THE

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CURRENT TOPICS.

During the vacation the retirement of a judge of the Superior Court has taken place, and also the death of an ex-judge. Mr. Justice Brooks, of Sherbrooke, whose retirement from the Bench occurred about two years ago, died on the 5th August, from apoplexy. The deceased was born in 1830, and was admitted to the Bar in 1854. In 1875 he was made a Queen's Counsel. In that year he was *bâtonnier* of the Bar of St. Francis district. In 1882 he was appointed judge of the Superior Court for the St. Francis district, and he retained this office until he was obliged to retire, in 1895, owing to ill-health. Mr. Justice Brooks as an advocate made his mark, and enjoyed a large practice. On his elevation to the Bench he had to deal with the business presenting itself in a large and growing community, and which taxed his strength to the utmost extent. Many of his decisions have appeared in the pages of this journal, and for the most part we think they will be found well considered and correct in the conclusions arrived at. As a judge the deceased was highly esteemed by the Bar, for his courtesy and careful attention to the arguments of counsel, and in private life he enjoyed the respect and consideration of his fellow-citizens.

A change on the Bench of the Superior Court has been caused by the retirement of Mr. Justice Malhiot, of the Ottawa district, who was unhappily obliged to retire owing to the loss of his sight. Judge Malhiot's sight has been failing for several years, and some time ago he visited Paris to consult specialists, but without success. The judge will have the sympathy of the Bar in the affliction which has befallen him.

Mr. Justice Malhiot's place has been filled by Mr. J. Lavergne, law partner of Sir Wilfred Laurier, the Premier of Canada. Mr. Lavergne was called to the Bar in 1872, and has practised in the district of Arthabaska.

An illustration of the expedition with which a case may pass through all the courts, including the final appeal to the Privy Council, is afforded by *City of Montreal* and *Standard Light & Power Co.*, reported in the present issue. The judgment of their Lordships of the Privy Council was rendered on the 3rd August, 1897, and, as will be observed by the opening remarks of Lord Macnaghten, who rendered the judgment, the incidents which led to the litigation occurred on the 10th September preceding. The judgment of Acting Chief Justice Tait was rendered on the 21st September, 1896, and the judgment of the Court of Queen's Bench, affirming the decision, on the 3rd October. This case shows that in the matter of expeditious administration of justice, the province of Quebec takes a very high place.

The second meeting of the Canadian Bar Association was held at Halifax on August 31. The president, Hon. J. E. Robidoux, Q.C., delivered an address. The meeting was well attended. Several of the judges of Nova Scotia were present during part of the sittings.

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

LONDON, 31 July, 1897.

PRESENT:—LORD MACNAGHTEN, LORD MORRIS, SIR RICHARD COUCH, SIR HENRY STRONG.

DAME CHARLOTTE DE HERTEL (opposant in first instance), appellant, & DAME EMILY C. GODDARD ET AL. (intervenants continuing suit in first instance), respondents.

Will—Interpretation—Substitution—Suspension by condition.

C. devised certain real estate to R., and after R's death to R's two daughters, M. and A., and to her niece T., conjointly and in equal shares, to be enjoyed by them during their natural life, and after their decease to their children respectively, in full and entire property, share and share alike. If two of the three persons named above should die without children the property was to go and belong to the child or children of the survivor. R. received the property and enjoyed it until her death, when M., A. & T. received it and enjoyed it jointly until the death of M. without children, and then A. and T. continued to enjoy the whole until A. also died without issue. One half of the share of M. (one-sixth of the whole) was now claimed, on the one hand, by the child of T. as her heir, and, on the other hand, by the universal legatee of A.

HELD (*affirming the judgment of the Court of Queen's Bench, Montreal, which affirmed the judgment of the Court of Review, Montreal, R. J. Q., 8 C. S. 72*):—*The will did not create, as between M., A. and T., a gradual substitution, under which the share of any one of them dying without issue would pass to the other two, and upon the death of a second of them, also without issue, the whole would vest in the third; but on the death of M. any further substitution of her share created by the will remained suspended, pending the fulfilment of the condition upon which it was made dependent, namely, that two of the three persons, M., A. and T., substitutes in the first degree, should die leaving no children, which further substitution only took effect upon the fulfilment of the condition by the death of A. without children. Hence no portion of the share of M. ever passed to or was vested in A. as substitute in the second degree, and she was unable to transmit it by her will.*

The appeal was from a judgment of the Court of Queen's Bench, Montreal, 25 February, 1896, affirming a judgment of the Court of Review, Montreal, 19 June, 1895, reported in R.J.Q., 8 C.S. 72. The judgment of the Court of Review reversed the decision of the Superior Court, Montreal, Archibald, J., 8 June, 1894, reported in R.J.Q., 6 C.S. 101.

LORD MACNAGHTEN:—

Having regard to the law of the province of Quebec in refer-

ence to substitutions created by will, a question now arises as to the meaning and effect of a devise in the will of the late William Plenderleath Christie who died in 1845.

The devise is in the following terms:

"I.....devise .....to.....Katherine Robertson of Montreal, " widow, during her natural life, and after her decease to her " daughters Mary and Amelia Robertson and to her niece Mary " Elizabeth Tunstall, conjointly and in equal shares, to be enjoyed " by them during their natural life and after their decease to " their children respectively born in lawful wedlock, in full and " entire property, share and share alike.....the seigniory de Lery " .....in the.....Province of Canada.....I desire if two of the " three persons Mary Robertson, Amelia Robertson, and Mary " Elizabeth Tunstall shall die without such children that.....the " seigniory.....shall go and belong to the child or children of the " survivor in full and entire property." And the testator then directed that if all three—Mary Robertson, Amelia Robertson, and Mary Elizabeth Tunstall—should die without such child or children, the seigniory should be sold and the proceeds divided between certain religious societies named in the will.

Katherine Robertson, the mother of Mary and Amelia Robertson and the aunt of Mary Elizabeth Tunstall, survived the testator and died in 1858.

Mary Robertson died, without having been married, in 1876.

Amelia Robertson died, without having been married, in February, 1891.

Mary Elizabeth Tunstall, the survivor of the three substitutes in the first degree, married one Edward Roe, and died in October 1891, leaving an only child, Alfred Edward Roe, who is now dead.

The appellant is the representative of Amelia Robertson. In her right the appellant claims to be entitled to one moiety of the share given to Mary Robertson for life, or in other words to one sixth of the whole estate.

The respondents, who represent Alfred Edward Roe, maintain that on the death of Mary Elizabeth Tunstall, the estate in its entirety devolved on her only child Alfred Edward Roe.

It is not disputed that the French law in force in the Province at the time of the cession of the country prohibited more than three degrees in substitutions created by will. The law as declared in the Civil Code of Lower Canada is to the same effect.

Article 932 provides that substitutions created by will "cannot extend to more than two degrees exclusive of the institute." That article however appears to be marked as new law. And the learned counsel for the respondents intimated that they were prepared to argue that at the time when the will came into operation there was no restriction on the number of degrees in substitutions created by will. The contention which they proposed to raise was that during the interval between the commencement of the Act of 1801 (41 George III. cap. 4) and the 1st of August, 1866, when the Civil Code came into force, there was unlimited freedom of disposition by will. But their lordships did not think it necessary to embark in so far reaching an inquiry in the present case.

Assuming for the purpose of the argument that only three degrees of substitution were permissible by law at the time when the testator's will came into operation, how many degrees are to be reckoned in the transmission of the estate from the testator to Alfred Edward Roe in regard to the share of Mary Robertson? From Katherine Robertson, the institute, to Mary Robertson is one degree. From Mary Robertson to Alfred Edward Roe, apparently, is not more than one degree. The learned counsel for the appellant however discover another degree in the interval between the death of Mary Robertson without issue, and the opening of the succession in favour of Alfred Edward Roe. They contend that on the death of Mary Robertson without issue, the share given to her for life passed by tacit substitution to Amelia Robertson and Mary Elizabeth Tunstall in equal shares.

It is certainly not unusual in the case of a gift to a class, the members of which are to take for life with remainder to their children, to find the benefit of survivorship attached to the gift in the event of one or more of the members of the class dying without issue. Often that is a very proper provision. It is one likely enough to commend itself to a person about to dispose of his property by will if it does not defeat or interfere with some object he has in view. But you cannot introduce it by mere conjecture. There must be either express declaration or necessary implication. Here there is neither the one nor the other. The case is very different from those cases on English wills to which Mr. Blake referred, where cross remainders must be implied in order to effectuate the testator's declared intention that the estate is to go over in its entirety. Here the appellant

desires that the share given to Mary Robertson should in the course of its devolution pass to the other two ladies in order that that portion of the estate may never reach its destination. There are two roads. One is blocked by the law which says that the journey must be completed in three stages if it is to be completed at all. Neither expressly nor yet by implication does the testator direct that road to be taken. The other fulfils all the conditions of the will. No doubt it involves a halt at one point of the journey. But that creates no difficulty. There is no intestacy. The law itself provides for the interval without suggesting that the provision is to count as a degree in the substitution. Article 963, which is admitted to be old law, declares that "if by reason of a pending condition or some other dis- "position of the will, the opening of the substitution do not take "place immediately upon the death of the institute"—that is in the present case upon the death of Mary Robertson who became the institute in regard to the substitute who came next—"his "heirs and legatees continue until the opening to exercise his "rights and remain liable for his obligations."

In the course of the argument some faint reliance was placed on the word "conjointly" in the gift to the three ladies, as pointing to accretion. But the word "conjointly" is not inapplicable to a gift of property in equal shares so long as the property remains undivided. It may perhaps be inferred from the use of the word in the gift to the three and its absence in the gift to their children, that the testator desired to indicate that there was to be no partition before the property reached its final destination. However that may be, the word "conjointly" cannot neutralise or control the plain meaning of the words "in equal shares" by which it is immediately followed.

Their lordships therefore have no hesitation in expressing their concurrence in the judgment of the Court of Queen's Bench, which affirmed the decision of the majority of the Court of Review reversing the conclusion of the Superior Court.

Their lordships will humbly advise Her Majesty that the appeal ought to be dismissed. The appellant will pay the costs of the appeal.

Appeal dismissed.

Hon. Edward Blake, Q.C., and *A. G. Cross* (both of the Canadian Bar) for the appellant.

Haldane, Q.C., and *Hon. C. A. Geoffrion, Q.C.*, and *E. Lafleur* (of the Canadian Bar) for the respondent.

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

LONDON, 3 August, 1897.

PRESENT:—LORD MACNAGHTEN, LORD MORRIS, SIR RICHARD COUCH, SIR HENRY STRONG.

CITY OF MONTREAL (respondent in Superior Court), appellant, and STANDARD LIGHT & POWER CO. (petitioner in Superior Court), respondent.

Statute, Interpretation of—55-56 *Vict.* (*Q.*) *ch.* 77—*Legislative powers*—*Interference with municipal control of streets.*

HELD (*affirming the judgment of the Court of Queen's Bench, Montreal, R.J. Q.*, 5 *B.R.* 558, 577, *which affirmed the judgment of Tait, A.C.J., R. J. Q.*, 10 *C. S.* 209):—*Where the terms of a statute express the intention of the legislature with sufficient clearness the Court will not consider the reason of the law, nor interfere with its execution on the ground of the inconvenience and danger to the public which may result therefrom.*

The terms of the Act, 55-56 *Vict.* (*Q.*) *ch.* 77, *as amended by* 56 *Viet., ch.* 73, *are sufficiently clear and positive to authorize the St. Henri Light & Power Company to lay wires underground in the streets of Montreal, and to open the streets for that purpose without first obtaining the consent of the municipal authorities, and such enactment was within the competence of the legislature.*

The judgment appealed from was rendered by the Court of Queen's Bench sitting in appeal at Montreal, 3rd October, 1896, and affirmed the judgment of the Superior Court, Montreal, Tait, A.C.J., 21st September, 1896. The first judgment is reported in R.J.Q., 10 C.S. 209, and the judgment of the Queen's Bench in R.J.Q., 5 B.R. 558, 577.

LORD MACNAGHTEN:—

On the 10th of September, 1896, about half-past two o'clock in the afternoon, workmen in the employ of the respondent company or their contractors broke up the surface of St. Antoine Street in the City of Montreal, and began to excavate the soil for the purpose of laying underground wires along the street.

In the course of the same afternoon the city surveyor and the police officials, acting as was admitted under instructions from the municipal council of the city, interfered by force and compelled the men employed to abandon their operations.

On the following day, the 11th of September, the respondents filed their petition in the Superior Court praying for an injunc-

tion to restrain the city from interfering with their contractors and workmen.

After some interlocutory proceedings Mr. Justice Tait granted an injunction on the 21st of September subject to a temporary suspension of the order.

The city immediately appealed to the Court of Queen's Bench for Lower Canada.

The appeal came on to be heard on the 25th of September, and on the 3rd of October the Court delivered an unanimous judgment dismissing the appeal with costs. From that decision the present appeal has been brought.

Their lordships have before them the reasons of Tait, J., and the opinions of Sir Alex. Lacoste, C.J., and Wurtele, J., in which the other learned judges concurred. They agree entirely in the conclusion at which the provincial courts arrived and the reasons assigned for that conclusion.

The respondents were incorporated in 1892 under the name of The St. Henri Light and Power Company by the Act 55 & 56 Vict. ch. 77. It is only necessary to refer to four sections in this Act. Section 5 empowers the company to manufacture and deal in electricity, gas and other illuminants, and proceeds to declare that the company "may lay its wires.....underground "as the same may be necessary, and in so many streets, squares, "highways, lanes and public places as may be deemed neces- "sary for the purposes of supplying electricity and gas for "light, power, and heating, the whole however without doing any "unnecessary damage and providing all proper facilities for free "passage through the said streets, squares, highways, lanes, and "public places while the works are in progress."

Section 6, which has been replaced by a more elaborate enactment, empowered the company to erect posts and supports for conducting their wires overhead.

Section 18, which is still in force, is in the following terms:—

"18. Before commencing the laying of wires or pipes or the "erection of waterways the company shall make a report to the "Commissioners of Agriculture and Public Works of the Pro- "vince, of such works, and shall send a copy thereof to the coun- "cil of the municipality in which such works are so projected."

Section 25, which is now repealed, declared that "the Company "may only exercise the privileges conferred upon it by the "present Act upon complying with the rules and regulations

" which exist or may be hereafter adopted by the municipal " authorities on the subject."

The Act of 1892 was shortly afterwards amended by the Act 56 Vict., cap. 73, which received the Royal assent on the 27th of February 1893. By that Act the name of the company was changed to the Standard Light and Power Company.

Section 25 of the Act of 1892 was repealed altogether, and section 6 was replaced by an enactment which contains a proviso in the following terms :—

"The municipal council in all cities, towns or incorporated " villages, if they deem necessary, shall have the right to over- " see and prescribe the manner in which.....streets, roads and " highways shall be opened.....for the placing of wires under- " ground."

The combined effect of the two Acts therefore is that having made the report required by section 18 of the Act of 1892, and having sent a copy thereof to the council of the municipality in which the proposed works are projected, the company becomes entitled to lay its wires subject to the right of the municipal council if they deem it necessary to oversee and prescribe the manner in which the streets are to be opened for the placing of the wires underground, and subject of course to the general provisions enacted by the legislature for the convenience and safety of the public.

On the 15th of May, 1896, the company sent to the municipal council a notification referring to the right of supervision reserved to the municipality, and intimating that they intended to exercise the powers conferred upon them for laying underground wires for the purpose of conveying electricity through or along certain streets in the City of Montreal, including St. Antoine Street.

On the 22nd of August, 1896, the company duly made a report to the Commissioners of Agriculture and of Public Works of the works they proposed to commence in the City of Montreal, with a plan annexed, and on the 24th of August they sent a copy of the report and plan to the municipal council requiring them within ten days to prescribe the manner in which the streets mentioned in the report were to be opened, and stating that in case of default they would proceed with the works, taking all due precautions, and would lay their wires underground, according to the report, without doing any unnecessary damage and

providing all proper facilities for free passage while the works were in progress.

No notice whatever was taken of this communication, and so on the 10th of September the works were commenced, and then the proceedings took place which led to this litigation.

Their lordships are unable to find any justification in law for the action of the appellants. The language of the legislature is too plain to leave room for argument. The appellants indeed contend that it is hardly possible to conceive that the legislature could have meant to confer such extraordinary powers upon a mere trading company as to authorize them at their will and pleasure to interfere with public streets, the care of which is committed to the municipality, and they suggest that section 5 of the Act of 1892 may be construed as defining the objects of the company, and enabling them to lay down their wires provided they first obtain the consent of the city. It is true that the section does not in express terms authorize the company to open streets, but that power is plainly involved in the authority given to them to lay their wires underground, and it is impossible to read section 25 of the Act of 1892 without seeing that section 5 confers upon the company powers and privileges which but for section 25 they would have been at liberty to exercise without interference from any quarter.

Then it was argued that the company were bound to give the municipality reasonable time for considering their plans, and it was urged that a period of 10 days was much too short a notice for a great municipal body which must necessarily proceed in a somewhat leisurely fashion. Regular councils it was said were only held once a month, and although a special council could be summoned at two days' notice the respondents could hardly expect the municipal council of the city of Montreal to depart from their ordinary course for their convenience. There is however nothing to be found in the Act justifying the position taken up by the municipality, and considering that as early as May the company gave formal notice that they intended to exercise their powers, although certainly the notice was not one which the municipal council were bound to recognize, it is plain that provision might easily have been made for the emergency even if the council could not bring themselves to summon a special meeting for such an occasion.

When it is urged on behalf of the municipality that the legislature would not intentionally have put upon them the indignity

of subordinating their authority to the ends and purposes of a trading company, it may be replied that the legislature does not seem to have anticipated any friction or jealousy between two bodies which might be expected to work together for the benefit of the public. The amending Act which repeals section 25 in the Act of 1892 expressly authorizes municipal corporations to take shares in the company and aid the company by bonus, loans or advances, or by guaranteeing the payment of bonds, or by granting it such privileges and exemptions as the council of any such municipal corporation might deem advisable.

Their lordships are of opinion that the respondents acted within their powers in opening St. Antoine Street, that the municipality were not justified in obstructing their works, and that the injunction was properly granted.

Their lordships will therefore humbly advise Her Majesty that the appeal ought to be dismissed. The appellants will pay the costs of this appeal.

Appeal dismissed.

Sir Edward Clarke, Q.C., Ethier, Q.C. (of the Montreal Bar), and *J. R. Paget*, for the appellant.

Haldane, Q.C., and *R. C. Smith* (of the Canadian Bar) for the respondents.

HOUSE OF LORDS.

LONDON, 16 July, 1897.

EARL RUSSELL (appellant) v. COUNTESS RUSSELL (respondent).
32 L.J.

Judicial separation—Cruelty.

Persistence by a wife in a charge against her husband that he has committed an unnatural offence, which has been disproved to the satisfaction of a jury, and in which the wife herself does not believe, is not legal cruelty such as to entitle the husband to a decree for judicial separation.

Decision of the Court of Appeal, 64 Law J. Rep. P. D. & A. 105; L. R. (1895) P. 315, affirmed by the majority of the House (Lord Watson, Lord Herschell, Lord Macnaghten, Lord Shand, and Lord Davey); the Lord Chancellor (Lord Halsbury), Lord Hobhouse, the Lord Chancellor of Ireland (Lord Ashbourne), and Lord Morris dissenting.

HOUSE OF LORDS.

LONDON, 19 July, 1897.

BARRACLOUGH v. BROWN (32 L.J.)

Ship—Wreck—Abandonment by owners—Removal by navigation authority—Liability of shipowners for expenses.

Where a statute provides that a sum due or damages incurred shall be recovered in a Court of summary jurisdiction, it is not competent for the claimant to take proceedings for the recovery of the sum before any other tribunal than that provided by the Act, even for the purpose of ascertaining the right.

Section 47 of the Aire and Calder Navigation Act, 1889, provides that if any vessel shall be sunk within the limits of the undertakers' jurisdiction, the owner, in default of removal by him, shall be liable for the expenses of removal, and such expenses shall be recovered before a Court of summary jurisdiction.

Held, that the time when the expenses were incurred, and not the time when the vessel sank, was the period to determine ownership, and that the original owners, who had abandoned the vessel to the underwriters before the expenses were incurred, were not liable to the undertakers for the expenses incurred by the latter in removing the wreck.

Respondents' counsel were not heard.

Their Lordships (Lord Herschell, Lord Watson, Lord Shand and Lord Davey), after consideration, affirmed the decision of the Court of Appeal, 65 Law J. Rep. Q. B. 333.

THE VALUATION AND PAYMENT OF ANNUITIES.

Fifty years ago Vice-Chancellor Knight Bruce, in *Wroughton* v. *Colquhoun*, decided, in accordance with older authorities, that where a testator's effects are insufficient to satisfy an annuity as well as pecuniary legacies bequeathed by his will, the proper course of administration is to value the annuity and to pay the amount of the valuation at once to the annuitant, subject to an abatement in proportion to the abatement of the pecuniary legacies. The result of this is that, although the annuitant may die before the time when the payment of the annuity in full would have equalled the abated amount of the valuation, the other legatees will be unable to claim the surplus of that amount,

which has disappeared once for all into the pocket of the annuitant. The statement of the practice contained in "Seton on Judgments" is, "Where assets are deficient an annuity should be valued and abate proportionately, and the apportionment belongs to the annuitant absolutely." It would seem fairer te apply the amount of the valuation as long as it lasted in payment of the annuity in full, and to give the surplus, if any, to the other legatees; this would, at any rate, avoid the inconsistency of giving to the annuitant the capital value of the annuity, although he might die the next day. The same principle, however, applies in bankruptcy; though there is no doubt a distinction between the case of an annuitant who is in the position of a creditor and one who is a mere legatee. And it seems that the same course will be followed in the case of a determinable as in the case of an absolute annuity. Suppose, for instance, that the annuity is held subject to forfeiture on alienation, as happened in the case of *In re Sinclair;* the annuity fund will be payable to the annuitant, although on the valuation the contingency of forfeiture is disregarded, it being according to actuarial practice impossible to take it into calculation. There is an authority against this view as to annuities held subject to conditions in a case of *Carr* v. *Ingleby*, which is referred to in "Seton on Judgments," and which certainly seems more consistent with equity than the course adopted in *In re Sinclair.*—*Law Journal* (*London*).

DIVORCE STATISTICS.

Nothing is so false as facts, except figures—thus the paradox; and judicial statistics are no exception—not less fallacious than other statistics. Take an instance. The latest volume of Judicial Statistics informs us that more divorce suits are commenced by husbands against their wives than by wives against their husbands. There were 353 suits in the year by husbands as against 220 by wives. "What!" says the unreflecting reader, "then it is the husbands who in most cases are the aggrieved parties; the wives who are the sinners." But the true inference is quite the other way. Wives do not seek divorce, not because they have not greater grievances than their husbands, but because they have more to lose, whether by a dissolution of the marriage or by a judicial separation, it matters not which. The break-up of the home is much more disastrous to the wife than

to the husband. Then there are the children to be considered. Personally the wife, even when innocent, suffers more in reputation from the censoriousness of society, unjustly, no doubt; but society is so constituted, and it is vain to protest. Moreover, the wife (such, again, are the ethics of society embodied in the law) has to prove unfaithfulness *plus* desertion or legal cruelty—to get over two stiles, in fact, where the husband has but one to surmount. A curious revelation of the statistics is that unfaithfulness breaks out mostly after between ten and twenty years of matrimony. The spouses presumably are tired of one another. Human life, as insurance companies know, has its critical periods, its dangerous ages, and the second decade seems to be the critical one of married life.—*Ib.*

A JOURNALIST'S SOURCES OF INFORMATION—ARE THEY PRIVILEGED?

The recent decision, says a writer in the *University Law Review*, of Judge Bradley in the action against Schriver, the newspaper correspondent of the "Mail and Express," who refused to answer a question propounded by the Senate investigating committee concerning the name of a Congressman who had informed him that he had been told by a certain wire manufacturer that there was, during the pendency of the Wilson Tariff bill in the Senate, a conference in a room in the Arlington Hotel between certain United States Senators and the sugar magnates, regarding which conference the witness had written a letter which appeared in the paper represented by him, opens up a somewhat new field for discussion. The witness's refusal was put upon the ground that a disclosure would be a breach of faith to his informant and a violation of his duty as a journalist. In this refusal he was sustained by the Court, which based its decision, however, upon the fact that the question asked of the witness was not pertinent to the subject under inquiry, and observed that:

"The reason given by the committee for its insistence upon an answer, and the reason urged on the argument of this motion in support of the right to put the question, was that, given the name of the member of Congress, he could be summoned and compelled to give the name of the wire manufacturer, and he, in turn, could be summoned and compelled to disclose what he had heard behind closed doors.

"This shows that the matter of giving the name of the Congressman might have been a matter of convenience to the committee, but it does not indicate that the name would be a material factor in proving or disproving the charges specified."

The principal point, as to the privilege of a journalist, has therefore been left untouched. The question is a novel one, and it is not unlikely that it may be raised at some future time by members of the press. The argument might, of course, be made that, as in the present instance, the majority of this kind of questions are put while in the pursuit of fishing expeditions and for the sole purpose of obtaining sources of evidence. Although when the matter arose in the *People* v. *Fitzgerald* (8 N.Y., Supp. 81), the New York Court declared an interrogatory somewhat similar in principle to be a proper one, in *Sterm* v. *The United States* (94 U.S., 76) it was held otherwise. Considering the matter purely as a question of privilege, it would seem exceedingly doubtful whether a court would be likely to extend the doctrine of privileged communications to a case like the present. A journalist stands on a very different plane from the advocate, the physician or the priest of a Church whose tenets prescribe confession. The immunity of the first has always been recognized both in the Roman and the common law, although one civilian thought that an advocate might lawfully be put to the torture and compelled to reveal the secrets of a client, but this doctrine appears to have met with strong disapprobation on the part of both the bench and bar. The doctrine as to the immunity of the physician and priest was a later outgrowth, and rests upon grounds too obvious to be discussed. But a very different state of facts is presented when we come to consider the case of a reporter or editor of a newspaper. While conceding the importance of the press as a factor in the unearthing of wrongdoing, it would seem to be exceedingly inexpedient to permit them to take shelter behind a question of privilege. Where newspaper articles have been published injurious to character, the party damnified should have a right to find out at whose instigation and upon whose authority they might happen to have been written. The doctrine of privileged communication should never be used to hide the machinations of some secret enemy, simply because he may choose to direct his attacks through the medium of the public press. It can hardly be said that a public official (this is cited merely as an illustration) against whom a

charge of malfeasance in office has wrongfully been brought, should be restricted to his remedy against the newspaper itself in a libel suit, and not be permitted to obtain the name of his true accuser.

On the whole, it seems better not to attempt to restrict the inquiry of a court any more than is absolutely necessary, and the present case scarcely seems to be one which is sufficient to warrant any extension of the doctrine of privileged communication.

GENERAL NOTES.

INSTRUCTIONS TO JURIES.—The Chicago Bar Association, through its president and secretary, recently took a postal-card ballot upon the question of "Oral Instruction to Juries." A postal-card was mailed to each member of the association requesting answers to the following questions: 1. Are you in favour of oral instruction to juries? (*a*) On the law alone? or, 2. If so: (*b*) On the law and the facts? Of the 550 cards mailed there were 290 replies; 181 voted in favour of oral instruction to juries, and 109 voted against oral instruction. Of the 181 who voted in favour of oral instruction 42 were in favour of instruction on the law alone, 119 were in favour of instruction on the law and the facts, and 20 qualified in various ways.

POLICE POWERS.—The evil ways of the police die hard. Again and again judges have pointed out that the police are not entitled to arrogate to themselves a right to question accused persons in private, which is not possessed by judge, jury, or counsel at any public hearing of the charge. At Warwick Assizes Mr. Justice Cave again expressed his well known views on the subject, and stated that he should certainly exclude all evidence obtained by this system of private interrogation, which is more appropriate to French than to English judicial procedure. He believes that most, if not all, of the judges agree with his opinion; and it is full time that the Home Secretary issued general instructions to the police throughout the country on this question, and on another of almost equal importance—the police practice of stripping and searching persons taken into custody irrespective of the nature of the charge or the improbability of any stolen property or weapon being concealed on the person of the accused.—*Law Journal (London)*.