professorships on all women who have proved themselves deserving of such distinction. [To the present day, there is no law to prevent women from graduating at Italian universities, or presenting themselves as candidates for professorships.]

As far back as the thirteenth century, when the Bologna University was so deservedly celebrated that it was frequented by no less than ten thousand students, many of them from far off England and Scotland, two women were numbered among its most distinguished professors, Accorsa Accorso and Bettisia Gozzadini.

The former was the daughter of the famous jurisconsult Accorso, author of a copious glossary of Roman law, so much esteemed for its precision and clearness that for many years it was the text book of all European tribunals. She filled the chair of philosophy at the university, but beyond that one fact—in itself a proof of her acquirements—history is silent about her.

Of *Bettisia Gozzadini* fuller mention is made. The historian Sigonio states that she was created *Doctor of Laws in* 1836, *and in the same year commenced her public lectures, to the admiration of crowded audiences.* She was a woman of immense erudition and powerful mind, and was for many years the ornament and pride of the university. So far Sigonio; and Ghirardacci, in his history of Bologna, tells us that she wrote on philosophy, law, and jurisprudence, and quotes a saying of hers to the effect that she loved her father as the author of her days, but that she loved and revered Doctor Odofreddo, the eminent jurisconsult, who had given her knowledge, esteeming herself highly favored to have been born in his time.

Tiraboschi maintains that Bettisia Gozzadini was considerably overpraised by her contemporaries, and remarks that the University of Bologna counted too many brilliant luminaries to be obliged to exaggerate the merits of those whose fame was not supported by the highest authorities.

In the *fourteenth century* we find but one lady professor at Bologna: one, too, who held her post by favor rather than by right. This was the learned and lovely *Novella, daughter of Giovanni d'Andrea*, renowned as the best jurisconsult of his day, and for a special aptitude in explaining the *Decretales*. Being thoroughly

versed in the law, Novella frequently took her father's place in the professorial chair, but hidden behind a curtain, to prevent her beauty from distracting her hearers' minds. Probably the poet Petrarch, for three years a pupil of Giovanni d'Andrea, may have been one of these hearers, but there is no record of the fact; and whatever his sentiments towards the daughter, he had but small friendship for the father, with whom, in later times, he carried on a long and ironical controversy on literary matters, in which Giovanni d'Andrea was thoroughly worsted.

USE AND ABUSE OF LEGAL HOLIDAYS.

On Thursday last the Long Vacation came to an end, and from all quarters of the globe counsel and solicitors have returned, or are returning, to the metropolis. Next Saturday the Lord Chancellor will receive Her Majesty's Judges in the customary manner, the Courts of Law will reopen, and practitioners will be as busy as the depressed condition of commerce, manufactures, and agriculture will permit.

Before the lawyers settle down to business, there will be much shaking of hands, and many friendly inquiries. Foremost among the topics of interest will be how our friends have spent the Vacation, and how they have enjoyed themselves. Innumerable are the recreations by which barristers and solicitors seek to regain health and strength after the labours of a legal year; and, for the first few days, there are pleasant comparisons of happy Vacation days. "Have you had good sport on the moors and in the turnips?" for this year there have really been turnips. "Have you been to the Paris Exhibition?" The rival attractions of foreign travel, Alpine climbing, shooting, country visits, seaside sojourns, Doncaster and Newmarket races, are discussed with as much animation as is possible when the coming toil of ten months is in prospect. Since the primitive days when Parliament was prorogued and the Courts adjourned in order that the harvest of England might be gathered, the way to spend the Long Vacation has been a fruitful theme of debate.

Indeed this is a subject of more real importance than would at first sight appear; and just as the professional classes increase in this country, and the things that can be done multiply, so does the task of discovering how to spend a holiday become more worthy of attention. It is astonishing what a muddle some people make of their leisure time. Bit by bit as the cares of life, the love of money, devotion to business, and bodily infirmities creep on them, away goes even the desire for recreation. Multitudes of men, if lifted in a moment above the necessity of professional labour, would be miserable from the want of something to do, simply because they have made no effort either to retain the skill for manly exercises of which in their youth they were justly proud, or to acquire new modes of healthy recreation for body and mind. They cannot ride, or shoot, or play any game demanding physical exertion; they hate to travel, the country is to them inexpressibly dull, the seaside is vulgar and monotonous. So they reluctantly assent to a fortnight or three weeks away from town to please their wives; and with that their Vacation begins and ends.

Now, of late years, persons of this class—and we speak not of Englishmen only—have hit upon an idea. They have got up conferences and congresses, and have sought to banish *ennui* by the pursuit of scientific, artistic, and philanthropical objects. This Vacation has been remarkable for meetings of this kind. There has been a Congress of Orientalists at Florence; of German Naturalists at Cassel; an International Prison Congress at Stockholm; a Scandinavian Jurists Congress at Christiana; a Conference on International Law at Frankfort; a meeting of the Institut de Droit International at Paris; and a sitting of the Associated Chambers of Commerce at Sheffield. Last, but not least, there began on Wednesday at Cheltenham the annual meeting of the National Association for the Promotion of Social Science, not the least important section of which is the Society for Promoting the Amendment of the Law. The Codification of the Criminal Law, the Reform of Real Property Law, Summary Jurisdiction of Justices, Prison Discipline—these are among the subjects to which men who have their bread to earn devote themselves in their hour of leisure, from love of their species and their art, and in the pursuit of recreation.

We do not desire to decry the voluntary labours of these holiday-makers. On the contrary, we have always recognized their zeal, and the valuable results flowing from their indus-

try; nevertheless we may point to this modern method of using leisure as a phenomenon of modern life. The manual labourers of our time do not work much more than half as hard as their forefathers; the professional classes seem eager to surpass their predecessors in industry. Even these voluntary workers may boast themselves vastly superior in wisdom to the counsel who spend their Long Vacation in the Temple at Lincoln's Inn, either picking up the crumbs that fall from the rich man's table, or writing legal text-books.

The truth is that life is too short, and the mental and physical constitution of mankind too weak, to stand the pressure of uninterrupted professional labour. Those who fancy that they can devote themselves to law for twelve months in the year, should read Dr. Carpenter's "Mental Physiology" and Dr. Richardson on "Health," and should also regard the examples around them of the necessary effect of unremitting toil —"neque semper arcum tendit Apollo." If we had two existences in this life, and after thirty years of unbroken industry we were allowed thirty years of healthy leisure in which to enjoy the wealth we had earned, the reasonable course would be to give up youth and manhood to severe and protracted labour. But it is not so; and he is most wise who so tempers toil with relaxation as to preserve his mental and bodily vigour to old age.

This admirable result can only be achieved by preserving the physical energy, and cultivating a taste for those bodily exercises which become a man. Wealth, and the highest honours of the profession are earned too dearly, if health is sacrificed in the pursuit. In all times members of the legal profession have been celebrated for their capacity for enjoying their hours of ease after a healthy and rational manner. They are noted for longevity beyond all other classes of industrial society, and they ought not now to be induced by the charms either of congresses or Long Vacation business to destroy the greatest of all blessings—"mens sana in corpore sano."—*London Law Journal.*

SALES BY SAMPLE.

The Supreme Court of Pennsylvania announced a novel rule in the law regarding sales by sample in the case of *Boyd* v. *Wilson*, 83 Penn. St. 319; S. C., 24 Am. Rep. 176. It was therein held that a sale by sample, in the absence of fraud or of circumstances indicating that the sample is to be taken as a standard of quality, implies no warranty of quality, but only that the goods are of the same kind as the sample and merchantable. From this decision Mr. Justice Sherwood dissented.

This decision seems to be well fortified by former decisions in the same State, but we much doubt if it finds support elsewhere.

Mr. Benjamin, in his excellent work on Sales, says, § 648: "Of implied warranties in sale of chattels there are several recognized by law. The first and most general is, that in a sale of goods by sample, the vendor warrants the quality of the bulk to be equal to that of the sample;" and this rule, he says, "is so universally taken for granted that it is hardly necessary to give direct authority for it." The editor of the American edition has added a large number of cases in which this rule is followed.

So in Story on Sales, § 376, in considering the exceptions to the rule *caveat emptor*, it is said: "The next exception is where goods are sold by sample; in which case a warranty is implied that the bulk corresponds to the sample in nature and quality. The exhibition of a sample is equivalent to affirmation that all the goods sold by it are similar, and if they be not, the vendee may rescind the contract."

This rule is so well established that it requires no support by citation of authorities, but its application is a matter that may bear a little illustration.

The mere circumstance that the seller exhibits a sample at the time of the sale will not of itself make it a sale by sample so as to raise an implied warranty as to the quality of the goods. The contract must be made solely with reference to the sample exhibited, and the parties must understand that they are dealing upon the understanding that the bulk corresponds with the sample. *Beirne* v. *Dord*, 5 N.Y. 95; *Hargous* v. *Stone*, id. 73; *Waring* v. *Mason*, 18 Wend. 425; *Cousinery* v. *Pearsall*, 4 N. Y. Supr. 113; *Day* v. *Ragnet*, 14 Minn. 273; *Bradford* v. *Manly*, 13 Mass. 139, per Parker, C. J.

The question whether goods are sold by sample or not is a question of fact. *Andrews* v. *Kneeland*, 6 Cow. 354; *Hargous* v. *Stone*, 5 N. Y. 73.

Where the purchaser has an opportunity to inspect the bulk of the goods, is requested by the seller to examine, and does examine, then it is not a sale by sample and no warranty is implied. Thus, where the goods were hemp in bales, and the purchaser, at the request of the seller, examined several of the bales by cutting them open, and might have examined all of them, it was held not to be a sale by sample, and that no warranty was implied that the interior of the bales corresponded with the exterior. *Salisbury* v. *Stainer*, 19 Wend. 159. See, also, *Kellogg* v. *Barnard*, 6 Blatchf. 279; S. C., 10 Wall. 383; *Hargous* v. *Stone*, 5 N. Y. 73.

In *Hubbard* v. *George*, 49 Ill. 275, where a purchaser of wheat by sample, on the arrival of one car-load hastily examined it, saying, "it will do," it was held that he was not thereby concluded from rejecting loads subsequently arriving under the same contract.

The general rule, however, is, that where goods in several lots are purchased under an entire contract, the purchaser must either accept or reject all or none. *Mansfield* v. *Trigg*, 113 Mass. 350; *Morse* v. *Brackett*, 98 id. 205; *Couston* v. *Chapman*, L. R., 2 Sc. App. 250.

If an inspection is ineffectual from the vendor's fraud or fault it is no inspection. *Heilbutt* v. *Hickson*, L. R., 1 C. P. 438. So, if by a defect not visible to the eye, the article has lost its distinctive character, as in *Josling* v. *Kingsford*, 13 C. B. (N. S.) 447, where the buyer not only inspected the samples, but the bulk, and the vendor said he would not warrant the strength of the "oxalic acid" sold, it was held that the purchaser was not bound to accept, because by adulteration with sulphate of magnesia the article had ceased to be "oxalic acid." And see *Williams* v. *Shafford*, 8 Pick. 250.

But where a sale was by sample of an article which the vendor called seed-barley, but said he did not know what it really was, and the bulk corresponded with the sample, it was held that the buyer took at his own risk, whether it was seed-barley or not. *Carter* v. *Crick*, 4 H. & N. 412.

That the manufacture of an article impliedly warrants it against secret defects arising from the manufacture is settled. *Hoe* v. *Sanborn*, 21 N. Y. 552, and cases cited: *Jones* v. *Just*, L. R., 3 Q. B. 197. So, if a manufacturer agrees to furnish goods according to sample, the sample is to be considered free from any secret defect of manufacture not discoverable on inspection and unknown to both parties. *Heilbutt* v. *Hickson*, L. R. 7 C. P. 438. But there is no implied warranty against a secret defect in both the samples and the goods where the seller is not the manufacturer. *Dickinson* v. *Gay*, 7 Allen, 29.

Where an average sample is exhibited taken from a number of packages by drawing samples from each and mixing them, the purchaser cannot reject any of the packages on the ground that they are inferior to the average; the true test is, whether, if all the packages were mixed together, the quality of the resulting bulk would equal the sample. *Leonard* v. *Fowler*, 44 N. Y. 289.

And a custom may be proved that upon a sale of articles, such, for instance, as berries in bags by sample, the sample represents the average quality of the entire lot. *Schnitzer* v. *Oriental Paint Works*, 114 Mass. 123.

But evidence is not admissible that, by the custom of merchants, there is an implied warranty that goods are not falsely or deceitfully packed. *Barnard* v. *Kellogg*, 10 Wall. 383; and see the American note to *Wigglesworth* v. *Dallison*, 1 Sm. Lead. Cas. Nor can a custom be proved limiting the time of the purchaser to examine and return the goods. *Webster* v. *Granger*, 78 Ill. 230.

The purchaser of goods sold by sample should examine them without delay; and if he finds that they are not conformable to the sample, he may reject them and rescind the contract, giving immediate notice to the vendor. Should the vendor not acquiesce, the purchaser should place the goods in neutral custody and duly apprise the vendor. *Couston* v. *Chapman*, L. R., 2 Sc. App. 250; *Freeman* v. *Clute*, 3 Barb. 424; *Park* v. *Morris, etc., Co.*, 4 Lans. 103.

Or if the vendor refuses to rescind, the purchaser may sell the goods at the best price he can obtain without notice to the vendor of the time and place of sale. *Messmore* v. *N. Y. Shot Co.*, 40 N. Y. 422.

The burden of proof to show that goods correspond with the sample is on the vendor in a suit for their price. *Merriman* v. *Chapman*, 32 Conn. 146.—*Albany Law Journal.*

CURRENT EVENTS.

ENGLAND.

Model Digest.—At the recent Social Science Congress, Mr. H. W. Boyd Mackay, of Exeter, read a paper on a method devised by him for the more perfect formularization of the law. He stated that he had, for many years, been engaged in analyzing the judicial decisions and statutory enactments, with a view to discovering some principle on which the objects generally regarded as *desiderata* might be simultaneously attained, and that he believed he had at last arrived at a solution of this problem. He pointed out that a digest should combine a perfectly scientific character with a perfectly alphabetical form, and should present, in detail, all the material facts of each abstracted case, and yet present them in such a manner as should render it unnecessary for the reader to peruse any of them but those bearing on the matter he might have in hand. In explaining how this purpose might be accomplished, he drew a parallel between law and the natural sciences, and pointed out that a much closer analogy exists between them than is generally suspected, and that this method might be advantageously used for the statement of any branch of science. He also severely animadverted on the waste of energy in the preparation of legal instruments which the present state of the law renders necessary, and expressed an opinion that the clauses which are now usually inserted in such instruments might and ought to be formulated into rules of law, operative under the same circumstances under which they are now adopted as express stipulations. In conclusion, he expressed a hope that the Government would see the wisdom of expending a small portion of the public money on the preparation of a code which should embrace, not only the judiciary and statutory law, but also the common forms of conveyancing; and thereby save the profession the great expenditure of time and energy, and to the public the great expenditure of money, which the present intricate and antiquated state of the law rendered necessary.

IRELAND.

Lord Justice Christian.—The London *Law Times* in commenting upon the retirement of Lord Justice Christian from the bench says:—

The Irish Bench has suffered very heavy loss by the death of Mr. Justice Keogh and the retirement of Lord Justice Christian. The latter learned judge retires with a great reputation; as a lawyer he has adorned the bench, whilst any defects of temper which he has displayed have only become conspicuous when his Lordship has felt called upon to attack what he believed to be abuses. But greatly as his disappearance from the Irish Court of Appeal is to be regretted, it is far better that judges should retire than continue on the bench struggling against physical infirmities.

SCOTLAND.

Sale of Scottish Prisons.—The following prisons in Scotland, which have been closed by the government since the new Prisons Act came into force, were exposed for sale in Dowell's Rooms, George street, last month, at the instance of Donald Beith, solicitor for her Majesty's Board of Works and Public Buildings: Kirkintilloch, upset £120, sold to Mr. Reid, Kirkintilloch, for £140; Pollockshaws, sold to Mr. J. Caldwell at the upset price, £360; Hawick, upset price, £120, sold to the Magistrates of Hawick for £360. Kelso prison was sold privately at £200, the upset price having been £120. The prisons of Helensburgh, Dunbar, Stonehaven, Nairn, Peebles, Tain, and Kinross had been previously sold. Banff prison was exposed at £720, but no offer having been made, the sale was adjourned.—Edinburgh *Law Magazine.*

Criminal Procedure in Scotland.—A correspondent writes in reference to the criminal proceedings in the Glasgow Bank case, that in Scotland the action of the law against persons suspected of crime is swift and decisive. The steps are taken in silence as far as the outside world is concerned, and until the person stands at the bar of the High Court of Justiciary, the world only knows that an arrest has been made, and that a certain crime has been committed; there information ceases. After the arrest of the accused, the judicial examination of the prisoner takes place immediately. Whatever the prisoner says at the time must be said voluntarily, but at this stage of the proceedings he is not permitted to have legal advice. What he says is written down and the writing at the

conclusion signed by the prisoner and magistrate. Two witnesses must be present and attest this declaration. Preparatory to the indicting of the accused, the examining magistrate may cite witnesses. Each witness is examined separately and not in the presence of any of the others. After the examination the prisoner may have legal advice. Fifteen days before the trial the prisoner is entitled to a copy of the indictment, and also to notice of witnesses who are to appear to give evidence against him, and also to a list of the jurors before whom he is to be tried. The prisoner, on the other hand, is bound to give notice of any witnesses he intends to call, twenty-four hours before trial. This is, however, not always enforced. A definite period can be fixed by the prisoner for his trial, irrespective of the sitting of the courts. He may apply for intimation to the public prosecutor, and the person on whose application he was imprisoned, calling on them within the next sixty days to execute an indictment against him, and to bring his trial to a conclusion within forty days thereafter; failing this he is liberated.

FRANCE.

After Vacation.—The *rentrée*, after the summer vacations of the Parisian courts and tribunals of justice, took place on the 4th November, according to the customary ceremonial. After hearing the mass of the Saint Esprit at the Sainte Chapelle, where the Archbishop of Paris officiated, the judges and magistrates proceeded in their robes to their various courts to take part in the *audience solennelle*, the leading feature of which is a learned speech by one of their number on some subject connected with the history or theory of law. M. Dufaure was much remarked as he came out of the Sainte Chapelle, at the head of the bar, walking by the side of the *bâtonnier*, Maitre Nicolet.

GENERAL NOTES

The statistics of divorce actions in Vermont are thus stated in a local paper: "During the year 1876 one hundred and sixty-eight divorces were granted in the State—three less than in 1875—being one divorce to every sixteen marriages. In one hundred and twenty-three cases the wife was the petitioner, and in forty-five the husband. Sixty-six were granted for 'intolerable severity,' eleven for 'refusal to support,' twenty-four for 'adultery,' fifteen for 'desertion.'"

In the United States Circuit Court for North Carolina, during the early part of last month, several interesting questions in relation to arrest were passed upon. The occasion was the trial of a number of Federal deputy marshals for assault and battery in arresting persons engaged in the manufacture of whiskey in violation of the United States revenue law. The officers met certain persons who were transporting in a wagon whiskey without the proper revenue stamps on the barrels. The officers thereupon arrested these persons and for the purpose of preventing them from escaping, hand-cuffed them. The court held that an arrest without the issue of a warrant was right under the circumstances, and that the use of hand-cuffs to prevent escape was lawful. In another case it was decided that the deputy marshal in executing a warrant had a right to call other persons to his assistance, and they, while acting in concert with him, would be entitled to the same protection for their acts as as he would be.

Erskine's Pet Leeches.—"Among the light, trifling topics of conversation after dinner," says Sir Samuel Romilly, "it may be worth while to mention one, as it strongly characterizes Lord Erskine. He has always expressed and felt a strong sympathy with animals. He has talked for years of a bill he was to bring into parliament to prevent cruelty towards them. He always had some favorite animals to whom he has been much attached, and of whom all his acquaintances have a number of anecdotes to relate; a favorite dog, which he used to bring, when he was at the bar, to all consultations; another favorite dog, which, at the time when he was Lord Chancellor, he himself rescued in the street from some boys who were about to kill it under the pretence of its being mad; a favorite goose, which followed him wherever he walked about his grounds; a favorite macaw, and other dumb favorites without number. He told us now that he had got two favorite leeches. He had been blooded by them last autumn when he had been taken

dangerously ill at Portsmouth; they had saved his life, and he had brought them with him to town, had ever since kept them in a glass, had himself every day given them fresh water, and had formed a friendship for them. He said he was sure they both knew him and were grateful to him. He had given them different names, 'Home' and 'Cline' (the names of two celebrated surgeons), their dispositions being quite different. After a good deal of conversation about them, he went himself, brought them out of his library, and placed them in their glass upon the table. It is impossible, however, without the vivacity, the tones, the details and the gestures of Lord Erskine, to give an adequate idea of this singular scene." Amongst the listeners to Erskine, whilst he spoke eloquently and with fervor of the virtue of his two leeches, were the Duke of Norfolk, Lord Grenville, Lord Gray, Lord Holland, Lord Ellenborough, Lord Lauderdale, Lord Henry Petty, and Thomas Grenville.

Diligent in Business.—Whilst he was presiding at the trial of a thief in the Old Bailey, Sir John Sylvester, Recorder of London, said incidentally that he had left his watch at home. The trial ended in an acquittal, the prisoner had no sooner gained his liberty than he hastened to the recorder's house, and sent in word to Lady Sylvester that he was a constable and had been sent from the Old Bailey to fetch her husband's watch. When the recorder returned home and found he had lost his watch, it is to be feared that Lady Sylvester lost her usual equanimity.—*Jeaffreson.*

An Intricate Question, Logically Decided.—Four men in India, partners in business, bought several bales of Indian rugs, and also some cotton bales. That the rats might not destroy the cotton, they purchased a cat. They agreed that each of the four should own a particular part of the cat; and each adorned with beads and other ornaments the leg thus apportioned to him. The cat, by an accident, injured one of her legs. The owner of that member wound around it a bag soaked in oil. The cat, going too near the hearth, set this rag on fire, and being in great pain, rushed in among the cotton bales, where she was accustomed to hunt rats. The cotton and rugs thereby took fire, and they were burned up—a total loss. The three other parties brought a suit to recover the value of the goods destroyed against the fourth partner, who owned this particular leg of the cat. The Judge examined the case, and decided thus:

"The leg that had the oiled rag on it was hurt: the cat could not use that leg; in fact, it held up that leg, and ran with the other three legs. The three unhurt legs, therefore, carried the fire to the cotton, and are alone culpable. The injured leg is not to be blamed. The three partners who owned the three legs with which the cat ran to the cotton will pay the whole value of the bales to the partner who was the proprietor of the injured leg."

An Ingenious Defence.—The *Nonconformist*, in a paragraph on pulpit plagiarism, says that recently a student, after delivering a trial discourse in a Scottish divinity hall, being charged by one of his fellow-students with plagiarism, coolly replied, "I wrote my sermon with inverted commas." "But how," exclaimed his fellow-student, "could your inverted commas be discovered by the Professor?" "Did you not observe," replied the unabashed thief, "that I turned up my tongue twice, in imitation of inverted commas, when I commenced my discourse, and turned down my tongue twice, at the other side of my mouth, when I had finished my sermon?"

Trial by Jury.—The acquittal of Bartley, on the charge of having murdered Serjeant Doré in the County of Beauce, has excited considerable remark. *L'Evénement* publishes the names of the jurymen, all French-Canadians, with their places of residence. It says:—"A verdict like this is a shame and a disgrace, and at the same time a serious warning that the notions of an oath and of duties toward society have become very weak in a considerable portion of the class from which juries are drawn." The *Courrier du Canada* says:—"According to the Court the verdict given in this case is evidently false, and the jury is guilty of perjury, either voluntary or involuntary. The sacredness of an oath is set at naught to-day, and we have proof that in this case one of the jurymen declared that he did not know whether the Holy Scriptures was a good book or not. Ignorance is very great among that population, and the sooner it is deprived of trial by jury the better it will be for the honor of justice."