THE LEGAL NEWS

CONDUCTED BY

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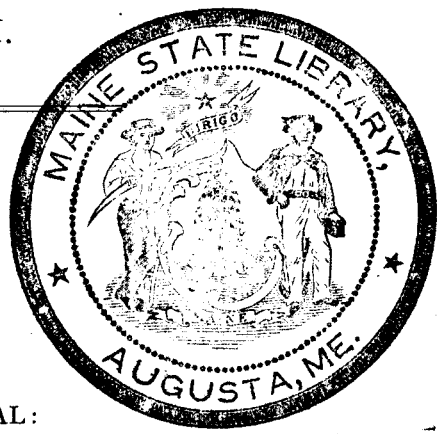
VOL. I.



MONTREAL:

RICHARD WHITE.

1878.

TABLE OF CASES

REPORTED, NOTED, AND DIGESTED.

The Legal News.

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INTRODUCTORY.

The marvellous advance which has been made during the last half century in almost every department of science, manufactures and trade, together with the increased complication of mercantile transactions, has been attended by an enormous expansion of jurisprudence. The multiplication of railways, telegraphs, banks, insurance companies and corporations of every kind, giving rise to numberless questions of extreme intricacy and novelty, has led to an immense increase of legal work, and called for a greater number of persons to do that work. What can be more remarkable than the sudden leap which the English bar has made within the memory of many now living? The English Law List for 1817 shows that there were then but twenty-nine King's Counsel. Last year there were one hundred and ninety-seven. In 1817 the number of barristers was about seven hundred Now it is six thousand! In the United States the increase has been equally marvellous; and in Canada, as we all know, it has not been small. The multiplication of judicial decisions is positively startling. The lawyer who would keep abreast with his profession at the present time needs all the aids within his reach. Besides the reports and digests, journals of a purely legal character, or nearly so, have been established in almost all the great cities of England and the United States, and have not only proved extremely useful and acceptable to the members of the bar, but have done much to keep up the interest which every one should feel in his profession. The Legal News is intended to fill a similar place in the literature of the Province of Quebec and Canada, and it is hoped will be a welcome visitor once a week to the office or the library of the professional man. No exertion will be spared to ensure accuracy and completeness within the limits assigned to the work, and if the journal finds sufficient support it is hoped that considerable improvements will be effected.

RENDERING JUDGMENTS.

It would be no easy matter to hit upon a model of a judgment and a style of delivering it that would satisfy everybody. Considerable divergence of opinion may be observed in the suggestions on this point so often heard in private conversation. And even if a model could be agreed upon that would give general satisfaction to the bar, Judges could hardly be expected in the discharge of their laborious duties to tie themselves down to a style foreign to their natural or acquired habit of expression. Whenever the matter of a discourse is of pre-eminent interest the manner is apt to be overlooked, or is left to regulate itself, and judgments, like arguments at the bar, seldom rank among specimens of polished eloquence.

Some latitude, then, must be allowed to the individuality of the Judge. Ease cannot be sacrificed to elegance nor accuracy to the desire to be brief. But there are certain points connected with the delivery of judgments on which all are agreed. These points we shall endeavor to indicate. The remarks which follow may be taken, therefore, not as the expression of individual opinion merely, but as the result of a comparison of the views of those who have some claim to be considered well-informed on the subject.

As the explanation of the facts of the case, if made at all, is obviously intended for the bar generally, and not for the counsel who are already familiar with the pleadings and evidence, it is desirable that it should be at once clear, concise and complete. That is to say, an intelligent auditor should not have much difficulty in grasping the points on which the parties are at issue. He should not be left to piece together scattered bits of information, or to follow the tedious verbiage of the pleadings before he can make out what is asked on one side and resisted on the other. It is desirable, in fact, that the Judge should begin, as often as practicable, with a brief statement of the nature of the demand and of the defence, so that the listener may not be left to grope in the dark for the point in dispute during the reading of lengthy extracts from depositions, affidavits, or correspondence.

In a Court of Appeal it is still more desirable that the issue should be plainly stated at the

beginning. We sometimes hear a case argued with considerable warmth and energy by some one member of the Court, and it is only from the exhibition of unusual warmth that we are led to surmise that the Judge is expressing and sustaining his individual opinion and not that of the majority of the Court. Then it may happen that he is followed by colleagues who manifest equal warmth on the opposite side. The case is fully argued by the members of the tribunal, and when the discussion is at an end the listener involuntarily turns to the bar who have been constituted, so to speak, judges of the disputation, and expects to hear from them the familiar words, "Taken *en délibéré*."

Of course these displays are of comparatively rare occurrence, and no exception can be taken to the ordinary manner of many of the Judges. It may be inferred, too, that those who lapse into the fault adverted to are unconscious of the light in which they appear, because some of these gentlemen before their appointment to the bench were accustomed to condemn very strongly that very mode of delivery of which they themselves now furnish too many illustrations. It may be that the interest of the questions involved, and which have been the subject of earnest and prolonged consideration, betrays the speaker into a prolixity of which he is faintly conscious; or, perhaps the discussions which have going on in Chambers are adjourned to the bench and continued from the judgment seat.

As we remarked at the outset, it is vain to expect that judgments can be framed on one model; but it is at least possible to avoid the exhibition of that heat which sometimes glows in judicial deliverances. The Judge who differs from the majority is not required to convince his audience that he is right and that his colleagues are wrong in their view of the law or the facts of the case. Still less is he called upon to stigmatize as 'absurd,' 'contrary to common sense,' 'preposterous,' or 'inconceivable,' any opinion which is about to be adopted and sanctioned by the judgment of the Court. Such offences against decorum are apt to provoke reprisals, and always detract from the respect which is due to the bench.

The dissenting Judge would do well, probably, to express his opinion in writing. That has been the practice of several eminent jurists. But at all events let him be content to state the reasons of his dissent in a lucid and orderly manner, and then perhaps he will not find it needful to add any further observations by way of reply or otherwise after the judgment of the majority has been pronounced. As to the latter, the delivery of it may usually be intrusted with advantage to a single Judge, unless the differences of opinion among the majority are so marked and important as to call for separate statements.

Much might be added on this subject. Many of our readers would no doubt find it easy to make additional suggestions of hardly less importance. We shall be glad to hear them. But if the few hints which are here put together were generally acted upon, we venture to think that the Judges, when laying the result of their deliberations before the bar, would have a less wearied and far more interested audience than sometimes falls to their lot.

APPEALS.

During the December Term of the Court of Queen's Bench, at Montreal, judgment was pronounced on thirty-five appeals in civil cases. The result was as follows:—

Confirmed unanimously,.....	14
Confirmed, 1 Judge dissenting.....	3
Confirmed, 2 Judges dissenting.....	4
Reversed unanimously.....	6
Reversed, 1 Judge dissenting.....	2
Reversed, 2 Judges dissenting.....	6
Total.....	35

There was also a reserved case from the Crown side, in which the conviction was affirmed, one Judge dissenting. When we remember that these appeals present the most difficult and complicated questions arising in the great volume of business disposed of by the lower courts, we can hardly charge the Judges with lack of unanimity, seeing that they were all agreed in twenty out of thirty-six cases. The fact that judgment was confirmed unanimously in fourteen cases, equal to two-fifths of the whole number, seems to indicate a disposition on the part of some members of the bar to try the chances of an appeal in rather weak cases.

We propose, in the present and future issues of the LEGAL NEWS, to furnish a synopsis of these decisions, as well as of the judgments that

may be pronounced in future terms, and in the execution of this task, we shall at all times be glad of any memoranda (apart from the printed factums) with which we may be favored.

LAWYERS' SCRAP BOOKS.

A letter enclosing a subscription to the LEGAL NEWS suggests strongly one aspect in which a journal like this must give good value to its subscribers. Our correspondent writes: "As a very old and constant practitioner for upwards of thirty years, I have long felt the want of a publication something larger in its field than our ordinary law reports, and which though in some measure to be found in the broad columns of the *Gazette*, is not convenient to keep for my own use. For over twenty years I have kept, and for half the time have arranged alphabetically and in form for ready reference on all points involved in cases, all newspaper reports of law cases, as they appeared in the *Gazette*, and very often in argument I cite them, and they are received as 'authority,' in default of better."

A good many lawyers, like our correspondent, begin to make scrap-books of cuttings from newspapers, but very few have the perseverance to keep them up so long as he. The time and labor needed are too great. But what we wish to say is this. Looking at the LEGAL NEWS in its humblest light as a mere record of matters which it is desirable to keep by one for reference, it is evident that the first cost of the blank books used as scrap-books, to say nothing of the labor of indexing and arranging, would be more than the subscription to the LEGAL NEWS, besides the advantage of having one convenient and handsome volume, carefully indexed, instead of several unwieldy scrap albums.

REPORTS.

COURT OF QUEEN'S BENCH.—APPEAL SIDE.

Montreal, Dec. 14th, 1877.

Present:—Chief Justice DORION and Justices MONK, RAMSAY, TESSIER, and TASCHEREAU *ad hoc*.

ANGERS, Atty. Gen., (Plff. below) Appellant; and THE QUEEN INSURANCE Co., (Defts. below) Respondents.

Powers of Local Legislatures—Stamp duty on Insurance Policies—Quebec Statute, 39 *Vict. c.* 7.

Held, (affirming the judgment of the Superior Court, 21 L. C. J. 77) that the Quebec Statute, 39 Vict. c. 7, requiring insurance companies doing business in the Province of Quebec to take out a license, the price of which should be paid by stamps affixed to the policies issued, is unconstitutional.

The Legislature of Quebec passed an Act, 39 Vict. c. 7, requiring insurance companies doing business in the Province of Quebec to take out a license, the price of which should consist in the payment to the Crown for the use of the Province of a percentage on premiums, and the percentage was made payable by stamps affixed to the policies issued. The right to impose this tax being denied by the companies, the present action was instituted as a test case by the Attorney General of the Province on behalf of the Crown, charging the respondents with infraction of the Statute.

The respondents pleaded the unconstitutionality of the Statute, inasmuch as it levied an indirect tax upon insurance business, and thereby encroached upon the exclusive jurisdiction of the Parliament of Canada.

The Court below (Torrance, J.) maintained the plea, and the action was dismissed.

RAMSAY, J., differing from the majority, would be for reversing the judgment appealed from. The tax levied by requiring stamps to be placed on insurance policies, though not direct taxation within the meaning of Section 92 of the B. N. A. Act, par. 2, yet fell within par. 9 of the same Section, permitting local legislatures to issue licenses for the raising of revenue for Provincial purposes. The payment of the license fee by stamps was simply a mode of collection, and was the most equitable mode that could be adopted.

DORION, C. J., held that the charge imposed on licenses by the statute was clearly an indirect tax, and the attempt to put it in the form of a license was an evasion of the B. N. A. Act, from which the local legislature derives its powers. His Honor abstained from expressing any opinion upon the question, not raised here, whether the local legislature has not power to force insurance companies to take a license at a fixed sum.

Judgment confirmed.

Carter, Q. C., and *Lacoste, Q. C.*, for Appellant.

Abbott, Q. C., *Kerr, Q. C.*, and *Doutre, Q. C.*, for Respondents.

Present:—Justices MONK, RAMSAY, TESSIER, CROSS, and TASCHEREAU *ad hoc.*

ALLAN, *et al.*, (Defts below) Appellants; and MCLAGAN, (Pltff. below) Respondent.

Defendants sued jointly and severally—Death of one or more defendants does not suspend suit.

Held, that an action, *ex delicto*, against several persons jointly and severally, is not suspended as to the survivors by the suggestion of the death of one or more of the defendants. Such action may be brought against any one or more of the persons jointly and severally liable.

The respondent sued for damages sustained by falling through an open hatchway of the steamer *Anglo Saxon*, on which he was a passenger. The action was brought against the appellants as joint owners, the allegation being that the hatchway had negligently been left open, and that this negligence was the cause of the accident. The damages were estimated by a jury at $12,500, and the verdict, which was maintained by the judgment of the Court below, was not seriously complained of. But the defendants appealed on various technical grounds, the objection chiefly insisted upon being that after the death of two of the defendants, the plaintiff had continued his action and obtained judgment against all.

TASCHEREAU, J. *ad hoc*, after pointing out that the defendants were jointly and severally liable, proceeded to remark: The death of one of the parties, says the Code, suspends the suit. But "one of the parties" means either the plaintiff or the defendant in the suit. Now, here and in all cases against joint and several defendants, though as a matter of procedure, there appears to be only one suit, strictly speaking, in law, there are as many suits as there are defendants; if one of the defendants dies, the suit between him and the plaintiff is suspended, because, according to the terms of the Code, one of the parties has died, but the other suits against the other defendants are not thereby interrupted. . . . It is an action *ex delicto*, upon which the defendants, if responsible at all, are so jointly and severally. The plaintiff could have singled out one only of the owners of the *Anglo Saxon* and might have instituted his action, if he had chosen, against this one alone. . . . The material point is, were the appellants, who have been condemned, such joint owners? Whether others were jointly owners with them, or whether Symes was or was not a joint owner, has nothing to do with the issue between them and the plaintiff.

Judgment confirmed.

Ritchie & Borlase for Appellants.
Doutre & Co. for Respondents.

Present:—Chief Justice DORION, and Justices MONK, RAMSAY, TESSIER, and TASCHEREAU *ad hoc.*

BEAUSOLEIL *es qual.*, (plff. below), Appellant; and CANADIAN MUTUAL FIRE INSURANCE CO. (defts. below), Respondents.

Fire Insurance—Failure to give notice of other insurances.

One Mazurette (represented by his assignee, the appellant) effected an insurance on his stock with the respondents, and in the policy there was a condition that insurances elsewhere would make the policy void unless the company received notice of such subsequent insurances. Mazurette failed by some inadvertence to give notice of an insurance effected subsequently in the Commercial Union Insurance Co. *Held*, that he could not recover on the policy.

Jetté, Beique & Choquet for Appellant.
Lunn & Davidson for Respondent.

Present:—Chief Justice DORION, and Justices MONK, RAMSAY and TESSIER.

CALDWELL (plff. below) Appellant; and MACFARLANE (deft. below), Respondent.

Insolvency—Buying goods on credit with intent to defraud.

1. An action was brought against an insolvent, under Section 136 of the Insolvent Act of 1875, alleging twenty-six different purchases of goods with intent to defraud, but concluding with a single prayer for the imprisonment of the defendant. *Held*, (reversing the judgment of the Superior Court) that it was not necessary to charge each purchase as a distinct offence.

2. Where the Court finds the evidence insufficient to justify an order for imprisonment, the plaintiff in such proceeding is nevertheless entitled to judgment for the debt if proved.

The action was brought, under section 136 of the Insolvent Act of 1875, by Caldwell, as representing the previously existing partnership of Caldwell & Watchorn, alleging that Macfarlane had purchased goods on credit from the firm on twenty-six occasions during a specified period, and that when he made these purchases he knew himself to be insolvent, and bought with intent to defraud.

The respondent pleaded by demurrer that there were twenty-six different purchases alleged, each of which constituted a separate offence, while there was only one prayer, and that the court could not adjudge imprisonment

under the circumstances. Upon this demurrer the action was dismissed in the court below.

DORION, C. J., said the Court of Appeal was unanimously of opinion that the demurrer could not be maintained. The proceeding invoked was a civil remedy which the law left open to the creditor, and the imprisonment was ordered, not for an absolute term, but only in case the debt and costs were not sooner paid. It was not necessary, therefore, to charge each offence separately. The court had to reverse the judgment. But on looking into the merits, it appeared that although Macfarlane had purchased goods from the appellant during the period in question to the amount of about $30,000, he had actually during this interval considerably reduced his indebtedness to the appellant, having made payments in all amounting to about $58,000. The Court considered that this fact rebutted any presumption of fraudulent intent which might arise from the state of Macfarlane's affairs. The prayer for the imprisonment of the defendant, therefore, could not be granted. But the appellant was entitled to judgment for his debt. Each party to pay his own costs in appeal.

Judgment reformed.

Abbott, Tait, Wotherspoon, & Abbott for Appellant.

Kerr & Carter for Respondent.

Present:—Chief Justice DORION, and Justices RAMSAY, TESSIER and CROSS.

PERIAM (deft. below), Appellant; and DOMPIERRE (plff. below), Respondent.

Damages—Contributory negligence.

The plaintiff, a carter, went to load wood at a wharf, in the port of Montreal, where a steamer was in the act of mooring, and a cable having snapped the plaintiff was seriously injured by the recoil. There was evidence that the plaintiff was aware of the danger. *Held*, that there was contributory negligence on his part, and he could not recover damages.

The respondent, Dompierre, a carter, brought an action of damages against Periam, the master of a steamer. The circumstances were these: Dompierre was employed in carting wood from a wharf in the port of Montreal. The steamer "Lufra," of which Periam was master, was in the act of mooring, when a cable, attached to an iron ring on the wharf, which was being taken up by the capstan to bring the steamer in, suddenly tightened and gave way, and the rebound of the rope seriously injured the respondent. It appeared from the evidence that Dompierre was aware of the possibility of such an accident, and had previously informed some other carters of the danger.

The Court below awarded the respondent $100 damages.

TESSIER, J., differing from the majority, held that the judgment was correct, the accident, in his opinion, being the result of negligence on the part of the master.

CROSS, J., for the majority of the Court, remarked that it was not as if Dompierre had been a passenger on board the steamer, and thus in the charge and keeping of the master. If the wharf was free to Dompierre to cart away wood, it was certainly equally free to Periam to moor his steamer. This was a primary purpose of the wharf, and it could not be pretended that the "Lufra" should interrupt the customary operation of mooring to suit the convenience of Dompierre. Why should the master put men on the wharf to warn Dompierre of what he well knew? He himself had declared that the cable was dangerous, and yet he exposed himself to be injured by it. The proximate cause of the accident was his own failure to exercise proper caution. The action should have been dismissed.

Judgment reversed.

Kerr & Carter for Appellant.

H. C. St. Pierre for Respondent.

CURRENT EVENTS.

CANADA.

Judges Knighted.—The Bench of Canada have had but a meagre share of imperial distinctions. Many gentlemen worthy of such favors have been passed over. Why, for instance, should a brilliant lawyer like the late Chief Justice Draper, never have received the honor of Knighthood? A step towards remedying the apparent neglect of Canadian Judges has been taken, and it is pleasing to see that the honors have fallen to gentlemen so eminently deserving as Sir W. B. Richards, Chief Justice of the Supreme Court of Canada, and Sir A. A. Dorion, Chief Justice

of the Court of Queen's Bench in the Province of Quebec. This is a good beginning. Perhaps a further step might have been taken with advantage in the same direction.

ONTARIO.

John Walpole Willis. — The death of this gentleman in England, at the advanced age of 84, recalls some facts of early legal history in Ontario. Mr. Willis was appointed a Judge of the King's Bench in Upper Canada in 1827—just half a century ago. He was called to the bar in England in 1816, and besides holding judicial office in Canada, was also for some time a Judge of the Supreme Courts of British Guiana and New South Wales. The London *Law Times*, in its obituary notice, says :—

"Mr. Willis' career as a colonial Judge was signalized by two remarkable episodes. Whilst acting as Judge of the supreme court of Upper Canada, (King's Bench) a judgment was given by him to the effect that certain political prisoners were illegally detained in custody. In consequence of this the Governor of Canada, (Sir John Colborne) peremptorily dismissed Mr. Willis from the bench. The Judge appealed to the King in Council, and it was decided that his judgment was right, and he was reinstated in his office. Afterwards, Mr. Willis was sent to the West Indies to adjust compensation claims under the Slavery Emancipations Act, and held other judicial offices. When Victoria was first erected into a separate government, Mr. Willis was appointed Judge of the District, but in 1843, in consequence of a judgment he gave against the legality of the proceedings of the Colonial Government with regard to waste lands, Sir George Gibbs, the Governor of New South Wales, dismissed Mr. Willis from his post of Judge of the Supreme Court. The colonists generally sided with the Judge, who appealed again to the Privy Council, and again, after a protracted litigation, with success. Sir G. Gibbs was ordered to pay damages and costs."

Chief Justice Moss.—This gentleman, like Mr. Thesiger, the new Lord Justice of Appeal in England, has attained to high judicial office at an unusually early age. He has been appointed President of the Court of Appeal in the room of the late Chief Justice Draper. The appointment, however, has given satisfaction, and it must be said that where the necessary knowledge and experience are not wanting, youth can hardly be deemed a drawback at the present day, when the duties of a Judge make no slight demand upon the physical as well as the mental energy of the individual.

QUEBEC.

THE BUSINESS BEFORE THE COURT OF QUEEN'S BENCH, APPEAL SIDE.—This Court has been endeavouring for several years to clear the roll of cases inscribed for hearing at Montreal, but so far unsucessfully. In the course of the December term at Montreal an application was made by Mr. Kerr, Q. C., the Bâtonnier of the Montreal Section, for an extra term. The Court took the matter into consideration, though apparently of opinion that it was not possible to hold an extra term and at the same time dispose of the cases already argued. On the last day of the term (Dec. 22nd) the Chief Justice, at the opening of the Court, addressing Mr. Kerr, remarked :—

"You have suggested, Mr. Kerr, that an extra term should be held, but we think that would not advance us much. We have three cases before us in which the factums comprise 350 pages. We have also 21 cases in Quebec with very heavy factums. So that if we give an extra term it would be impossible to render judgment in the cases already heard. After giving the matter the best consideration, and with every desire to meet the wishes of the Bar, understanding as we do the grievance of having a long list of cases unheard, we are unable to hold an extra term and at the same time advance the business before the Court. I may mention in this connection that the Court about a year ago passed a rule which enables lawyers to agree upon a case, and if that rule were acted upon it would greatly facilitate the Bar and the Court. There was a case submitted yesterday with a factum of 110 pages. The amount in dispute is only $150, but the printing alone at two dollars a page would be $220, and I was told that the greater part of it was objections at *enquête* which had no meaning. Why should the Court be compelled to read through all this? Let lawyers make a statement of the points on which they agree. Let it be sent up as a reserved case is sent up, with such part of the evidence as is material. In a case last term we were ready to give judgment, but there was one fact to be verified, and I was an hour or more looking over the evidence to find the statement referred to in the factum, and not being able to find it, the judgment had to be held over. In a case about wages there is a factum of 143 pages on

one side and about 100 on the other. In another case concerning the signature to a promissory note, there are 110 pages of evidence. I think the lawyers and the Court might be greatly facilitated by an agreement to send up only such portions of the evidence as are material. This however is merely a suggestion. But after full consideration we have come to the conclusion that the interests of suitors would not be advanced by an extra term under the circumstances." The Court, however, has been adjourned to January 29 for judgments.

The majority of the Judges seem to be of opinion that the arrears might be disposed of if the system of terms were changed, and four Judges were to sit from day to day in Montreal, except when otherwise engaged, to hear the Montreal cases.

BRITISH COLUMBIA.

TRAVELLING ON CIRCUIT UNDER DIFFICULTIES.—British Columbia possesses a Judge of great energy in Mr. Justice Crease. While riding over a trail lately, on his way to hold a court, his horse stumbled and fell, and the Judge being thrown forward on the pommel of the saddle, received serious injuries. But, notwithstanding the intense suffering resulting from the accident, the Judge, according to a local journal, proceeded to hold court while lying on a stretcher, and, although physically helpless, went through the business in a manner that showed him in no respect wanting in his wonted mental vigor. "In coming out from the mines," the narrative proceeds, "Judge Crease was packed over the trail between Deese Lake and Telegraph Creek, a distance of nearly 100 miles, on a stretcher borne by eight Indians. The situation was a trying one for the honorable Judge. No one who has not been over the trail over which he was carried will be able to form an adequate idea of the nature of the undertaking. The descent to and ascent from the two forks of the Stickeen River was, under the circumstances, simply terrific. On more than one occasion the stretcher was necessarily in a perpendicular position, with the Judge's head down hill, and had it not been that he was firmly strapped to the stretcher with strong leather bands, it is obvious that the Judge and his couch would oftentimes on the journey have parted company in a rather unceremonious manner."

GREAT BRITAIN.

AGENTS' COMMISSIONS.—The Master of the Rolls has given an important decision in the case of *Williamson* v. *Barbour*, with reference to commissions charged by agents. The suit in question was brought by a Calcutta firm, Williamson Brothers & Co., against a well-known Manchester commission firm, Robert Barbour and Brother, to open the accounts which had existed between the two firms during a long term of years, with the object of obtaining the repayment of alleged overcharges made by the Barbours. The transactions between the parties, which dated as far back as 1850, were of considerable magnitude. It appears that the Manchester commission firm acted as the agents in England for the purchase and forwarding to India of what are termed Manchester goods, consisting of white shirtings and gray shirtings. The practice, as we learn from the *Times'* report, is to buy the gray shirtings, and submit them to various processes, such as bleaching, dyeing, glazing, swissing, and thus convert them into white shirtings. The goods are then packed, sometimes in bales, sometimes in tins and boxes, and shipped to their destination. The accusation against the Barbours was that they made a profit on the buying of the goods, and further on the bleaching, both by discounts from the bleachers, for which they did not account to their principals, and by an extra charge on the gross amount paid the bleachers. Their illicit profits also extended to the tickets supplied, on the sums paid for marking the goods, the packing and packing cases. Another serious branch of the accusation was that these men charged premiums of insurance on goods which they really did not insure at all, and interest on sums which they did not disburse until some time after the date from which interest was charged. The whole amount of alleged overcharges was about half a million dollars.

The defence to these charges, as to the substance of which there seems to have been no dispute, was that the agency ceased with the purchase, and from that moment the commission firm acted as principals and were justified in making all they could out of their customers

in India. The defendants also urged that the charges made were usual on the part of those engaged in similar business, and an attempt was made to support this pretension by the examination of other commission merchants whose statements tended to show something of the kind alleged, but not an established usage that would justify the Court in sustaining the defendants' plea. The case was evidently felt to be of immense importance, for able counsel from the Common Law bar were retained for the defence, including the Attorney-General and Mr. Benjamin. Five days were spent in hearing the case, and the judgment pronounced by the Master of the Rolls occupied three hours in delivery. The result of this elaborate examination was that the accounts were ordered to be opened for investigation of the long series of charges. The Judge remarked that accounts in such circumstances were always opened more readily when the persons stood in a fiduciary relationship to each other, and the Court would re-open an account as between a principal and his agent when a single instance of fraudulent overcharge could be shown. The question at this time was not to ascertain the exact state of the account, but to decide whether the Calcutta firm had made out a sufficient case of fraudulent overcharges to justify the Court in re-opening the account. On this point his Lordship was very clear. In his opinion the grounds that had been proved were fourfold more than enough to open the accounts. The defendants, in fact, did not dispute that an extra charge had been made in almost every item. After enumerating the various heads of complaint, his Lordship said that as to the insurances there was no dispute that the defendants had been directed to insure and had charged the insurance, although they had not actually done so for the amounts represented. They had also charged for premiums and for policies which were never paid. As to the discounts, too, the matter was practically admitted. The defences to the charges which were not admitted were somewhat curious. The defendants denied their agency except for the purpose of buying, as an attempt had been made to show that as soon as the defendants had bought the relation of principal and agent ceased. As to that the Judge was of opinion that they bought and forwarded as agents, but that they were principals for the purpose of packing, and such like charges, and were entitled to make a reasonable charge for so doing, and which he could allow them when the matter came into Chambers. That circumstance, however, did not alter the main relationship between the parties, which was that of principal and agent, any more than if they had employed a packer to do the work.

An appeal is intimated, but the decision of the Master of the Rolls is so obviously founded on justice and common sense that there is no reason to believe that it will be disturbed. The suit has been watched with much interest in England, and the decision has caused a flutter in some circles. The *Times* hints pretty plainly that a great many other agents of various kinds are in the same boat with the Barbour Brothers. "The vigorous language of the Master of the Rolls," it remarks, "will carry consternation into some highly respectable counting-houses, and will excite vague terrors in the breast of more than one merchant prince. When a man agrees to act as the agent of another for a specified remuneration, and, as agent, buys goods for his principal, and when he puts down in his invoice a higher price than he actually paid, are we not to call his conduct fraudulent? What can be urged to take the charges for insurances which were never effected out of the category of fraud? What is to be said in defence of the profits made by the agents upon discounting their principals' bills, the charges for interest that never accrued, the suppression of the trade discounts allowed which ought to have gone to the credit of the principal? If agents are to exact profits in this way, it must be with full notice to their principals, and not in reliance on the latter's possible acquaintance with a disputed, or, at best, an ill-defined custom. But it may be safely said that no commission agency in the world would venture to propose to do business on terms including the right to charge for insurances that were never effected, and for interest on money that had never accrued."

THE BENCH AND UNIVERSITY HONORS.—The *Solicitors Journal* says:—

"Some of our contemporaries who attacked the recent judicial appointment on the ground of the learned Judge's want of University distinction were probably unaware that only a

small proportion of the existing judical staff are graduates in high honors. Including eight Law Lords and the four paid members of the Judicial Committee of the Privy Council, the total number of Judges may be taken as forty. Out of this number seven are graduates of Oxford and eleven are graduates of Cambridge. Of the seven graduates of Oxford, Lord Selborne obtained a first class in classics, Lord Justice Cotton a second class in classics and a first class in mathematics, and Sir Robert Phillimore a second class in classics; while Lord Coleridge, Lord Justice Thesiger, and Justices Grove and Lopes were passmen. The eleven Cambridge Judges exhibit a larger proportion of classmen than those who have been educated at the sister University. Lords Hatherly and Blackburn and Lord Justice Baggallay were wranglers, the Lord Chief Justice of England was in the first class of the Civil Law Tripos, Mr. Justice Denman was Senior Classic, while Baron Cleasby was both a wrangler and first class man in classics. Lord Justice Brett and Sir James Colvile were Senior Optimes, Vice-Chancellor Malins was a Junior Optime, and Lord Penzance and Sir Robert Collier took no honours. The University of London is represented by the Master of the Rolls and Mr. Justice Fry, both of whom obtained high honours, and the Lord Chancellor's career at Trinity College, Dublin, was also highly distinguished. Baron Huddleston was educated at the last-named University. Lord Gordon and Lord Justice James were educated at Scottish Universities, and Sir James Hannen at Heidelberg, while the the remaining fifteen Judges do not appear to have graduated at any University."

IRELAND.

Law Reporting.—Judge Christian, Lord Justice of Appeal, has been assailing for some time past the reports published under the authority of the Council of Law Reporting in Ireland. Either the Judge is very eccentric, or the reports are very carelessly done. In a late issue of the *Times* the following appears in its Dublin correspondence:—

"In the Court of Chancery Appeal to-day, Judge Christian, Lord Justice of Appeal, in expressing his concurrence in the judgment delivered by the Lord Chancellor affirming a decision of the Vice-Chancellor, declined to state his reasons for so doing, being assured that if he did so a mangled version of it would in a week or a fortnight be sold to the solicitors on either side, and would in due course be laid before counsel in London for them to advise as to the hopefulness or the hopelessness of an appeal to the House of Lords. He appealed to the Council of Law Reporting, as gentlemen, to state in their next publication that the reports given in their publication of the case of 'Lewis and Coote v. Gordon' had been disowned, disclaimed and exposed by the calumniated Judge. That reparation he demanded of them in the interests of justice and fair play, and he could not bring himself to believe that it would be refused. He desired to make a few observations with reference, not the strictures of the newspapers, or one or two of them, on himself, but with regard to the temperate and weighty strictures which he heard had been passed upon him by instructed, competent, impartial, nay, even in some instances friendly, critics. By some such it seemed to have been thought that he had spoken too strongly; that he had made too much ado about individuals, that, in fact, he had been breaking flies upon a wheel. With all deference, he thought that these gentlemen had failed to realize the true state of the case. The publication of that libel in 'Lewis vs. Lewis' was an aspersion upon him of the most malicious kind that could be made upon any judge. Was he to pass that over in silence? Had he done so after what had occurred in July, it would have been loudly proclaimed as an admission of the accuracy of the report. If a policeman from the 'Hall,' or a coal-porter off the quay, had been brought in and placed in the reporters' box, he could hardly have produced a thing of more entire inanity—if, indeed, it was not wilful caricature. But it was said, 'You are assailing the reporters.' As well might the highwayman complain that he was assaulted by the man who resisted him. He again appealed to the Council of Law Reporting to take prompt measures for expunging from their publication the slanderous trash they had appended to his name, which constituted a series of defamatory libels on the Court of Appeal in Chancery in Ireland."

RECENT ENGLISH DECISIONS.

Company.—1. Nine persons signed the memorandum of association of a new company. At a preliminary meeting, attended by four of the signers, it was voted that three others should be allotted no shares, and the deposit made by them should be repaid; which was done, and the three had nothing more to do with the company. The directors, under the articles of association, had power to issue and dispose of shares as they thought fit, but had no power to accept surrenders of shares. *Held*, on the winding up of the company, that the three were contributories.—*In re London and Provincial Consolidated Coal Company*, 5 Ch. D. 525.

2. The proprietors of a lease and concession of the island of Alto Vela from the Republic of

Santo Domingo, for the working of guano and other deposits on the island, became liable to forfeit the same by failure to perform some of the conditions thereof. They then went to work to get up a company, to the trustees of which they sold the property; and the trustees made it over to the company. For their part in the transaction they received £15,000 "commission" in shares. The company, through the trustees, employed the same counsel employed by the sellers and promoters; and they passed the title to the property as good. The directors, who were chiefly composed of the promoters, speculated in the shares. One of them, the defendant H., got up a pretended sale of certain patent rights belonging to the company, for a large sum, to a person who turned out to be a tool of H.; and all the money paid down by him was furnished him by H. Meanwhile the Dominican Government proposed to take advantage of the forfeiture. The condition of things came out. The shares fell from £60 to £3, and the deluded stockholders brought suit against the original proprietors of the property, the trustees, promoters, directors and counsel. *Held*, that the proprietors must repay the whole purchase money, the trustees their "commission," (called by the court a bribe); the counsel and directors, who were not proprietors and promoters, their proportion of the costs of suit.—*Phosphate Sewage Co.* v. *Hartmont*, 5 Ch. D. 394.

Copyright.—If a dramatic piece has been first represented in a foreign country, the author has no exclusive right over the piece in England. Representation is publication within 7 Vict. c. 12, § 19.—*Boucicault* v. *Chatterton*, 5 Ch. D. 267.

Evidence.—Indictment for obtaining money under false pretences. The prisoner was time-keeper, and C. was paying clerk to a colliery company. Every fortnight the prisoner gave C. a list of the days worked by each man, and C. entered them in a time-book, together with the amount due each one. On pay-day, the prisoner had to read from the time-book the number of days so entered, and C. paid them off. While the prisoner read, C. looked on the book also. *Held*, that C. might refresh his memory as to the sums paid by him to the workmen, by referring to the entries in the time-book. *The Queen* v. *Langton*, 2 Q. B. 296.

Factor.—H., a commission merchant and tobacco dealer, sold, through his agent K., to the plaintiff, a lot of tobacco lying in bond at the dock. The tobacco, according to the usage practised between the parties, remained at the dock uncleared in the name of H.; but the transaction was entered in H.'s books as a sale; and Dec. 3rd, 1875, an invoice of sale by H. to the plaintiff was sent to the latter, and Dec. 31st he paid for the tobacco in full. The usage had been in such cases for the plaintiff to receive the tobacco in instalments, as he wished it to manufacture, in which case he would send dock dues and charges for the portion he wanted, and that portion would be discharged and forwarded by H.; but in this case none of the lot had been sent, and March 9th, 1876, H. absconded, and March 15th was adjudged bankrupt. Meantime, Jan. 26th, 1876, he had pledged the tobacco to the defendants and given them the dock warrants, and transferred the tobacco into their name. He represented it to be his property, and they had no knowledge that the plaintiff claimed it. The court had power to draw inferences of fact. *Held*, that the plaintiff was entitled to the tobacco; and that H. had no authority to sell or pledge the tobacco while lying in the dock in his name, but only to clear and forward it to the plaintiff.—*Johnson* v. *The Crédit Lyonnais*, 2 C. P. D. 224.

False Pretences.—Indictment for obtaining money under false pretences. Prisoner was a pedler, and induced a woman to buy some packages, which he called good tea, but which turned out to be three-quarters foreign and deleterious substances. The jury found that he knew the character of the stuff, and that he falsely pretended it was good, with intent to defraud. *Held*, that the conviction must stand. —*The Queen* v. *Foster*, 2 Q. B. D. 301.

Freight.—Charter-party by the defendants to convey a cargo of railway iron from England to Toganrog, Sea of Azof, or "so near thereto as the ship could safely get," consigned to a Russian railway company. The ship arrived, Dec. 17th, at Kertch, a port 300 miles by sea and 700 by land from Toganrog, where the captain, the plaintiff, found the sea blocked up with ice, and unnavigable till April. Against the orders of the charterers, who notified him

that they would hold him responsible, he proceeded to unload the cargo; and, there being nobody to receive it, he put it in charge of the Custom-house authorities there. The consignees claimed it; and, on their producing the bill of lading and charter-party, it was delivered to them, against the captain's claim that it should be retained for the freight. A receipt was given to the effect that the cargo was received "on the power of the charter-party and the bill of lading." *Held*, affirming the judgment of the Queen's Bench Division, that the Captain was entitled to no freight, not even *pro rata*. *Metcalfe* v. *The Britannia Iron Works Co.*, 2 Q. B. D. 423.

General Average.—A captain burnt some spars and a part of the cargo, to keep the donkey engine running to pump the ship in bad weather, and thus saved her. The ship sailed properly equipped with coals; but they ran short, owing to unexpected bad weather. *Held*, a case for general average.—*Robinson* v. *Price*, 2 Q. B. D. 295.

Husband and Wife.—A wife cannot commit larceny from her husband, no matter whether she has been guilty of adultery or not. *The Queen* v. *Kenny*, 2 Q. B. D. 307.

RECENT UNITED STATES DECISIONS.

Agent.—A broker is entitled to a commission for effecting a sale of land, if he has procured a person to enter into a binding agreement to purchase it, though the agreement be not carried out.—*Love* v. *Miller*, 53 Ind. 294.

Attorney.—1. An attorney who published advertisements of divorces obtained "without publicity; residence unnecessary," giving his address at a particular post office box, without his name, was stricken from the rolls.—*People* v. *Goodrich*, 79 Ill. 148.

2. An attorney-at-law cannot delegate his authority; and therefore payment of a debt entrusted to him for collection, to a person authorized by him to receive it, does not discharge the debtor.—*Dickson* v. *Wright*, 52 Miss. 585.

Bankruptcy.—Debts due from a factor to his principal are debts "created while acting in a fiduciary capacity," within the meaning of the Bankrupt Act, and are not barred by a discharge in bankruptcy.—*Banning* v. *Bleakley*, 27 Louisiana Annual 257.

Bills and Notes.—If a promissory note bearing interest payable annually be endorsed before maturity, but after an instalment of interest is due and unpaid, the endorsee takes it subject to all equities between the original parties.—*Hart* v. *Stickney*, 41 Wis. 630.

Burglary.—The prisoner entered, without breaking, a dwelling-house by night, with intent to commit felony, and broke out in making his escape. *Held*, that he was guilty of burglary, by force of the English Stat. 12 Anne c. 7, which, if not merely declaratory of the common law previously existing, is itself a part of the common law of the State.—*State* v. *Ward*, 43 Conn. 489.

Checks.—Checks deposited with a bank, and credited in the depositor's pass-book, are taken, in the absence of special agreement, for collection, and not as cash; and may be afterwards returned and the credit annulled if there are no funds to meet them; and this, whether drawn on the same bank or another.—*National Gold Bank* v. *McDonald*, 51 Cal. 64.

Conspiracy.—A conspiracy by A and B to injure C, in an enterprise in which they are all jointly engaged, is not criminal, if the whole enterprise is unlawful; because conspiracy is not criminal, unless against an innocent person. And, therefore, where two conspired to defraud a third by falsely pretending that parcels sold by them to him contained counterfeit money; whereas, in truth, such parcels contained only sawdust,—*held*, that the conspiracy was not indictable.—*State* v. *Crowley*, 41 Wis. 271.

Contempt.—1. A sentence of imprisonment for contempt committed in the presence of the Court, is valid though pronounced in the absence of the offender.—*Middlebrook* v. *The State*, 43 Conn. 257.

2. A libel on a grand jury, as to their past action, not calculated to obstruct the future

performance of their duty, *held* not punishable as a contempt of court.

Corporation.—1. A member of an incorporated Board of Trade, expelled therefrom for violation of its by-laws, was held to have no remedy in the courts to be restored to membership, either by bill in equity or by mandamus.—*Fisher* v. *Board of Trade*, 80 Ill. 85.

2. If a contract of subscription be made to stock in a corporation, and certificates in the usual form issued to the subscriber, a condition reserving the right to the subscriber to cancel his contract will be held void as against other subscribers, though expressed on the face of the contract.—*Melvin* v. *Lamar Ins. Co.*, 80 Ill. 446.

Damages.—1. In an action of tort for personal injuries, the declaration averred that the plaintiff was by such injuries prevented from attending to his ordinary business. *Held*, that he could not, without more particular allegations, recover special damages on the ground of loss of employment in a trade requiring special skill and training.—*Taylor* v. *Monroe*, 43 Conn. 36.

2. A buyer of seed, who knows before sowing it that it is of inferior quality to that which the seller agreed to furnish, cannot recover of the seller damages for the diminished value of the crop.—*Oliver* v. *Hawley*, 5 Neb. 439.

Evidence.—Evidence as to the religious belief of a person does not affect the admissibility, but only the weight, of his dying declarations. —*People* v. *Chin Mook Sow*, 51 Cal. 597.

Fraudulent Conveyance.—The grantee in a conveyance alleged to be fraudulent cannot, in defence of a suit brought by a creditor to set it aside, show by parole a consideration different from that expressed in the conveyance.—*Galbreath* v. *Cook*, 30 Ark. 417.

Gaming.—In an indictment for playing cards on Sunday, the particular game played need not be averred; but if averred, it must be proved as laid.—*State* v. *Anderson*, 30 Ark. 131.

Indictment.—Indictment for breaking into the house and stealing the goods of A. The evidence was that the goods stolen were household furniture, the separate property of A's wife, and in the common use of the family. *Held*, no variance.—*State* v. *Wincroft*, 76 N. C. 38.

Insurance.—1. A building was insured by policy conditioned to be void if the building should fall. The wall of part of the building fell, leaving more than three-fourths standing. *Held*, that the policy was not avoided.—*Breuner* v. *Ins. Co.*, 51 Cal. 101.

2. Insurance was effected on a phaeton contained in a barn, particularly described. *Held*, that the phaeton while left at a carriage-shop for repairs was covered by the policy.—*McCluer* v. *Girard F. & M. Ins. Co.*, 43 Iowa, 349.

3. A son has not necessarily, as such, an insurable interest in the life of his father.—*Guardian Mutual Life Ins. Co.* v. *Hogan*, 80 Ill. 35.

Partnership.—A agreed to advance money to B from time to time, up to a certain amount, to enable B to carry on business; and B agreed to pay interest to A on the average balance advanced, and also half the profits, after deducting a fixed sum for expenses; but A was not to bear any losses. *Held*, that A and B were not partners as to third persons.—*Smith* v. *Knight*, 71 Ill. 148.

Seduction.—In an action for seduction of the plaintiff's daughter and servant, evidence that the defendant, after the seduction, procured an abortion to be made, is admissible to aggravate damages, at least if such matter is laid in the declaration; and evidence of an offer of marriage by the defendant after action brought is not admissible in mitigation.—*White* v. *Murtland*, 71 Ill. 250.

Closely worked professional men often die literally in harness. Doctors have died in their carriages while making their round of visits; clergymen have died in their pulpits, and judges have died on the bench. The Atlanta *Constitution* relates a recent case of the last mentioned mode of taking off. The Superior Court was in session in Knoxville, Judge Hill presiding. A criminal trial had just been concluded, and the jury had returned a verdict of guilty. They neglected to give the value of the goods stolen, and Judge Hill told them that they had better retire and supply this part of the verdict. They went out, and soon afterwards an attorney looked up and saw Judge Hill's head thrown back on his chair, a deathly pallor overspreading his countenance. Friends rushed to him, but, with an easy gasp, his spirit passed away, and he sat dead on the bench.