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LEGAL NEWS.

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CURRENT TOPICS AND CASES.

The Court of Appeal, at Quebec (Nov. 13), in *Tapp & Turner*, had occasion to interpret Art. 1102 of the Code of Procedure, as to which there have been conflicting decisions in the lower courts. Art. 1102 says: "Judgments for sums not exceeding forty dollars can only be executed upon the movable property of the debtor, except," etc. The question did not arise upon the exceptions. The point was whether the words "judgments for sums not exceeding forty dollars" mean judgments where the debt and costs together do not exceed forty dollars. The literal construction of the words of the article might appear, at first sight, to exclude the question of costs, and so the courts at Montreal have held in several cases. See *Jencks Machine Co.* v. *Hood*, 21 R.L. 204, where several decisions are referred to On the other hand, the Quebec courts appear to have held usually that the award of costs being part of the judgment, execution may issue against real property where the debt and costs exceed forty dollars. The Court of Appeal has sustained the latter view, Justices Blanchet and Wurtele dissenting. If the costs, which are awarded by distraction to the

attorney, may be included, of course interest may also be taken into the calculation. So, too, where the action is dismissed with costs which exceed forty dollars, execution may issue at the instance of the defendant against immovables of the plaintiff for such costs.

Ex-president Harrison, in answer to a request from a correspondent as to the possibility of succeeding in the legal profession without following a course at a law school, writes as follows: "Whatever success I have attained at the bar was attained without a course at a law school. I studied law in the office of a leading firm in Cincinnati. That a course of lectures by able professors upon the law, as upon any other subject, is valuable to the student, I do not doubt. But these professors derive their information from books, to which the student has access, and he may grub knowledge for himself if he has the requisite pluck and industry. The observation and casual instruction which a student gets in a law office are of the first value to a practitioner." The experience of Mr. Harrison is no doubt similar to that of thousands of other practitioners, who never had an opportunity of attending a course of law lectures; but he cannot be quoted as adverse to such instruction. He says it is not indispensable where the student has sufficient industry and determination, and this proposition cannot be questioned.

The appeal list for the January term at Montreal contained precisely the same number of cases as that for November—29. Nineteen were appeals from the Montreal district and ten from outside districts. Fifteen cases on the printed list and one case of later date were heard, the other fourteen being continued. The Court has intimated that after the list has been called twice, and all the cases in which the parties are ready to proceed

have been heard, the term will be closed. Under this rule, the Court will decline to fix cases for particular days, when the parties are not ready at the time the cases are called. Such cases go to the foot of the list.

The Supreme Court of Ohio is one of the courts which has great difficulty in keeping pace with the increase of business. Its record last year was a remarkable one, 704 cases having been disposed of, compared with 504 in the previous year. The year, however, closed with 864 cases still undisposed of, as against 978 one year ago.

NEW PUBLICATION.

BLACKSTONE'S COMMENTARIES.—By Wm. Draper Lewis, Ph. D., Dean of the Faculty of the Law Department of the University of Pennsylvania. Rees Welsh & Co., Philadelphia, Publishers, Vol. 1.

This edition of Sir William Blackstone's well-known work has some remarkable features. It is unabridged. Each word, phrase or sentence found in the text of Blackstone, or in the notes, printed in Greek, Latin, Norman French, Italian, etc., as well as maxims and quotations, has been translated into English, and added in the notes upon the particular page where the quotations appear. Then, again, all text-book writers in the United States and England, who have referred to Blackstone in their works, are cited in the foot notes. It is also stated that lawyers will find, in every reported case in the United States, England and Canada, where the judge in rendering his opinion, has quoted Blackstone, the name of the case, date, volume and page are given. From what has been said it will be seen that a vast amount of labor has been expended by the editor in the preparation of the edition, of which Vol. 1 has now been issued. It is in fact a treasure house of learning, as to all that concerns the work of the great English commentator. The notes of former editors have been used, credit being given; but the present editor's own labors have added immensely to the interest and value of the work. We have pleasure in commending so important a publication to the attention of our readers.

QUEEN'S BENCH DIVISION.

LONDON, 25 January, 1897.

In re CHAFFERS. *Ex parte* THE ATTORNEY-GENERAL. (32 L.J.)

Habitual and persistent institution of vexatious legal proceedings.

This was an application by the Attorney-General for an order under the Vexatious Actions Act, 1896, prohibiting the respondent, Alexander Chaffers, from instituting any legal proceedings without leave of the High Court or of some judge of the High Court, on the ground that the respondent had habitually and persistently instituted vexatious legal proceedings within the terms of section 1 of that Act. The facts were set out in two affidavits, in which it was shown that the respondent between January, 1891, and December, 1896, had instituted forty-eight actions against the Lord Chancellor and other judges, the Speaker, officials of the House of Commons, the Solicitors for the Treasury, and the trustees of the British Museum. The actions were mainly brought for slander, conspiracy to defeat justice, assault, refusal to receive a petition to the House of Commons, and wrongful exclusion from the reading-room of the British Museum. The respondent had failed in forty seven actions, and no costs had been obtained for him. In one action he succeeded on a claim for 1*l.* for work done in copying an affidavit for the use of the Solicitor to the Treasury. Another action against a judge was still pending.

The Attorney-General (*Sir R. E. Webster, Q.C.*) and *H. Sutton* supported the motion.

Corrie Grant (assigned by the Court) appeared for the respondent.

The COURT (WRIGHT, J., and BRUCE, J.) held that the Vexatious Actions Act, 1896, though not retrospective in so far as it did not operate upon any past proceedings, clearly applied to a case such as the respondent's, and was plainly intended to prevent similar proceedings in future; and that, looking at the number of the actions, their general character and their results, there was good ground for holding that the respondent had habitually and persistently instituted vexatious legal proceedings.

Order prohibiting the respondent from instituting any legal proceedings either in the High Court or any other Court without leave of the High Court or of a judge thereof.

NEW YORK COURT OF APPEALS.

8th December, 1896.

HARRY C. ADAMS, respondent, *v.* THE NEW JERSEY STEAMBOAT COMPANY, appellant.

Passenger's money stolen from stateroom of steamboat—Liability of steamboat company similar to that of innkeeper.

A steamboat company is liable to a passenger for loss, without negligence on his part, of a sum of money reasonable and proper for him to carry upon his person to defray the expenses of his journey, stolen from his stateroom during the passage; and without any proof of negligence on the part of the company.

The liability of the company, in such a case, as an insurer of the property of its passengers, is similar to that which exists on the part of an innkeeper towards his guests.

Appeal from a judgment of the General Term, First Department, affirming a judgment in favor of the plaintiff.

O'BRIEN, J.—On the night of the 17th of June, 1889, the plaintiff was a cabin passenger from New York to Albany on the defendant's steamer Drew, and for the usual and regular charge was assigned to a stateroom on the boat. The plaintiff's ultimate destination was St. Paul, in the State of Minnesota, and he had upon his person the sum of $160 in money for the purpose of defraying his expenses of the journey. The plaintiff on retiring for the night, left this money in his clothing in the stateroom, having locked the door and fastened the windows. During the night it was stolen by some person who apparently reached it through the window of the room.

The plaintiff's relations to the defendant as a passenger, the loss without negligence on his part, and the other fact that the sum lost was reasonable and proper for him to carry upon his person to defray the expenses of the journey, have all been found by the verdict of the jury in favor of the plaintiff. The appeal presents, therefore, but a single question, and that is, whether the defendant is in law liable for this loss without any proof of negligence on its part. The learned trial judge instructed the jury that it was, and the jury, after passing upon the other questions of fact in the case, rendered a verdict in favor of the plaintiff for the amount of money so stolen. The judgment entered upon the

verdict was affirmed at general term, and that court has allowed an appeal to this court.

The defendant has therefore been held liable as an insurer against the loss which one of its passengers sustained under the circumstances stated. The principle upon which innkeepers are charged by the common law as insurers of the money or personal effects of their guests originated in public policy. It was deemed to be a sound and necessary rule that this class of persons should be subjected to a high degree of responsibility in cases where an extraordinary confidence is, necessarily, reposed in them, and where great temptation to fraud and danger of plunder exists by reason of the peculiar relations of the parties: Story on Bailments, Sec. 464; 2 Kent's Com. 592; *Hulett* v. *Swift*, 33 N. Y. 571. The relations that exist between a steamboat company and its passengers, who have procured staterooms for their comfort during the journey, differ in no essential respect from those that exist between the innkeeper and his guests.

The passenger procures and pays for his room for the same reasons that a guest at an inn does. There are the same opportunities for fraud and plunder on the part of the carrier that was originally supposed to furnish a temptation to the landlord to violate his duty to the guest.

A steamer carrying passengers upon the water, and furnishing them with rooms and entertainment is, for all practical purposes, a floating inn, and hence the duties which the proprietors owe to the passengers in their charge ought to be the same. No good reason is apparent for relaxing the rigid rule of the common law which applies as between innkeeper and guest, since the same considerations of public policy apply to both relations.

The defendant, as a common carrier, would have been liable for the personal baggage of the plaintiff unless the loss was caused by the act of God or the public enemies, and a reasonable sum of money for the payment of his expenses, if carried by the passenger in his trunk, would be included in the liability for loss of baggage: *Merrill* v. *Grinnell*, 30 N. Y. 594; *Merritt* v. *Earl*, 29 N. Y. 115; *Elliott* v. *Russell*, 10 Wend. 7, Brown on Carriers, Sec. 41; Redfield on Carriers, Sec. 24; Angell on Carriers, Sec. 80.

Since all questions of negligence on the part of the plaintiff, as well as those growing out of the claim that some notice was posted in the room regarding the carrier's liability for the money, have

been disposed of by the verdict, it is difficult to give any good reason why the measure of liability should be less for the loss of the money under the circumstances than for the loss of what might be strictly called baggage.

The question involved in this case was very fully and ably discussed in the case of *Crozier* v. *Boston, N. Y. & Newport Steamboat Company*, 43 How. Pr. 466, and in *Macklin* v. *New Jersey Steamboat Company*, 7 Abb. Pr. 229. The liability of the carrier in such cases as an insurer seems to have been very clearly demonstrated in the opinion of the court in both actions upon reason, public policy and judicial authority. It appears from a copy of the remittitur attached to the brief of plaintiff's counsel that the judgment in the latter case was affirmed in this court, though it seems that the case was not reported.

It was held in *Carpenter* v. *N.Y., N. H. & H. R. RR. Co.*, 124 N. Y. 53, that a railroad running sleeping coaches on its road was not liable for the loss of money taken from a passenger while in his berth, during the night without some proof of negligence on its part. That case does not, we think, control the question now under consideration. Sleeping car companies are neither innkeepers nor carriers. A berth in a sleeping car is a convenience of modern origin, and the rules of the common law in regard to carriers or innkeepers have not been extended to this new relation.

This class of conveyances are attached to the regular trains upon railroads for the purpose of furnishing extra accommodations, not to the public at large nor to all the passengers, but to that limited number who wish to pay for them. The contract for transportation and liability for loss of baggage is with the railroad, and real carrier. All the relations of passenger and carrier are established by the contract implied in the purchase of the regular railroad ticket, and the sleeping car is but an adjunct to it only for such of the passengers as wish to pay an additional charge for the comfort and luxury of a special apartment in a special car. The relations of the carrier to a passenger occupying one of these berths are quite different with respect to his personal effects from those which exist at common law between the innkeeper and his guest, or a steamboat company that has taken entire charge of the traveller by assigning to him a stateroom.

While the company running sleeping cars is held to a high

degree of care in such cases, it is not liable for a loss of this character without some proof of negligence. The liability as insurers which the common law imposed upon carriers and innkeepers has not been extended to these modern appliances for personal comfort, for reasons that are stated quite fully in the adjudged cases and that do not apply in the case at bar: Ulrich *v.* N. Y. C. & H. R. RR. Co., 108 N. Y. 80; Pullman Co. *v.* Smith, 73 Ill. 360; Woodruff Co. *v.* Diehl, 84 Md. 474; Lewis *v.* R. R. Co., 143 Mass. 267.

But aside from authority, it is quite obvious that the passenger has no right to expect, and in fact does not expect, the same degree of security from thieves while in an open berth in a car on a railroad as in a stateroom of a steamboat, securely locked and otherwise guarded from intrusion. In the latter case, when he retires for the night, he ought to be able to rely upon the company for his protection with the same faith that the guest can rely upon the protection of the innkeeper, since the two relations are quite analogous. In the former the contract and the relations of the parties differ at least to such an extent as to justify some modification of the common law rule of responsibility.

The use of sleeping cars by passengers in modern times created relations between the parties to the contract that were unknown to the common law, and to which the rule of absolute responsibility could not be applied without great injustice in many cases. But in the case at bar no good reason is perceived for relaxing the ancient rule and none can be deduced from the authorities. The relations that exist between the carrier and the passenger who secures a berth in a sleeping car or in a drawing-room car upon a railroad are exceptional and peculiar. The contract which gives the passenger the right to occupy a berth or a seat does not alone secure to him the right of transportation. It simply gives him the right to enjoy special accommodations at a specified place in the train.

The carrier by railroad does not undertake to insure the personal effects of the passenger which are carried upon his person against depredation by thieves. It is bound, no doubt, to use due care to protect the passenger in this respect, and it might well be held to a higher degree of care when it assigns sleeping berths to passengers for an extra compensation than in cases where they remain in the ordinary coaches in a condition to pro-

tect themselves. But it is only upon the ground of negligence that the railroad company can be held liable to the passenger for money stolen from his person during the journey. The ground of the responsibility is the same as to all the passengers, whether they use sleeping berths or not, though the degree of care required may be different.

Some proof must be given that the carrier failed to perform the duty of protection to the passenger that is implied in the contract before the question of responsibility can arise, whether the passenger be in one of the sleeping berths or in a seat in the ordinary car. The principle upon which the responsibility rests is the same in either case, though the degree of care to which the carrier is held may be different. That must be measured by the danger to which the passenger is exposed from thieves and with reference to all the circumstances of the case. The carrier of passengers by railroad, whether the passenger be assigned to the ordinary coaches or to a berth in a special car, has never been held to that high degree of responsibility that governs the relations of innkeeper and guest, and it would perhaps be unjust to so extend the liability when the nature and character of the duties which it assumes are considered.

But the traveller who pays for his passage, and engages a room in one of the modern floating palaces that cross the sea or navigate the interior waters of the country, establishes legal relations with the carrier that cannot well be distinguished from those that exist between the hotel keeper and his guests. The carrier in that case undertakes to provide for all his wants, including a private room for his exclusive use, which is to be as free from all intrusion as that assigned to the guest at a hotel. The two relations, if not identical, bear such close analogy to each other that the same rule of responsibility should govern.

We are of the opinion, therefore, that the defendant was properly held liable in this case for the money stolen from the plaintiff, without any proof of negligence.

The judgment should be affirmed.

All concur.

WHAT CONSTITUTES A VALID MARRIAGE?

In a case recently decided by the Supreme Court of Minnesota—*In re estate of N. Hulett*, Mitchell, J., expressed himself as follows as to what constitutes a valid marriage:—

The respondent had been for a long time prior to the execution of the marriage contract in the employment of Hulett as housekeeper, at his farm at Stoney Point, some miles out of the city of Duluth. Her testimony is that immediately after the execution of this contract she moved into his room, and that from henceforth until his death they occupied the same sleeping apartment, and cohabited together as husband and wife. But she admits that it was agreed between them that their marriage was to be kept secret until they could move into Duluth and go to housekeeping, in a house which Hulett owned in that city. While a feeble effort was made to prove that their marital relation had become known to one or two persons, yet we consider the evidence conclusive that their marriage contract was kept secret; that they never publicly assumed marital relations or held themselves out to the public as husband and wife, but, on the contrary, conducted themselves so as to leave the public under the impression that their former relations of employer and housekeeper remained unchanged. Upon this state of facts the contention of the appellants is that there was no marriage, notwithstanding the execution by them of the written contract; that in order to constitute a valid common-law marriage the contract, although *in verba de presenti*, must be followed by habit or reputation of marriage, that is, as we understand counsel, by the public assumption of marital relations.

We do not so understand the law. The law views marriage as being merely a civil contract, not differing from any other contract, except that it is not revocable or dissoluble at the will of the parties. The essence of the contract of marriage is the consent of the parties, as in the case of any other contract, and whenever there is a present perfect consent to be husband and wife the contract of marriage is completed. The authorities are practically unanimous to this effect. Marriage is a civil contract *jure gentium* to the validity of which the consent of parties able to contract is all that is required by natural or public law. If the contract is made *per verba de presenti* and remains without cohabitation, or if made *per verba de futuro* and be followed by

consummation, it amounts to a valid marriage in the absence of any civil regulations to the contrary. (2 Kent Com. p. 87; 2 Greenl. Ev. sec. 460; 1 Bishop, Mar. & Div. secs. 218, 227, 228, 229). The maxim of the civil law was "*consensus non concubitues facit matrimonium.*"

The whole law on the subject is that to render competent parties husband and wife they must, and need only, agree in the present tense to be such, no time being contemplated to elapse before the assumption of the status If cohabitation follows it adds nothing in law, although it may be evidence of marriage. It is mutual present consent lawfully expressed which makes the marriage. (1 Bish. Mar. Div. & Sep. secs. 239, 313, 315, 317.)

See, also, the leading case of *Dalrymple* v. *Dalrymple* (2 Hazzard Rep. 54), which is the foundation of much of the law on the subject. An agreement to keep the marriage secret does not invalidate it, although the fact of secrecy might be evidence that no marriage ever took place. (*Dalrymple* v. *Dalrymple*, *supra*.)

The only two cases which we have found in which anything to the contrary was actually decided, are: *Regina* v. *Millis*, 10 Cl. & F. 534, and *Jewell* v. *Jewell*, 1 Hun (U.S.) 219, the court in each case being equally divided. But these cases have never been recognized as the law, either in England or in this country.

KLEPTOMANIA.

In a paper read at the Congress of Criminal Anthropology by Prof. Lacassagne, corresponding member of the Medico Legal Society, and editor of the Journal of Criminal Anthropology, of Lyons, France, the writer divides the women thieves called kleptomaniacs into three categories. The 'collectioneuses,' who steal without need, merely for the pleasure of possessing, are the first. Then come the 'deséquilébrées,' whose minds have not a perfect poise. The greater part of these are rich women. Many of them, after yielding to the first few impulses to steal, become decided thieves and utterly incapable of resisting temptation.

He mentioned one such woman as having purchased goods to the amount of 200 francs in a Paris shop. Passing out of the store she stole a sponge valued at twelve sous. On another occasion the same woman made some large purchases, and then stole a fifteen cent pocketbook to give to her cook.

The third category of these women thieves comprises those who are really mentally diseased, and who steal without having the slightest idea of what they are doing.

For all these women thieves Dr. Lacassagne invokes the indulgence of the courts. But he is of the opinion that it would be better to prevent than to punish. In the resolution which he presented for the consideration of the congress he said: 'The great stores are veritable provokers of special thefts. They constitute a real danger for feeble or sickly persons. A great many women who would not steal elsewhere here find themselves fascinated and overwhelmed with a desire to appropriate small articles within their reach. It is a temptation that is truly diabolic, for the chances of detection are minimized at certain hours during the day when the stores are crowded, and each clerk has many customers waiting to be served, these meanwhile handling the goods that lie upon the counters.

The best method of preventing these women from becoming thieves would be, he says, to station at each counter an officer of the law, not in ordinary dress like the rest of the customers, but in a uniform as conspicuous and noticeable as possible. If a gendarme was placed at each counter there would be no more thefts. Women steal in these places because they believe that they can do so without being detected.

Dr. Lacassagne also indorsed the rule of some stores that no known kleptomaniacs should be admitted, and suggested that it would be an excellent provision if this rule should be made general, and if minors, unaccompanied, should also be excluded.

"The kleptomaniacs," he said, "steal only in the great stores, in which places the surroundings are all provocative of theft. The articles of merchandise are so arranged as to excite the covetousness of the visitor, for the customer, merchants know well, must be fascinated and her desires excited by the lavish display of rich goods.

"These excitants of the senses might be called the *aperitifs* of crime, for as absinthe or vermouth stimulates the appetite for food, so do heaped-up counters whet the feminine greed for possession. The strongest willed of women will yield by expending more than she in her sober moments has set aside for her wants. But who can measure the force which draws on and overmasters the feebler or degenerate minds?

"In London the police and the great stores have a list of people known to be kleptomaniacs—all of whom are people of wealth—about eight or ten hundred in number. When a merchant finds that he has lost something by theft, he ascertains the names of those of his kleptomaniac clients who have visited his place within the previous day or so, and to each of these he sends a circular requesting that they forward to him at once the missing article in question or the price. The kleptomaniac does not remember whether she has stolen or not; she pays at once, therefore, to ease her awakened conscience. It so happens, therefore, that for the same theft as many as ten families will indemnify one of these great stores."

In the discussion that followed Prof. Lacassagne's paper, Motet, the distinguished French alienist, said:

"It is possible for us to draw the line between the kleptomaniac and the shoplifter, if we know the value of the object stolen. The professional thieves scorn all articles save those of some value, but the true kleptomaniac picks up things of trifling cost in comparison. When detected they say with undoubted sincerity, 'It seemed to me as if everything belonged to me—I might have taken all.'

"These thieves are the mentally unbalanced, whose minds are slightly touched by disease. Here the intervention of medicine is legitimate. We have asked many times for a law compelling the appointment of inspectors in the great stores, whose business it shall be to deter by their presence all attempts or even thoughts of theft on the part of these kleptomaniacs."

The following resolution was finally adopted by the congress: "The Congress of Criminal Anthropology, considering that theft in the great stores and grand bazaars is a new crime of a particular character, sui generis, resulting from a combination of circumstances artificially constituted, among which may be cited the means employed to tempt the public, the facilities which are given to hold for a length of time in the hands the articles put on sale, and, above all, the absence of an efficacious protection or surveillance, make the following recommendation: That the great magasins and houses of commerce in which the public is permitted to circulate freely, should be the subject of special police regulation, with a view of diminishing the possibility of the commission of these thefts."

ESTOPPEL BY TAKING A BENEFIT.

If there is one point more clearly settled than another on the thorny subject of estoppels, it is that the judgment of a Court of record is conclusive between the same parties. The rule is thus laid down in the *Duchess of Kingston's Case;* and in Buller's 'Nisi Prius' the reason is stated to be that 'the verdict ought to be between the same parties, because otherwise a man might be bound by a decision who had not the liberty to cross-examine.' If authority on the point be sought in the domain of legal maxim, it is found in the saying 'Res inter alios acta alteri nocere non debet.' But sometimes a man may be estopped, not indeed by a judgment to which he was not a party, but by his conduct when and after the judgment came to his knowledge. A good instance of this is found in the recent case of *In re Lart; Wilkinson* v. *Blades*, 65 Law J. Rep. Chanc. 846, in which a man who was not bound by a judgment delivered in a former action to which he had not been made a party, but who had been aware of the judgment at the time when it was delivered and had received and retained a fund which it put into his pocket, was estopped, when identical circumstances subsequently arose, from reopening any of the questions which that judgment covered by taking proceedings relating to another fund arising under the same will; even though the new claim was made in respect of a different interest. The nearest analogy which could be found was in the practice of the Probate Division, in which when a will is disputed, and an interested party does not intervene, he is bound by the proceedings although he was not a party to them. To quote Lord Penzance's language in *Wytcherley* v. *Andrews*, such a party cannot complaim if, knowing what was passing, he has been content to stand by and see his battle fought by somebody else in the same interest. And since *Wytcherley* v. *Andrews* was decided provision has been made by Rules of Court for enabling those who have an interest in an action to be added as parties. From his knowledge of the facts, and more especially from the circumstance that he took the money, the plaintiff in *In re Lart* seems to have been really, though not technically, 'privy' to the judgment which he afterwards complained of. The case is a curious one from the apparent absence of direct authority on the point.—*Law Journal.*

"*SURPLUS ASSETS.*"

Phrases often get currency without being understood, legal phrases especially, and 'surplus assets' is one of them. The reason is the invincible indolence of the human mind, which will not undergo the fatigue of analysing or testing the truth of language unless there is something at stake which makes it worth while to do so. The stake in the *New Transvaal Company* did make it worth while. On one construction of 'surplus assets' the holders of the founders' shares in the company stood to win 18,000*l.* on the 200 shares, for which they had paid 1*l.* each. On the other construction, they would get some 18*s.* 6*d.* per share. The question on which this large cash difference turned was whether the property of the company remaining after payment of outside debts and liabilities only was distributable as 'surplus assets,' or whether the paid-up capital also must be returned before a surplus was arrived at. To some extent it was a question of the company's articles, but at bottom it was one of principle. If a company's paid-up capital is a debt due from the company to its shareholders, then it must be paid—of course, after outside creditors have been first satisfied—like any other debt of the company, and till it is so paid there can be no surplus. This seems the true view, and a sound view. A trading company is a corporate person, to whom the shareholders lend their money, that it may be employed for the acquisition of gain on the objects stated in the company's memorandum. The shareholders set the company up in business and then get paid a rate of interest varying with the profits. This is not only the theory of the thing, but the practical outcome. Shareholders are investors and dividend-drawers, not in any true sense parties managing a business.—*Ib.*

GENERAL NOTES.

Form of Oath.—The West Riding magistrates in the Leeds division have decided to accept the Scottish form of oath. In announcing the decision of the magistrates the chairman, Mr. Benson Jowett, said it had been pointed out in some recent letters and articles in the *Times* that in no country in Europe

except England was the superstitious form of kissing the book observed. He took occasion to express his own opinion that it was a somewhat uncleanly thing to kiss a book not always over-clean by lips which sometimes merited the same description. It certainly was not sanitary to perform an act which might transmit, and in many cases had transmitted, dangerous infections and even loathsome diseases. There was much more impressiveness too, about the Scottish form of oath. On behalf of the constabulary the decision to adopt the Scottish form was also announced.

QUALIFIED PRIVILEGE.—Mr. Blake Odgers, Q.C., in his fifth lecture on The Law of Libel, under the new scheme of the Council of Legal Education, delivered at the Middle Temple Hall, dealt with "Qualified Privilege." Every fair and accurate report of any proceeding in a Court of law was privileged, unless the Court has itself prohibited the publication, or the subject matter of the trial was unfit for publication. That was so even where an application was made to the Court *ex parte*. All comment must be reserved till the trial was over. Similarly, a fair and accurate report of any proceeding in either House of Parliament was privileged, although it contained matter defamatory of an individual. At one time, only proceedings of a public meeting were privileged at common law. The lecturer referred to the decision of the Court of Appeal in *Purcell* v. *Sowler*, and the Newspaper Libel and Registration Act. The Law of Libel Amendment Act, 1888, defined "public meeting" to mean any meeting *bonâ fide* and lawfully held for a lawful purpose and for the furtherance or discussion of any matter of public concern, whether the admission thereto be general or restricted. The next question discussed was malice. Dr. Blake Odgers said that, as soon as the judge ruled that the occasion was privileged, the plaintiff had to prove malice. Malice did not mean malice in law, a term in pleading, but actual malice, a wrong feeling in a man's mind. It might be proved by extrinsic evidence, showing that there were former disputes or ill-feeling between the parties, or other libels or slanders published by the defendant or the plaintiff. Or it might be proved by intrinsic evidence, such as the unwarranted violence of defendant's language, or the unnecessary extent given to the publication.