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LEGAL NEWS.

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CURRENT TOPICS AND CASES.

The late Mr. Justice Ramsay, in a case before the Court of Appeal, at Montreal, once checked a counsel who was indulging in some remarks implying that his client had suffered by having had to contend with a Jew. Observations reflecting on the conduct of a person, coupled with the mention of his religion, the learned judge said, could not be permitted, all religions being equal before the law. The same course was recently adopted by Mr. Justice Williams in England. A counsel having observed, "My client fell into the hands of the Jew money-lender, and that is why he now appears in bankruptcy," his Lordship replied: "From my experience both at the bar and on the bench I am of opinion that 'Jew money-lender' ought not to be used in an opprobrious sense." The term seems to be specially offensive and out of place, in courts where Jewish barristers practice, and in a country where a Jewish judge (Jessel) not long ago, was one of the most distinguished ornaments of the bench.

When the furniture and effects which form the *gage* of the lessor are destroyed by fire, does he wholly lose his privilege for the rent, or does it extend to the amount of

the insurance, where the effects are insured? This point arose in *Voscelles* v. *Laurier*, decided by Mr. Justice Charland at Montreal, on the 12th December last. The learned judge, following the majority of the authors, held that the lessor had no privilege on the amount due by the insurance company. In some cases the application of this rule might mean that the lessor would lose his claim in the event of a fire, but it is open to him to protect himself from loss, by a stipulation in the lease that the effects shall be insured, and that there shall be a transfer of the insurance to himself so soon as the lease begins to run.

The duties incumbent on auditors form the subject of frequent discussion, and as to which there is considerable difference of opinion. In a case which attracted notice in England not long ago, a conscientious auditor was dissatisfied with the directors' balance-sheet, and he prepared a report to the shareholders, in which he stated that he did not consider the balance sheet was drawn up so as to exhibit a true and correct view of the state of the company's affairs, the amount at the credit of the depreciation fund being insufficient and the expenditure charged to capital account excessive. Instead of allowing this to go before the shareholders, the directors got a valuation from another person to support the book values of the property and show that the depreciation fund was sufficient. The auditor then gave a qualified certificate, which was communicated to the shareholders. The sequel of the incident shows the nature of the reward which too often comes to fidelity, for the auditor was shortly after replaced by one, presumably, of more elastic conscience.

The English judiciary system is much more elastic and pliable than our own, and this serves to explain how the business of a great country is handled by such a small

number of judges. When the business before the Court of Appeal is light, the Lords Justices of that Court descend to the Court below, and devote their spare moments to assisting the judges of the Queen's Bench Division. Sometimes three Lords Justices have thus been assisting at once in the Queen's Bench Division.

SUPREME COURT OF CANADA.

OTTAWA, 9 Dec., 1895.

THE PROVINCE OF ONTARIO v. THE DOMINION OF CANADA AND THE PROVINCE OF QUEBEC. IN RE INDIAN CLAIMS.

Constitutional law—Province of Canada—Treaties by, with Indians—Surrender of Indian lands—Annuity to Indians—Revenue from lands—Increase of annuity—Charge upon lands—B. N. A. Act, s. 109.

In 1850, the late Province of Canada entered into treaties with the Indians of the Lake Superior and Lake Huron districts, by which the Indians' lands were surrendered to the Government of the Province in consideration of a certain sum paid down, and an annuity to the tribes, with a provision that "should all the territory thereby ceded" by the Indians "at any future period produce such an amount as will enable the Government of this province, without incurring loss, to increase the annuity hereby secured to them, then, and in that case, the same shall be augmented from time to time."

By the B. N. A. Act, the Dominion of Canada assumed the debts and liabilities of the Province of Canada, and sec. 109 of that act provided that all lands, etc., belonging to the several provinces of Canada, Nova Scotia, and New Brunswick at the Union, and all sums then due or payable for such lands, etc., should belong to the several provinces of Ontario, Quebec, Nova Scotia, and New Brunswick, in which the same were situate, "subject to any trusts existing in respect thereof, and to any interest other than that of the province in the same."

The lands so surrendered are situate in the Province of Ontario, and have for some years produced an amount sufficient for the payment of an increased annuity to the Indians. The Dominion

Government has paid the annuities since 1867 and claims to be re-imbursed therefor by Ontario.

Held, affirming the award of the arbitrators, that the payment of the annuities was a debt or liability of the Province of Canada assumed by the Dominion under the B. N. A. Act.

Held also, reversing the said award, that the provision in the treaties as to increased annuities had not the effect of burdening the lands with a "trust in respect thereof" or "an interest other than that of the Province in the same" within the meaning of said sec. 109, and therefore Ontario held the lands free from any trust or interest, and was not solely liable for repayment to the Dominion of the annuities, but only liable jointly with Quebec as representing the said Province of Canada.

Appeal allowed with costs.

Æmilius Irving, Q.C., S. H. Blake, Q.C., and J. M. Clark, for Province of Ontario.

Christopher Robinson, Q.C., and Hogg, Q.C., for the Dominion of Canada.

Girouard, Q.C., and Hall, Q.C., for Province of Quebec.

Quebec.] 25 Feb., 1896.

HAMEL V. HAMEL.

Appeal—Final judgment—Interlocutory proceeding—Petition for leave to intervene.

In an action brought by one executor of an estate to have the other removed, E. H., *mis-en-cause* in the action, wishing to take proceedings for the removal of both executors, presented a petition to the Superior Court asking to be allowed to intervene. His petition was dismissed, the court holding that as he was already in the cause as *mis-en-cause*, if he wanted relief that he could not obtain in that capacity he must bring a separate action. The judgment dismissing the petition was affirmed by the Court of Queen's Bench and the petitioner sought to appeal to the Supreme Court.

Held, that the proceedings were only interlocutory, and there was no final judgment from which an appeal would lie.

Appeal quashed with costs.

Drouin, Q.C., for the motion.

Belcourt, contra.

Ontario.] 9 Dec., 1895.

TORONTO JUNCTION v. CHRISTIE.

Appeal—Judgment awarding damages to respondent—Increase of damages—Cross-appeal.

C. claimed damages from the Town of Toronto Junction for injury to his house property by the raising of the grade of the street on which it stood, and the claim was submitted to arbitration under the Ontario Municipal Act, 1892. The arbitrators considered that C.'s property was benefited by the alteration in the grade of the street, which was raised to the level of the houses and so made a more convenient entrance, and they awarded him nominal damages. On appeal to Mr. Justice Rose he increased the award to substantial damages, and the Court of Appeal sustained his judgment, being equally divided as to his jurisdiction so to deal with the case. The Corporation then appealed to the Supreme Court of Canada:

Held, that the Ontario Judicature Act (R. S. O., c. 44, ss. 47, 48) and rule 16 thereunder, gave the Court of Appeal power to increase the amount of the award to the extent to which it had been increased by Mr. Justice Rose, and the judgment appealed from was right; that the Supreme Court, under its rule no. 61, had the like power to increase damages awarded to a respondent though there was no cross-appeal; *Robertson* v. *The Queen* (3 Can. S. C. R. 52) followed; and that the amount awarded by Rose, J., did not compensate the respondent for the injury to his property and it should be still further increased.

Held, per Strong, C.J., that as the statute under which the arbitration took place required the court to pronounce just such judgment as the arbitrators should have given, it was sufficient notice to the appellant of what the court might do without a cross-appeal.

Appeal dismissed with costs subject to variation by increasing the damages.

Aylesworth, Q.C., & Going, for appellant.

Riddell & Gibson, for respondent.

Ontario.] 4 March, 1896.

EASTMURE V. CANADA ACCIDENT INSURANCE CO.

Master and servant—Dismissal—Agent of insurance company—Acceptance of agency for rival company.

By agreement in writing, E. became chief agent for Ontario, of the Canada Accident Insurance Company, doing ordinary accident, plate glass, and employers' liability insurance. By one clause in the agreement E. engaged to fulfil conscientiously all the duties assigned to him, and to act constantly for the best interests of the company, and by another, the agreement was to continue from year to year subject to termination by either party on giving three months' notice to the other. Shortly after he became agent of this company, E. accepted the agency for Ontario of The Lloyds Plate Glass Insurance Company, and on refusing to give it up on demand of the Canada Accident Insurance Company, he was dismissed from their employ.

Held, affirming the decision of the Court of Appeal for Ontario (22 Ont. App. R. 408), that the acceptance by E. of the agency of the rival company, by which he would be prevented from conscientiously fulfilling the duties assigned to him by the Canada Accident Insurance Company, was sufficient justification for his dismissal by the latter.

Appeal dismissed with costs.

Gormully, Q.C., & Ordex, for the appellant.

W. Cassels, Q.C., & Bruce, Q.C., for the respondents.

SOME NOTES ON QUIBBLING.

The quibble is as ancient as Eden. Our first parents quibbled, and we have been quibbling ever since. When God said, "Hast thou eaten of the tree?" did He receive an unequivocal reply? Nay, Adam shuffled over the matter, saying, "The woman whom Thou gavest to be with me, she gave me of the tree." Mother Eve likewise avoided the affirmative monosyllable, pleading, "The serpent beguiled me." This is rather a weak specimen of the quibble, perhaps—most things are weak at birth—but in view of the inherent tendency of our nature to evade, to shuffle, to

equivocate, when we find ourselves in a tight place, it may reasonably be looked upon as the genesis of quibbling.

Quibbling, then, dates back to man's first disobedience, and does not owe its origin, as someone has hinted, to the codification of laws and the advent of the lawyer. The equivoke is a weapon of common possession, but the skill to use it to the best advantage must be acquired, even as the master of fence acquires his marvellous dexterity. The old poet realized this :—

> " O many are the lawyers that are sown
> By nature ; men endowed with nicest quirks,
> The quibble and the fallacy refined ;
> But wanting the accomplishment of slang,
> Which in the docile season of their youth
> It was denied them to acquire, through lack
> Of lectures, or the inspiring food of inns ;
> Nor having e'er, as life advanced, been led
> By circumstance to take unto the height
> The measure of themselves for wig and gown,
> They go to the grave unheard of."

In ancient times the quibble was actively employed, and many a man fell a victim to the clever word-twisting of his tricky opponent. In these matter-of-fact days we have grown more wary, and are seldom caught. The few recent examples of successful quibbling which occur to me at this moment, are of such a commonplace character that I will not describe them, but will pass on to older and more interesting cases. Before leaving the present, however, let me say that the plea of "Not Guilty," so often heard in our courts, would seem to possess something of the nature of a quibble.

An old law book says, " A man who has committed an offence may plead 'not guilty' and yet tell no lie ; for by the law no man is bound to accuse himself, so when I say I am not guilty, the meaning is as if I should say, 'I am not as guilty as to tell you. If you bring me to trial, and have me punished for what you lay to my charge, prove it against me.' " Here we have a sort of legalized lie ; an untruth as far as the hearer is concerned, but no falsehood to the speaker because of a mental reservation. Let casuists decide.

An amusing example of quibbling is to be found in the following story related by a verdant son of Ireland : " Sure and I'm heir to a splendid estate under my father's will," said he ; " when he died he ordered my brother to divide the house with me, and

by St. Patrick, he did it—for he tuck the inside himself and give me the outside."

In "State Trials," by Nicholas Moile, we find the following:— "Action on the case for words. Sir Thomas Holt struck his cook on the head with a cleaver, and cleaved his head; the one part lay on the one shoulder, and another part on the other. The defendant pleaded not guilty, and it was found against him. It was now moved, in arrest of judgment, that these words were not actionable, for it is not averred that the cook was killed, but argumentative. The court was of that opinion, Fleming, C. J., and Williams, J., *absentibus;* for slander ought to be direct, against which there may not be any intendment, but here, notwithstanding such wounding, the party may yet be living, and it is then but trespass. Wherefore it was adjudged for the defendant." Sir Thomas's attack upon his cook reminds one of the smiting of Pandarus by Turnus:—

> Scalp, face, and shoulders the keen steel divides,
> And the shared visage hangs on equal sides.

If Virgil had had the true legal instinct, he surely would have added that the wound was fatal.

A man once said of an attorney, that he had "no more law than Mr. Crocker's bull." For this he was brought to court, whereupon he endeavoured to escape by saying that Mr. Crocker had no bull. But the quibble did not work. "If that be so," said the judge who tried the case, "then the scandal is the greater.

That reminds me of the schoolboy—evidently one of the lawyers sown by nature—who, having been convicted of some offence and sentenced to the usual punishment, requested as a favor that its execution be postponed until he had got his evening meal of bread and milk. This indulgence being formally granted, the youngster declared that he did not mean to eat any bread and milk that evening, and contended that consequently the promise made to him amounted to a reprieve *sine die.* The lad deserved to escape for his cleverness, but it is recorded that old Dryasdust only walloped him the harder.

In the matter of slander the quibble has frequently been employed with successful results. For instance, A said of B that he had "as much sense as a pig." That A meant to be abusive was plain, but he wormed himself out of any unpleasant consequences by arguing that to say B had as much sense as a pig,

was by no means to say that he did not have a great deal more. Again, C publicly remarked of D that he "deserved to be hanged as much as ever Blank did at Newgate." This was not actionable, as it was a mere expression of opinion, and D could not prove that C did not believe that Blank never deserved hanging.

Here is a peculiar hypothetical case which I picked up in an old volume: Brown and Smith are witnesses on a case. Brown says to Smith, "One of us is perjured!" Smith replies, "It is not I." Brown says, "I'm sure it is not I." Smith shall then have cause for action for these words, for in the brief colloquy, Brown has called him a perjurer, just as surely as if he had said, "Smith, you are a perjurer!"

Sir William Fish once attempted to escape an obligation by a quibble. He had been ordered by court to pay "fifty pounds" on a certain day at Gray's Inn. Promptly at the appointed time he appeared, and tendered fifty pounds weight of stone. Sir William's ruse had all the success it deserved.

An ancient case of court quibbling is the following, recorded by Herodotus. It appears that Archetimus of Erythræa, having made a journey to Tenedos, and availed himself of the hospitality of Cydias, handed over to his host a sum of money for safe keeping. When Cydias was asked to return this money, he refused to do so, and the pair went to law. Finally the whole matter hung upon Cydias' oath. Now the latter was too much of a knave to confess the truth, and too much of a coward to tell a bold lie, so he devised the plan of concealing the money in the hollow of a walking stick which he put into Archetimus' hands. Having done this he swore that, although he had received the money in question, he had afterwards given it back. This would have been sufficient for his release, had not a peculiar thing happened. Archetimus in a rage threw down the stick with such violence that it broke, disclosing the treasure and discovering the trick. Herodotus imputes the discovery to Divine Providence, and adds that Cydias ultimately came to an unhappy end.

Perhaps the most famous quibble in history was that perpetrated by Queen Dido. She bargained for as much land as could be covered by a hide, and then cleverly cut the hide into long strips so as to enclose quite an extensive tract. For this feat her memory has been perpetuated in our dictionaries.

But of all the quibblers of old, commend us to the men at arms. When Temures besieged Sebastia, he promised that if they would

surrender, no blood would be shed. The garrison took him at his word and surrendered, when Temures, quibbling on his promise, buried them all alive.

Aryandes, treating with the Barcœans, enticed their ambassadors to a place prepared for the purpose, where he swore to observe the treaty as long as the earth on which they stood should continue firm. He had placed them on a pit having a trapdoor covered with earth, which presently he caused to sink beneath them. Having thus, as he conceived, terminated the treaty, he put his unfortunate victims to the sword.

Labeo, the Roman general, having overcome Antiochus, stipulated as a condition of peace, that he should be entitled to carry away one-half of Antiochus' ships. This having been agreed to, Labeo cut each of the ships in two, and carrying off his half destroyed the king's entire navy.

Cleomenes the Spartan, having entered into an armistice with the Argive army for seven days, fell upon them during the third night, and killed and captured a great number of them while they were fast asleep. On being reproached with his perfidy, he argued in justification that he had made the truce for seven days, but had said nothing about the nights.

A Roman officer, taken prisoner by Hannibal, was permitted to leave the camp on a promise that he would speedily return. Just after leaving, he returned on pretence of having forgotten something, and again went away. He then hastened to Rome, where he remained, maintaining that he had kept his promise to speedily return, and therefore would not go back.

Coming down to more modern times, it is told that a distinguished Spanish general, having bound himself by oath never to fight against the French army, whether on foot or on horseback, took the field against them at the battle of Rocroy in a sedan chair.

Equivocatory clauses in wills, and puzzling inscriptions on burial stones and statues have frequently formed the groundwork of very interesting stories. Petrarch tells us one to this effect: There was in Sicily a huge statue on which this inscription was engraved in very ancient letters, "On May-day I shall wear a golden head." Many persons considered this statement as a jest, while others went the length of piercing the head on the day mentioned, hoping to find it really golden. Finally one man, more expert in quibbles than the rest, came on May-day to the

spot, and observing where the first rays of the sun threw the shadow of the head of the statue on the ground, he dug there, and laid bare an immense treasure of gold.

Shakespeare's quibbling in Macbeth is notorious. "None born of a woman shall harm Macbeth." Rather a weak quibble, William, to claim that a child brought into the world by the Cæsarean operation was not born of his mother. "Till Birnam wood shall come to Dunsinane" is not much better. No wonder Macbeth should exclaim:

> "And be these juggling fiends no more believed,
> That palter with us in a double sense;
> That keep the word of promise to our ear,
> And break it to our hope."

G. H. Westley, in the "Green Bag."

THE GERMAN POLICE.

Any one who has observed the working of the police in Germany must be struck by the wonderfully wide scope of their operations, and the enormous mass of details of every possible kind with which they have to deal; matters, many of them, entirely outside the duties of our police. One would think that for such work men of superior intelligence must necessarily be employed; but this does not appear to be the case. True, there is considerable variety of material. In the large towns, where the police are supplied and maintained by the central government, the "Schultzmann" is a great personage. This is the variety chiefly known to the tourist, and recognizable by his smart long frock-coat, like an officer's undress, his military helmet, and sword. This imposing gentleman is usually a former non-commisioned officer of the army, who, at the end of the regular nine years' service, retired to this appointment. He is nearly always smart, well set up, and dignified; and though he does not appear to parade his beat in the mechanical fashion we know so well, he yet manages to avoid the appearance of idle lounging, sometimes to be observed in this country. These officers are relieved at night by an entirely different set of men, called night watchmen—ordinary citizens, who from dusk till sunrise parade the streets in hideous brass helmets and a kind of fireman's uniform, thus relieving the others of night-patrol duty.

The regular police seem, as a rule, to discharge their manifold duties quietly, and without unnecessary strictness. The superior officials consist, in the large towns, of a police president, or head of the entire police system of the town (of whom more anon), and of a certain number of commissaries (Commissär), each having his own office and staff in a separate district, where he attends to the innumerable matters of greater or less importance that come before him, of which, as we shall see, ordinary street-police work forms really only a small part. These are very grand gentlemen, hardly to be distinguished at a little distance from military officers, and chosen from a somewhat more highly educated class. Besides these, there are various officials connected with the force, and charged with particular duties, such, for instance, as the overseeing of town drainage arrangements. One man devotes his whole energies to seeing that dogs in the streets are properly muzzled; and many an encounter this unenviable official would seem to have with tender-hearted ladies, who cannot bear to inflict those instruments upon their pets, or, the only alternative, to lead them by a chain. Nor are ladies the only offenders, for one gentleman told the writer not long ago, that, in the course of a year, he paid not less than a hundred marks, or twenty-five dollars, in fines for this offence, in respect of a favorite collie, which had a knack of escaping from the garden. Here I may mention that, for this and many other offences against public order and convenience—some of which will be mentioned later on—the police have power to inflict summary fines without the formality of a summons before the judge. A policeman calls at your house with a small scrap of paper, called a "strafzettel," on which are set forth the offence and the fine to be levied, with the necessary information, in case you wish to appeal to the court. But if you are a wise man, or unless the whole thing is a mistake, you pay up at once, and get the matter over.

These regular police officials are paid and entirely controlled by the government; they act independently of the local authorities, and, indeed, often in opposition to them. In the smaller towns and villages of any size, their place is taken by the humbler "Ortsdiener." He, too, is adorned with a sword and a uniform, handsome in itself, if not always in the highest state of preservation; and is often a somewhat elderly, spectacled, and benevolent looking gentleman, whose rule is probably, on the

whole, easy-going and paternal, and who is not above smoking the social cigar and indulging in friendly gossip on his rounds.

If we now turn to the duties undertaken by the police, we shall find that their range is as wide as it is various, and includes several matters which, as I have said, hardly come within the cognizance of the American police at all. The head of the police force in a large town is indeed an important officer. He is usually a man of good family, who has served the state in various capacities, and qualified himself after the thorough-going German fashion, by all manner of examinations in law, jurisprudence, and what not, for his present office. He may have served for a time as a judge, as an official of a provincial government, or in any of the hundred and one branches of state officialism. And it is quite necessary that he should be highly qualified, for much of his work requires tact, experience, and skill of a high order. He has, in fact, to represent the central government in all things. We may take the instance of the expulsion of the Queen of Servia from Germany as a case in point. There the local police president was charged with all the negotiations, and exceedingly well he appears to have carried out what must have been a very delicate and a very disagreeable duty.

The president sometimes comes into collision with the "patres conscripti" who are, perhaps, not more free from human failings than in some other countries that might be named. These differences of opinion arise on very various questions—often in the matter of licenses for houses of public entertainment, where the police have to see that the statutory regulations as to space, etc., are duly insisted on by the local licensing authority, which is sometimes disposed to undue leniency. Or, again, to mention a recent case, the police lay before the town council a recommendation that all owners of houses let in flats should be required to properly light the public staircase during the dark hours. It must be remembered, in this connection, that the "concierge" is unknown in Germany; in most of these houses anyone who goes in or out after dark has to grope his way as best he can. Accidents from this cause are not uncommon. The suggestion would seem obvious and reasonable enough, but the conscript fathers did not see it in that light. Being most of them owners of house property themselves, the appeal to their pockets was too much for their sense of justice. In this particular instance the police have not yet carried their point, but will doubtless do so

sooner or later. The same kind of paternal supervision is observed in regard to sanitary matters, such as house-drainage, removal of refuse, and water supply. The police utilize their intimate knowledge of local affairs to interfere at the right moment. They also test at intervals all milk sold in the district, and publish the results in the local papers, giving the name of each dealer in full, so that adulteration becomes practically impossible.

To mention all the minor details which this many-sided authority takes in charge would prolong this sketch far beyond its limits; but one or two instances may be given. Take, for example, the registration of all arrivals, departures, and changes of residence in a town or district. Woe betide any proprietor of a hotel or pension who neglects to promptly report the arrival and departure of every guest at the office of the "Commissär" of his district; or any householder who does not notify to that individual the name, address, and standing of every member of his household on first arrival in the place, and thereafter of every guest who may pass even one night beneath his roof. Further, he must report whenever he changes his residence within the district, and will be required to state, among other things, what rent he pays for the new abode, if hired, or the price he has given, if purchased. This latter information is utilized for the purposes of the income tax commissioners, of whom the police president is the chief member. Even your new housemaid has to announce herself and produce her papers; and if it should be found that the departing one has omitted to report herself before leaving, she will inevitably be followed to her new place by the dreaded "Strafzettel," for these offences come within the category before mentoned of those for which the police are empowered to impose a fine without going to a magistrate in the first instance, although there is always a right of appeal. Thus you may some morning be presented with one of these unpleasant little documents, and find on inquiry that your servant has been cleaning (that is, banging) the feather-beds out of a window looking on to the street, and that your next-door neighbour, suffering from an inundation of fluff, has called the attention of the "Shultzmann" to the heinous transgression. Contrasting this kind of thing with the grave political and judicial functions discharged by the same authorities, one is inclined to compare

German police to a Nasmyth hammer, which, capable of tremendous power, is yet adaptable to the most delicate work.

With regard to the number of men employed, it would appear to be based on the principle of one man to each thousand of population.—*A. T. Sibbald, in the "Green Bag."*

GENERAL NOTES.

THE STREAM OF PUBLICATIONS.—In Great Britain the output of books is as follows: Sermons, one volume a day; novels, five a day; educational books, two a day; art and science, two each every week; histories or biographies, six a week, and law, one every two weeks.—*Publishers' Circular.*

EQUIVOCAL.—A Scots judge's 'lordship,' like a bishop's, does not make his wife a 'lady,' and on one occasion a judge, whose name was Y., but who bore the territorial title of X., wrote in the hotel visitors' book; "Lord X. and Mrs. Y." Presently appeared the landlord, much perturbed. "Beg pardon, my lord," quoth he, "sorry to inconvenience your lordship, but I fear I must ask you to find accommodation elsewhere. *This is a respectable house!*"

SEIZURE OF WAGES.—Mr. Justice Williams deprecates the making of orders attaching a bankrupt's salary where the man is in receipt of a weekly income which is not payable to him in relation to periods of time, but is a weekly amount earned by a working man. It is not good, says the judge, either for the State or the bankrupt, that a man should be turned into a slave of this sort, and have to make deductions like this from his wages, as it does not encourage industry. *Law Journal(London.)*

RESTRAINT UPON TRADE.—The common law, Lord Macnaghten has just said in *Trego* v. *Hunt*, in its jealousy of all restraints upon trade, paid too little attention to what was just and fair between man and man. It must be admitted that in the matter of goodwill the noble lord's reproach is not undeserved. The law allows a man who has sold the goodwill of a business to set up a similar business on his own account, even next door to the premises in which his successors carry on their trade. It allows him to advertise his previous connection with the business that

he has sold, provided that he does not represent that he is carrying on the identical business. May he, however, directly solicit the customers of his former business to give their custom to him? Twenty-five years ago this question arose for the first time in *Labouchere* v. *Dawson*, and Lord Romilly granted an injunction to restrain such solicitation. His judgment was followed by Sir George Jessel, who even held that the man who had parted with the good-will of a business might not trade with any of his old customers. These decisions were overruled by the Court of Appeal in *Leggett* v. *Barrett* and *Pearson* v. *Pearson*. Most purchasers of businesses protect themselves against the competition of their predecessors by restrictive provisions in their agreements; but where they have neglected to safeguard their interests in this manner, the judgment of the House of Lords will, to some extent, give them a just and effective protection.—*Ib.*

THE LAW OF LARCENY.—The common law of larceny complicated by mistake which divided the long array of judicial wisdom in *Regina* v. *Ashwell* is now troubling the Celtic intellect. A., the master of a vessel loading a cargo, gives B., one of his labourers, in payment of his wages a 10*l.* note in mistake for a 1*l.* note. B. takes the note in all innocence, but shortly afterwards discovers the mistake, and makes up his mind, as he frankly declares, to appropriate, and does appropriate, the unearned increment, and duly disburses it at a public house. About the moral character of this transaction there will not be much doubt, only whether it is technically larceny or not. *Regina* v. *Ashwell* leaves the law, so says *Regina* v. *Flowers*, in its pristine state, which was that the innocent receipt of a chattel, coupled with its subsequent fraudulent appropriation, does not amount to larceny. The *asportavit*, to talk technically, is not there. It would be a nice speculation whether the technicality of our criminal law has saved or lost more prisoners. The misspelling of a Christian name in an indictment has delivered many a man from hanging; but what of 'constructive treason'? 'O Justice!' we may exclaim, 'what crimes have been committed in thy name!' Hair-splitting is a fine intellectual exercise in civil cases, but it wears a ghastly aspect when a man's life or even his liberty is trembling in the balance.—*Ib.*