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SUPREME COURT OF CANADA.

OTTAWA, 9 December, 1896.

Quebec.]

MONTREAL ROLLING MILLS CO. v. CORCORAN.

Negligence—Cause of accident—Evidence—Presumptions—Art. 1053 *C. C.—Quebec Factories Act (R. S. Q. arts.* 3019-3053)—*Police regulations—Civil responsibility.*

An engineer in charge of the engine and machinery of a Rolling Mills Company was killed by being caught in a belt, or a fly wheel, while acting in discharge of his duty. He was alone at the time, and no certain evidence could be obtained in an action by his widow, as to the immediate cause of the accident. It was contended that the fact that the fly wheel and machinery were not securely guarded or fenced, contrary to the provisions of "The Quebec Factories Act" (R. S. Q. arts. 3019-3053), was sufficient evidence of negligence to make the employers of the deceased liable.

Held, reversing the judgment of the Court of Queen's Bench, that it was necessary to prove by direct evidence, or by weighty, precise and consistent presumptions, that the accident was caused by the positive fault, imprudence or neglect of the employers, and for want of such proof they were not liable.

Held, further, that the said provisions of The Factories Act are

intended to operate purely as police regulations, and do not affect the civil responsibility of employers towards employees as provided by the Civil Code.

Appeal allowed with costs.

McGibbon, *Q.C.*, and *Riddell*, for the appellants.
Guerin, for the respondent.

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9 December, 1896.

Quebec]

LEFEBVRE v. AUBRY.

Partnership—Dissolution—Division of assets.

On the dissolution of a non-commercial partnership in the Province of Quebec, where for want of other arrangement between the partners the assets must be divided by operation of law, such division must follow the rules regulating the partition of successions. Art. 1898, C.C.

Where one partner, on dissolution of the partnership, had been entrusted, as mandatary of the others, with the collection of debts due, any of his former co-partners could bring an action against him directly either for an account or for money received and not paid over.

Appeal dismissed with costs.

Geoffrion, *Q.C.*, and *Martineau*, for the appellant.
Lafleur, and *Bonin*, *Q.C.*, for the respondent.

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9 December, 1896.

Ontario]

LAKE ERIE & DETROIT RIVER RY. CO. v. SALES.

Railway Company—Carriage of goods—Connecting lines—Special contract—Loss by fire in warehouse—Negligence—Pleading.

In an action by S., a merchant at Merlin, Ont., against the Lake Erie & Detroit River Railway Company, the statement of claim alleged that S. had purchased goods from parties in Toronto and elsewhere to be delivered, some to the G. T. R. Co., and the rest to the C. P. R. and other companies, by the said several companies to be, and the same were, transferred to the

Lake Erie &c. Company for carriage to Merlin. It also alleged that on receipt by the Lake Erie Company of the goods it became its duty to carry them safely to Merlin and deliver them to S., but did not allege that they were received to be carried subject to the common law liability of the company as common carriers. There was also an allegation of a contract by the Lake Erie for storage of the goods and delivery to S. when requested, and of lack of proper care whereby the goods were lost. The goods were destroyed by fire while stored in a building owned by the Lake Erie Company at Merlin.

Held, reversing the decision of the Court of Appeal, that as to the goods delivered to the G. T. R. to be transferred to the Lake Erie as alleged, if the cause of action stated was one arising *ex delicto* it must fail as the evidence showed that the goods were received from the G. T. R. for carriage under the terms of a special contract contained in the bill of lading and shipping note given by the G. T. R. to the consignors, and if it was a cause of action founded on contract it must also fail as the contract proved created only a limited liability and was not the absolute unconditional contract set up in the statement of claim.

Held, further, that as to the goods delivered to the companies other than the G. T. R. to be transferred to the Lake Erie, the latter company was liable under the contract for storage alleged; that the goods were in its possession as warehousemen, and the bills of lading contained no clause, as did those of the G. T. R., giving subsequent carriers the benefit of their provisions; and that the two courts below had held that the loss was caused by the negligence of servants of the Lake Erie, and such finding should not be interfered with.

Held, also, that as to goods carried on a bill of lading issued by the Lake Erie Company, there was an express provision therein that owners should incur all risk of loss of goods in charge of the company, as warehousemen; and that such condition was a reasonable one, as the company only undertakes to warehouse goods of necessity and for convenience of shippers.

Appeal allowed in part.

Riddell for the appellants.

Thomson, Q.C., and *Tilley* for the respondent.

9 December, 1896.

NIAGARA DISTRICT FRUIT GROWERS CO. v. WALKER.

Ontario.]

Principal and surety—Guarantee bond—Fidelity of principal—Principal's default—Duty of creditor to disclose.

W. was appointed in 1891 by instrument in writing, agent of a company to sell its fruit, giving a bond with sureties conditioned for the faithful discharge of his duties, and prompt return of monies collected on sales. At the end of the year, the bond was given up and a new bond executed by W., and the same sureties for the next year's business, and the same course was pursued for three years more. W. was in arrears to the company every year, and represented that it was due to slow collections, although by the terms of his appointment he could only sell for cash. The arrears were always made good by W. giving an indorsed note which the company accepted. At the end of 1894 the company discovered that the default had not been caused by slow collections, but that W. had received monies which were not remitted, and for the balance due on that year's business, an action was brought against the sureties.

Held, reversing the judgment of the Court of Appeal (23 Ont. App. R. 681), that the appointment of W., as agent for each of the four years was an independent appointment; that the position of the sureties for 1894 was the same as if other persons had been sureties in the preceding years; and that the company was under no obligation to disclose to the persons signing the bond for 1894 the default of the preceding year, nor was the non-disclosure a representation that W. had punctually performed his undertakings in respect of such previous employment.

Moss, Q. C., & Meyers, for appellants.

Armour, Q. C., for respondents.

9 December, 1896.

FARWELL & GLENDON v. JAMIESON.

Ontario.]

Landlord and tenant—Construction of statute—R. S. O. (1887) *c.* 143, *s.* 28—*Holding "under" tenant—Estoppel.*

By sec. 28 of The Landlord and Tenant Act (R. S. O. 1887, c. 143), only the property of the tenant or person liable for the rent shall be distrained upon. The word "tenant" in the act includes a sub-tenant; assignees of a tenant and person in actual occupation under or with consent of the tenant. A property under lease was assigned by way of mortgage, and the mortgagees took possession and gave the keys to a house agent so that he could show the premises with a view of letting them. The house agent, without any authority so to do, let into possession, a firm of dealers in pianos, and the stock they placed in the premises was distrained upon for arrears of rent under the original lease.

Held, reversing the judgment of the Court of Appeal (23 Ont. App. R. 517) and of the Divisional Court (27 O. R. 141), that the said property was not liable to seizure; that it could only be liable as property of persons in occupation "under" the assignees of the tenant and these persons were not so in occupation; and that though in an action of ejectment or trespass they might be estopped from denying that they held under the assignees, that would not bring them within the terms of the act; they must hold under the tenant in point of fact.

Appeal allowed with costs.

Laidlaw, Q. C., for the appellant.

Kilner, for the respondent.

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9 December, 1896.

COOPER v. THE MOLSONS BANK.

Ontario.]

Debtor and creditor—Collateral security—Proceeds received by creditor—Appropriation—Res judicata.

C. had a line of discount with a bank on terms of depositing customers' notes as collateral, and having failed owing a large amount for discount, about three-fourths of which was secured as agreed, the bank sued and obtained judgment on his notes dis

counted as they matured. C., then, claiming the right to have the amounts realized from the collaterals credited to him, obtained from the Divisional Court an order directing the trial of an issue upon the question whether, before or since the recovery of said judgments, the bank had received any payments which ought to be applied in or towards satisfaction thereof, and if so, when and to what extent. The bank, while admitting the receipt of a considerable portion of the collaterals, claimed the right to exhaust all other means of obtaining payment of its debt before crediting the money so received, and the decision on the trial of the issue was that no money had been received which it was bound to apply in satisfaction of the judgments. After the last of the discounted notes had matured the bank sued C. on them, and the question of applying the proceeds of the collaterals was again raised, it being contended that, at all events after all the debt had matured, the bank was bound to appropriate. It was again decided in favour of the bank, not only on the question of law but also on the ground that it was *res judicata* by the decision on the issue.

Held, reversing the judgment of the Court of Appeal (23 Ont. App. R. 146), that the matter was not *res judicata*; that under the Judicature Act, *res judicata* as a defence, or reply to a counterclaim, must be specially pleaded; and if not, as the questions in litigation in the action were not identical with those involved in the issue, though depending on the same principle of law, the decision might be binding on inferior tribunals and courts of coordinate jurisdiction, but would not be binding as *res judicata* on courts of appellate jurisdiction.

Held, further, that though the bank was not obliged so long as the collaterals remained in its possession uncollected, to give any credit in respect of them, when it received payment of such collaterals or any part of them it operated at once as a payment of the principal debt.

Appeal allowed with costs.

Foy, Q. C., for the appellants.
Shepley, Q. C., for the respondents.

IMMUNITY OF JUDGES.

In connection with the subject of the immunity of judges, recently discussed in England (*ante* p. 313), the following case is of interest:—

At Brompton County Court, on October 22, 1895, his Honour Judge Stonor gave judgment in the case of *Chaffers* v. *Judge Lumley Smith and Judge Meadows-White.* The plaintiff appeared in person; and Mr. Dennis was counsel for the defendants.

The learned judge said that at an adjourned hearing of this action on September 24, the plaintiff stated his case and gave his own evidence in support of it, and then applied for a further adjournment in consequence of the absence of two witnesses—viz., the defendant Judge Meadows-White, and Lord Esher, both of whom had been duly subpœnaed. The former was abroad when the subpœna came to his knowledge, and wrote at once to the registrar of the Court to express his readiness to attend on a future occasion if it were considered desirable by the Court. The latter did not attend on the day of trial or send any communication to the Court, but at the adjournment intimated, by the learned counsel who then appeared for him as well as for the defendants, that he was also ready to attend if it were considered desirable by the Court. At the adjourned hearing, on September 24, the plaintiff, however, also moved, in pursuance of a previous notice, to have Lord Esher's attendance enforced by the Court under the powers given by the County Court Act, 1888, ss. 111, 167. On the part of the defendants it was then contended, first, that this action did not lie; and, secondly, that it was vexatious; and that upon both grounds it ought to be dismissed, and that the attendance of the defendant Judge Meadows-White and Lord Esher ought not to be required, and the whole matter was further adjourned for decision. The material portions of the particulars in the action were as follows: The plaintiff's claim was for £1 for damages against the defendants for that they had corruptly and maliciously conspired and combined together—acting in collusion with the Right Hon. Baron Herschell and also in collusion with the Right Hon. Baron Esher—to obstruct and defeat the course of justice by maliciously acting with gross oppression and tyrannical partiality, under the colour and in abuse of their judicial office, and by refusing to compel

the attendance of the said Barons Herschell and Esher after they had been duly subpœnaed to attend, and also refusing to adjourn the trials of the actions before them in which the said Barons Herschell and Esher were defendants for their attendance on their subpœnas. It was quite clear that all the acts alleged to have been done by the defendants in pursuance of the alleged conspiracy were done in the performance of their judicial duties, and that, according to the cases of *Scott* v. *Stansfield*, 57 Law J. Rep. Exch. 155; L. R. 3 Exch. Div. 220, and *Anderson* v. *Gorrie*, L. R. (1895) 1 Q. B. 668, the defendants were not liable in respect of such acts, even if done from malicious motives as alleged. It was, however, certainly another matter whether an action would not lie against them for previously entering into a conspiracy as alleged, in consequence of which such wrongful acts as alleged were done, and this depended upon the question whether such alleged conspiracy ought to be regarded as having been entered into by them in the execution and in violation of their judicial duties, and, upon consideration, he thought that it ought to be so regarded. He would observe, however, that an action containing allegations of conspiracy might be brought, and a judge harassed as to every case tried by him, and therefore the same reason existed for a judge's immunity from such an action for a conspiracy as from an action for any acts done in pursuance of it. And in support of this view he would refer to the recent case of *Haggard* v. *Pelissier Frères*, 61 Law J. Rep. Priv. Co. Cas. 19. He therefore thought that this action would not lie for the alleged conspiracy in the present case, any more than for the acts alleged to have been done in pursuance of it. As to whether the present action was vexatious and ought to be dismissed, and the enforcement of the witnesses' attendance consequently refused, he felt very strongly the observations of Lord Herschell in the case of *Lawrence* v. *Lord Norreys*, 59 Law J. Rep. Chanc. 681, as to the caution with which this power of summary dismissal ought to be exercised, which observations were referred to in the case of *Haggard* v. *Pelissier Frères;* but, considering all the circumstances of the present case, especially that the particulars in the action and the statement and evidence of the plaintiff disclosed no cause of action, that he admitted that he had no knowledge or reason for thinking that there were any

communications between the defendants and Lord Herschell and Lord Esher, that he also admitted that the actions now in question and others had been brought by him merely for the purpose of cross-examining Lord Esher with regard to certain words which he used in summing up the evidence in a civil action brought by the present plaintiff, which cross-examination he would have no right, and ought not to be permitted to enter upon; and, lastly, considering the utter improbability of the plaintiff's case, he thought that this action must be dismissed as vexatious, and the motion for the enforcement of Lord Esher's attendance would, of course, be also dismissed.

CHAUCER'S LAWYERS.

Geoffrey Chaucer was born about 1340, and died on the 25th October, 1400, his life thus covering an interesting period in the history of English law. At the death of Edward I., in 1307, English common law, the law of the realm, had reached its full development, and its consolidation and interpretation had begun. The law and the practice of the law were ascertained, and the two branches of the legal profession already occupied a defined position in the economy of the land. The future of English law lay, not so much in the creation of laws as in the moulding and modifying of them by means of fictions and decisions based on fictions, and by the development of an equitable jurisprudence, in order to bring the laws into touch with altered manners and other times. One expects to find in Chaucer not a little information concerning the lawyers and the courts of his day, information that would throw informing light on the administration of justice in a time when that administration had reached a fixed and final position; but expectation, in a great measure, is vain. Chaucer says sufficient to arouse curiosity, and not enough, even partially, to allay it.

A few notes, however, on some of the information that he does give us will nevertheless prove not without value. Among his characters in the Canterbury Tales that are connected directly or indirectly with law are "The Sergeant of the Lawe," "The Frankelein," "The Manciple," and "The Sompnour." Before dealing with these it is worth while to make a short note as to the position of the legal profession before and at this time.

"Before the end of the thirteenth century there already exists a legal profession, a class of men who make money by representing litigants before the courts and by giving advice." (Pollock and Maitland's "History of English Law.") Much earlier than this we get the distinction between the pleader who speaks for the litigant, and who can be disavowed by the litigant if he does not speak accurately (cases of such disavowal are reported), and the attorney who stands absolutely and irrevocably in the litigant's place. This acting by attorney was in imitation of a royal privilege to act and plead by attorney, but at first, in the case of a subject, the attorney could only represent his one attorner in one particular plea without he obtained a royal writ to act generally as an attorney. The practice of employing attorneys was in general force before the end of the twelfth century. "Already in Glanvill's day everyone who is engaged in civil litigation in the King's Court enjoys this right of appointing an attorney."

The limitation of the right to act in one plea for one person gradually falls away, and soon we find persons holding themselves out to act as attorneys for any one. For a long time, however, and seemingly especially in the case of pleaders, the duty was undertaken rather by friends and not by professional members of a class. So true was it that the profession did not exist, that even the king's justices were drawn from the ranks of his civil servants. That importunate and undeniable litigant, Richard of Anesty, pursued the remedy for his wrongs through the courts, civil and ecclesiastical, with the aid of "friends and helpers and pleaders." In this case we see a mixture of lay and professional aid, for among his pleaders were two professional men—the famous Master Ambrose in the ecclesiastical courts, and the rising lawyer, Ranulf Glanvill, in the civil courts. By 1235 the barrister class was already formed, for we find that in that year Laurence of St. Albans, the advocate of Hubert de Burgh, had to fight in court "all the advocates of the bench, whom we commonly call counters." To this word "counter" we shall refer directly in relation to Chaucer's work. In 1268 we find that a "counter of the bench assaulted a justice of the Jews in Westminster Hall," and his fellow counters interceded for him (History of English Law). A little earlier than this (in 1259) the king grants permission to citizens to plead without

lawyers except in pleas of the crown, pleas of land, and pleas of unlawful distraint. In fact, we may say with some exactness, that the profession was well established by the middle of the thirteenth century, in imitation of the ecclesiastical bar which was practically constituted in 1237 by the Legatine Constitutions of Cardinal Otto. The bar having been formed, it fell at once into the two classes of serjeants (*servientes ad legem*) and apprentices. The first statute of Westminster, c. 29 (1275), especially deals with improper behavior on the part of "serjeant counters," and is still in force.

In 1292 Edward I. directed his justices to provide for every court a sufficient number of attorneys and apprentices from among the best, the most lawful, and the most teachable, so that the king and people might be well served. About 1280, the corporation of London reformed the practice in its courts, and provided that no "counter was to be an attorney." This marked the division of the two branches of the profession. From the first Year-book (1292) we find that most of the work was then in the hands of some seven counsel, and we also note that the opinion of a serjeant is almost as weighty as a judgment; (History of English Law). By Chaucer's time, therefore, the bar was fully formed as a fixed and recognized institution. It is now desirable to see what light Chaucer throws upon it.

First, as to the manciple. A manciple (manceps), we are told by Cowell, is a clerk of the kitchen, or caterer, and an officer in the Inner Temple was anciently so called, who is now the steward there. This officer still remains in colleges in the universities. This statement that a manciple was an officer in the Inner Temple leads us to a most interesting piece of information. Geoffrey Chaucer, in line 569 of the Prologue to the Tales, says:

> A gentil manciple was ther of a temple,
> Of maisters had he mo than thries ten
> That were of lawe expert and curious;
> Of which ther was a dosein in that hous
> Worthy to ben stewardes of rent and lond
> Of any lord that is iu Englelond
> And able for to helpen all a shire
> In any cas that mighte fallen or happe;
> And yet this manciple settee hir aller cappe.

Whence it seems we may legitimately deduce the fact that in the middle of the fourteenth century there were between thirty and forty resident lawyers in the Inner Temple, some twelve of whom were serjeants or of very considerable standing. I am not aware that this historical reference in Chaucer, with respect to the Inns of Court, has received the notice it apparently deserves.

The next character to whom reference may be made is the sompnour. A sompnour is a summoner (*summonitores*)—a petty officer, whose duty is to cite and warn men to appear in any court (Fleta, 1, 4). He is also called an apparitor, and seems chiefly to have acted in connection with ecclesiastical courts. Chaucer's description of this man "that hadde a fire-red cherubinnes face" is vivid and most amusing. He, like a modern usher, was fond of aping his masters, and

> Whan that he well droken had the win,
> Than wold he speken no word but Latin,
> A fewe termes coude he, two or three,
> That he had lerned out of som decree,
> No wonder is, he herd it all the day.

If he was asked to go on, however, he would give you the formal end of a stated case and have done with you. "Ay, *questio quid juris* would he crie." This sompnour only belonged to the ecclesiastical courts, and Chaucer tells us that he performed his duties right corruptly. For a quart of wine he would wink at a deadly sin, and he would teach the offender to have no awe "in swiche a case of the archedekene's curse." He goes on to explain, however, that the curse may be harmful if the offender's soul dwell in his purse, for the archdeacon can get at that. "Purse is the archedeken's hell," said he. Chaucer, however, disagrees with the apparitor, and thinks a curse no light spiritual thing—

> Of cursing ought eche gilty man him drede,
> For curse will she right as assoiling saveth,
> And also ware him of a *significavit.*

This reference to the writ *de excommunicato capiendo* (which begins *significavit nobis venerabilis pater*) is interesting. There is one further statement as to the duties of a sompnour which is somewhat surprising:

> In danger hadde he at his owen gise
> The yonge girles of the diocise,
> And knew hir conseil, and was of hir rede.

"Girles" refers to young people of both sexes, and the text seems to infer that this official had all the legal infants of the diocese within the control of his office. To what extent this was true is an interesting question.

One of the most important of Chaucer's creations from the legal point of view is "the frankelein." A frankelein was a country gentleman, a freeholder, a squire, as we should say, and a power in the land where he dwelt. The frankelein, whom the poet has drawn as a type of a great class, is, indeed, a jovial, free-living, free-handed, enviable old man. He was more than a rough and tumble country gentleman, however. He was learned in the law, and administered it; nay more, he had been a member of parliament, and had helped to make the law:

> At sessions there was he, lord and sire,
> Full often times he was knight of the shire;
> An anelace and gipciere all of silk,
> Heng at his girdle, white as morwe milk.
> A shereve had he ben, and a countour,
> Was no wher swiche a worthy vavasour.

In the last line but one it will be noticed that he was a "countour." It is astonishing to notice the difficulty that this word has given so learned an editor as Tyrwhitt. As we have said above, the "contour" was the early form of barrister. A "counter" is a "contour" which is a translation from the Latin "narrator." "Matthew Paris, in his life of John II., Abbot of St. Albans, which he wrote in 1255, 39 Hen. III., speaks of advocates at the common law, or contours (*quos banci narratores vulgariter appellamus*), as of an order of men well known." (1 Bl. Com. 23, Coleridge's edit., note *t*.) "Contour" is seemingly a French translation of "narrator," and we have a similar word in the French "raconteur." Tyrwhitt, however, is ignorant of this, and says in a note to the word in the Prologue (l. 361), "This word has been changed in Ed. Urr, upon what authority I know not, to *coroner*. The MSS all read countour or comptour. At the same time it is not easy to say what the office meant. I have a notion that the foreman of the inquest in the Hundred court was called a *countour*, but the law glossaries do not take notice of any such sense of the word." Of course, the real meaning is that the frankelein was a country gentleman who had qualified himself for the judicial offices in his county by having

studied law and become a barrister. It is a pity that more people of the same class do not do the same nowadays.

We now pass to perhaps the most interesting of Chaucer's lawyers—the sergeant-at-law:

> A sergeant of the lawe ware and wise,
> That often hadde yben at the paruis,
> Ther was also, ful riche of excellence.
> Discrete he was, and of gret reverence;
> He semed swiche, his wordes were so wise,
> Justice he was ful often in assize,
> By patent, and by pleine commissioun,
> For his science, and for his high renoun,
> Of fees and robes had he many on.
>
> Prologue, line 311 *et seq.*

The above quotation is a straightforward statement, the only word of any difficulty being "Paruis." Selden tells us that the word means "an afternoon's exercise, or moot, for the instruction of young students, bearing the same name originally with the *parvisiæ* at Oxford." Possibly, therefore, the serjeant was a law lecturer or presided over legal discussions in the then important English law school that Henry III. had brought together in London. As to his sitting as a justice, the statement bears out the knowledge that we have of the great weight attached to the opinions of a serjeant in Chaucer's time. The next three lines seem difficult to understand:

> So grete a pourchasour was nowher non,
> All was fee simple to him in effect;
> His pourchasing might not ben in suspect

To purchase is to acquire lands otherwise than by descent; so that it is possible that the phrase means that his earnings were considerable, and that he invested them in lands with indisputable titles and unhampered with an inalienable entail; for this was before the time of Taltarum. He certainly had a considerable practice "nowher so besy a man as he ther n'as," but (and here Chaucer brands the profession with a satire that has never lost its humour or its sting), "And yet he seemed besier than he was."

The next few lines are intensely interesting and somewhat difficult:

> In termes hadde he cas and domes alle,
> That fro the time of King Will, weren falle.
> Therto he coude endite, and make a thing,
> Ther coude no wight pinche at his writing.
> And every statute coude he plaine by rote.

This seems to mean that the learned serjeant possessed and was well read in all the cases, both civil and criminal, that had been reported since the conquest, and from his knowledge of them could give legal advice that were too sound to be cavilled at; moreover, he knew every statute by heart. "Domes" certainly does not mean "opinions" as some have said. The proper meaning of the word is a judgment, sentence, or decree (*Termes de la Ley*, 266.) The words "in termes" seem to mean "in writing;" the following line shows that it does not refer to legal terms or sittings as it might well mean if the line stood alone. If the passage will bear the construction given above, it would seem as if the practice of resting all things upon precedent was already firmly established in Chaucer's time. The Queen's Counsel of the present day is unlike the worthy serjeant in one thing, he does not know every statute by heart. So the worthy serjeant rode out with the rest of that merry company from the Tabard Inn at Southwark to Canterbury. Perhaps he joined them for safety on the way to the assize. It is possible that he was only holiday making in the Easter vacation; anyway, he went in humble guise.

> He rode but homely in a medlee cote,
> Girt with a seint of silk, with barres smale.

It would be interesting to know if this man of law were a picture of one of the handful of accomplished lawyers who were at that time doing practically the whole of the work at Westminster. The serjeant was (of all people in the world) a romanticist, and told one of the best of all the Canterbury Tales. When his turn came to amuse the assembled company the host addressed him thus:

> "Sir man of lawe," quod he, "so have ye blis
> Tell us a tale anon, as forword is.
> Ye ben submitted through your free assent
> To stonde in this cas at my jugement,
> Acquiteth you now, and holdeth your behest;
> Than have ye don your devoir at the lest."

"Hoste," quod he, "*de par dieux jeo assente*,
To breken forword is not min intente.
Behest is dette, and I wold hold it fayn
All my behest, I can no better sayn.
For swich lawe as man yeveth another wight,
He should himselven usen it by right."

After which truly legal conversation (including even a scrap of law-French and a statement of the natural equality of law) the man of law sets to work to tell his tale "of the Emperoure's daughter Dame Custance," and all her woes and victories. The story is delightful, but unfortunately not to our present purpose. There is one point of legal interest that may, however, be noted. Constance, having come to Northumberland, is there falsely accused before Alla, the king, of murdering a woman. The bloody knife is found near her, and the false knight swears to her guilt. On the other hand, everyone in the house where she lives gives evidence as to her good character, and also—

This gentil king hath caught a gret motif
Of this witness, and thought he would enquere
Deper in this cas, trouthe for to lere.

The knight then swears his false evidence on "a Breton book written with Evangiles," and instantly an unseen hand smites him to the earth and a voice declares, "Thou hast desclandred giltless the doughter of Holy Chirche in high presence." She is declared innocent, and is wedded to Alla. Nothing could be more interesting than this mingling of the new and the old conceptions of the law of evidence. The extracts and references here given will show that the writers of legal history have something to learn from the poets and word painters of old time who, in their comprehensive view of life, did not omit to paint the lawyers who then, as now, played a necessary part in the affairs of life.—*J. E. G. de Montmorency in Law Times.*

A "TEAZER."—Referring to a railroad whose operating expenses always exceeded its earnings, an opinion of the United States Supreme Court contains the following:—"Counsel say that 'it is familiarly known in Texas as a teazer, and if it ever passes beyond this interesting but unprofitable stage, even its friends will be surprised.' We are not advised, and we can hardly be expected to take judicial notice, of what is meant by the term 'teaser', but it is clearly disclosed by the record that this was an unprofitable road."

INDEX

TO

REPORTS AND ABSTRACTS OF CASES.

PAGE

ACTION.

Jurisdiction to entertain—Mortgage on foreign lands........ 214

ADMINISTRATOR.

Payment of doubtful claim by—Death of administrator—Administration *de bonis non*—Recovery back of amount paid—Unadministered asset 90

AGREEMENT.

Foreign law—'Lex loci contractus'—'Lex fori'.............. 309

APPEAL.

Municipal by-law—Judgment of Superior Court on petition to annul—Appeal in Court of Queen's Bench—53 Vic., c. 70, s. 310—40 Vic., c. 29, s. 439—Jurisdiction of Queen's Bench—Judgment quashing appeal—Appeal to Supreme Court from 10

Reversal of judgment on questions of fact.................. 19

Appeal to Supreme Court—Final judgment—Interlocutory proceeding—Petition for leave to intervene................ 68

Appeal to Supreme Court—Judgment awarding damages—Cross-appeal.. 69

Appeal to Supreme Court—Amount in controversy............ 150

Appeal from Court of Review—Appeal to Privy Council—Appealable amount—Addition of interest—C.C.P. arts. 1115, 1178, 1178 (*a*), R.S.Q. art. 2311—54-55 Vic. (D.) ch. 25, s. 3, sub-sec. 3—54 Vic. (Q.) ch. 48..........................165, 182

Appeal to Privy Council from Supreme Court of Canada—Grounds for granting special leave to appeal................ 179

Appeal to the Supreme Court—Final judgment—Judicial proceedings—R.S.C., c. 135, s. 29—54 & 55 V. c. 25, s. 4—Controversy—Action on promissory note—Bills of Exchange Act, 1890.. 355

PAGE

ASSIGNMENT FOR BENEFIT OF CREDITORS.
Preferences—R.S.N.S. 5 ser. c. 92, ss. 4, 5 and 10—Chattel mortgage—Statute of Elizabeth..... 118

BAILEE.
Express company — Receipt for parcel — Condition — Compliance with—Pleading—" Never indebted "—Plea of non-performance..... 153

BANK.
Theft of securities..... 363

BICYCLES..... 364

CANADA TEMPERANCE ACT.
Search warrant—Seizure of goods under—Replevin—Judgment quashing warrant—Justification under warrant after—Estoppel..... 118

CARRIERS.
Murder of passenger..... 364

CHAMPERTY.
Unconscionable bargain—Rescission of contract..... 172

CHATTEL MORTGAGE.
Description—Order to amend pleadings..... 218
Mortgagee in possession..... 211

COMPANY.
Liability for acts of agent..... 224
Prospectus—Omission of facts—Contract to take shares..... 138
Winding-up—Misfeasance—Dividends paid out of capital—Auditors—Duties of—Manager's certificate as to value of stock—Reliance on..... 173
Winding-up—Unclaimed dividends—Statutes of Limitation.. 246

CONSTITUTIONAL LAW.
Powers of members of Government—Letter of credit—Contract of member of executive by—Ratification by legislature..... 4
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. 67
Provincial and Dominion powers—Manufacture, importation and sale of intoxicating liquors—Prohibitory liquor laws.....185, 199
Navigable waters—Title to soil in bed of—Crown—Dedication of public lands by—Presumption of dedication—User—Obstruction to navigation—Public nuisance—Balance of convenience..... 193
Municipal corporation—Powers of legislature—Monopoly—License—Highways and ferries—Navigable streams—Inter-municipal ferry—Disturbance of licensee..... 197

PAGE

CONSTITUTIONAL LAW :—*Continued.*

Marital rights—Married woman 217

Power of provincial legislature to punish for contempt of the House—Responsibility of members—Power of local legislature to pass an act relieving members from liability to civil action 228

Canadian waters—Property in beds—Public harbours—Erections in navigable waters—Interference with navigation—Right of fishing—Power to grant—Riparian proprietors—Great lakes and navigable rivers—Operation of Magna Charta—Provincial legislation—R.S.O. (1887), c. 24, s. 47—55 V., c. 10, ss. 5 to 13, 19 and 21 (O)—R.S.Q. Arts. 1375 to 1378........ 339

United States decisions 364

CONFESSIONAL.

Privilege of the 52

CONTEMPT OF COURT.

Right of newspapers to report Court proceedings—Abuse of such right—What will amount to contempt of Court........ 291

Newspaper comments—Pending criminal charge—Application to commit........ 342

CONTRACT.

Inconsistent conditions—Dismissal of contractor—Architect's powers—Arbitrator—Disqualification—Probable bias—Evidence, Rejection of—Judge's discretion as to order of evidence 103

Public work—Progress estimates—Action for payment on—Engineer's certificate—Revision by succeeding engineer... 167

Subsequent deed—Inconsistent provision........ 169

COUNTY COUNCIL.

By-laws for good rule and government—Limitation in terms—Profane language........ 110

CRIMINAL LAW.

Causing money to be paid to any person by forged instrument—Forged telegram........ 58

CRIMINAL CODE.

Sec. 575—Persona designata—Officers de facto and de jure—"Chief Constable"—Appointment of deputy—Common gaming-house—Confiscation of gaming instruments, money, etc.—Evidence—The Canada Evidence Act, 1893, secs. 2, 3, 20 and 21—Judgment in rem—Res judicata..... 116

Possession of die for making fictitious stamp—Lawful excuse 170

Right of self defence........ 224

Arson........ 363

PAGE

CRUELTY TO ANIMALS.
'Domestic animals'—Tame seagull—Cruelty to Animals Act, 1849 (12 & 13 Vict. c. 92) s. 29, and 1854 (17 & 18 Vict. c. 60), s. 3 57

CUSTOMS DUTIES.
50 & 51 Vic. c. 39, items 88 and 173—Exemption from duty—Steel rails for use on railways 236

DAMAGES.
Injury to feelings and affections 365

DEBTOR AND CREDITOR.
Agreement between—Conditional license to take possession of debtor's goods—Creditor's opinion of debtor's incapacity—*Bona fides* in forming opinion—Grounds—Replevin—Joint conversion 6
Payment by debtor—Appropriation 212
Composition and discharge—Acquiescence in 216
Collateral security—Proceeds received by creditor—Appropriation—Res judicata 373

ELECTRIC CARS.
Classification of 224

ELECTRICAL USES 365

EXECUTORS.
License to sell real estate—Petition to revoke—Judgment on—Res judicata—Estoppel 106

EXTRADITION.
Treaty with France—French and English versions—Crime, Falsification of accounts—'Faux' translated 'forgery'—Extradition Acts, 1870 and 1873 308

FREEDOM OF THE PRESS 365

GIFT 365

GUARANTY 365

INSURANCE, FIRE.
Condition of policy—Fraudulent statement—Forfeiture by—Proof of fraud—Presumption—Assignment of policy—Fraud of assignor—Appeal—Reversal on questions of fact 9
Mutual Insurance Company—Contract—Termination—Notice—Statutory conditions—R.S.O. (1887) c. 167—Waiver—Estoppel 37
Condition in policy—Breach—Change of interest—Chattel mortgage—Waiver of forfeiture—Powers of agent 356

INSURANCE, LIFE 365

INSURANCE, MARINE.
Repair of ship—Constructive total loss—Notice of abandonment—Sale by master—Necessity for sale 91

PAGE

INSURANCE, MARINE:—*Continued.*
Voyage policy—"At and from" a port—Construction of policy—Usage 101
Goods shipped and insured in bulk—Loss of portion—Total or partial loss—Contract of insurance—Construction 102

LESSOR AND LESSEE.
Water lots—Filling in—"Buildings and erections"—"Improvements" 169
Construction of contract 365
Construction of statute—R.S.O. (1887) c. 143, s. 28—Holding "under" tenant—Estoppel 373

MARKETS 366

MASTER AND SERVANT.
Dismissal — Agent of insurance company — Acceptance of agency for rival company 70

MORTGAGE.
Agreement to charge lands—Statute of frauds—Registry 89

MUNICIPAL BY-LAW.
Special assessments—Drainage powers of council as to additional necessary works—Ultra vires resolutions—Executed contract 105

MUNICIPAL CORPORATION.
Repair of streets—Double taxation 216
Repair of streets—Non-feasance—Elevation of sidewalk 101

NEGLIGENCE.
Construction of boiler—Defect in—Expert evidence—Questions of fact—Concurrent findings of courts below 154
Obstruction of street—Assessment of damages—Questions of fact—Action of warranty 166
United States decisions 366
Cause of accident—Evidence—Presumptions—Art. 1053, C.C. —Quebec Factories Act (R.S.Q. arts. 3019-3053)—Police regulations—Civil responsibility 369

NUISANCE.
Livery stable—Offensive odors from—Noise of horses—Damages 99
Damages 366

OWNERSHIP.
Lost property 125

PARTNERSHIP.
Note made by firm—Representation as to members—Judgment against firm—Action on, against reputed partner—Agreement as to liability 104
Use of partnership property to pay individual debts 224
Judicial abandonment—Dissolution—Composition—Subrogation—Confusion of rights 263
Dissolution—Division of assets 370

PAGE

PERSONAL CHATTELS.
Fixtures 215

PRESCRIPTION.
Action for damages—Injury to property—Continuance of damage—Art. 2261 C.C.—Railway Company—Construction of road—Wrongful act of contractor—Liability for 36

PRINCIPAL AND AGENT.
Agent's authority—Acting beyond scope 215

PRINCIPAL AND SURETY.
Giving time to principal—Reservation of rights against surety. 119
Guarantee bond—Fidelity of principal—Principal's default—Duty of creditor to disclose 372

PROMISSORY NOTE.
Liability of guarantor—Signature to note—Surety 127

RAILWAY COMPANY.
Loan of cars—Reasonable care—Breach of duty—Negligence—Risk voluntarily incurred—"Volenti non fit injuria"—"Kicking" cars on switch 39
Purchase of ticket—Rights of purchaser—Continuous journey—Right to stop over—Conditions on ticket 100
Bagages—Perte ou avaries—Compagnie des Wagons-Lits—Responsabilité 107
Mail car—Posting letters on—Moving train—Invitation—Licensee 127
Driving horses across track without reins or halter 131
Carriage of goods—Connecting lines—Special contract—Loss by fire in warehouse—Negligence—Pleading 370

REAL PROPERTY ACT N. W. TERRITORIES.
Registration—Execution 198

RECIPES 367

RELIGIOUS ADVISERS.
Privilege of 52

REGISTRY LAW.
Registered deed—Priority over earlier unregistered conveyance—Notice—Suit to postpone 195

REVISION COURT.
Regulation of business 135

SALE.
Mandate—Agreement to re-sell—Warranty 81
Immovables by destination 209

SHIPS AND SHIPPING.
Chartered ship—Perishable goods—Ship disabled by excepted perils—Transhipment—Obligation to tranship—Repairs—Reasonable time—Carrier—Bailee 194

PAGE

SHIPS AND SHIPPING:—*Continued.*
Shipowner and cargo-owner—General and particular average—Contribution—Value of ship, how ascertained—'New for old' allowance 245

SLANDER.
Particulars 126

STATUTE.
Construction of—55 Vic., c. 26, ss. 2 and 4(O)—Chattel mortgage—Agreement not to register—Void mortgage—Possession by creditor 5
Construction of—General act—Repeal of special act—Repeal by implication—By-law—Municipal corporation 7
Construction of—By-law—Exclusive right granted by—Statute confirming—Extension of privilege—45 Vic., c. 79, s. 5 (P.Q.)—C.S.C., c. 65 36

STATUTE OF FRAUDS.
Memorandum in writing—Repudiation of contract 150

SURETYSHIP.
Principal and surety—Continuing security—Appropriation of payments—Imputation of payment—Reference to take accounts 87

TITLE TO LAND.
Action en bornage—Surveyor's report—Judgment on—Acquiescence in judgment—*Chose jugée* 8

TRADE-MARK.
Descriptive word—'Solio'—Registration—Patents, Designs, and Trade-marks Act, 1888, s. 10, subs. 1 (e) 356

TRADE NAME.
Name accurate description of goods—Right to use name after appropriation by another—Injunction 120

TRAMWAY.
By-law—Reasonableness—Construction—"Deliver up his ticket . . . or pay the fare"—Passenger inadvertently destroying ticket without intent to defraud 120
Expulsion of passenger from street car 124

TRUST.
Principal and agent—Advances to agent to buy goods 213

VENDOR AND PURCHASER.
Agreement for sale of land—Assignment by vendee—Principal and surety—Deviation from terms of agreement—Giving time—Creditor depriving surety of rights—Secret dealings with principal—Release of lands—Arrears of interest—Novation—Discharge of surety 151

PAGE

WILL.

Charity—Gift to "service of God" 135
Devise to two sons—Devise over of one's share—Condition—Context—Codicil 166
Legacy—Bequest of partnership business—Acceptance by legatee—Right of legatee to an account 168
Construction of—Executory devise over—Contingencies—"Dying without issue" 195
Death without issue—Executory devise over 210

WITNESS.

Privilege of the Confessional 52
Judge examined as witness in case over which he is presiding. 224

GENERAL INDEX

VOL. XIX.

PAGE

AIR 138
ARMENIA AND THE TREATIES 138
AUTOMATIC GAS METERS 318

BABY, MR. JUSTICE, CHARGE TO GRAND JURY 110
BAR MEETINGS 140
BLACKBURN, THE LATE MR. JUSTICE 44

CANADIAN BAR ASSOCIATION—PRELIMINARY MEETINGS OF 296
CHAUCER'S LAWYERS 377
CODIFICATION OF PRIVATE INTERNATIONAL LAW 11
COMMISSIONS, SECRET, IN TRADE 316
COMPANY LIQUIDATION AND THE CRIMINAL LAW 121
CONTRACT—RIGHT TO ABANDON BECAUSE OF OTHER PARTY'S DEFAULT .. 343
CORPORAL PUNISHMENT OF CHILDREN 40
CURIOUS CASE, A 367

CURRENT TOPICS:

- Action of widow for husband's death 148
- Appeal business 162
- Appeals and re-hearings in criminal cases 35
- Appointments of Queen's Counsel—Report of Minister of Justice 273
- Auditors, duties of 66, 178
- Auditors, Lord Herschell on the duties of 131
- Baby, Mr Justice, retirement of 145
- Bankruptcy law asked for 18
- Barristers in the Dominion Government 116
- Blackburn's (Lord) appointment to the bench 34
- Business in Review and in Appeal 354
- Canadian Bar Association 243, 290
- Canadian representation on the Judicial Committee 241
- Chief Justice's (A) error 177
- Colonial representation on the Judicial Committee of the Privy Council 353

CURRENT TOPICS:—*Continued.*

	PAGE
Contracts by way of wagering	97
Counsel absent at hearing	337
Court of Review sitting in two divisions	33
Court of Review, Montreal	321
Early closing by-law	163, 338
Extradition	177
German Civil Code, The	130
Hawkins, Mr. Justice, on jury trials in civil cases	258
Hughes, Judge, the late	243
Increase of mendicancy	97
Interest, Rate of	17
Inventories, Closing of	34
James, Lord, Appointment to the Judicial Committee	114
Joseph, J. O., Appointment of	225
Judges Knighted	161
Judges, Retirement of	244
Judicial changes during the Queen's reign	308
Justice, Administration of	66
Larceny Act of 1896	322
Law officers in England, Position of	51
Law sittings in Liverpool and Manchester	98
Lawyers in legislatures	2
Lawyers and clients	163
Lawyers in the Laurier administration	226
Legal education	115
Legal profession, The	322
Lessor, Privilege of	65
Marchand, L. W., The late	147
Masonic signs in Court	50
Moot Society debates	178
Nonogenarians in the Legal Profession	306
November Appeal Term	337
Ouimet, Mr. Justice, Appointment of	145
Partnership—Case of Stewart v. McLean	225
Powers of the local legislature	290
President Lincoln on fees	227
Privilege of advocates	3
Privilege of the Confessional	49
Proof of proceedings in other cases	1
Public meetings—Reports of	305
Quebec Ministry	146
Queen's Counsel, Right to appoint	339
Reference to the Judicial Committee	162
Reflections upon Jews	65
Reversal on questions of fact	18
Roentgen rays, Use of, in legal investigations	113

PAGE

CURRENT TOPICS:—*Continued.*

Russell, Lord Chief Justice, on success at the bar.... 99
Russell's, (Lord Chief Justice) visit to America.... 115
Russell, Lord Chief Justice, in America.... 257
Russell, Lord Chief Justice, on International law and arbitration.... 275
Secret commissions.... 3, 307
September Appeal term.... 289
Shortis case, Commutation of sentence.... 49
Supplementary factums.... 1
Supreme Court, Proposal to appoint *ad hoc* judges.... 257
Trial at Bar.... 259
Veterans on the Bench.... 258

DELIBERATION—HOW CASES ARE DECIDED.... 362
DISSECTION, UNLAWFUL.... 156
DIVIDENDS AND THE STATUTE OF LIMITATIONS.... 247

ELECTION LAW IN ENGLAND.... 294
EXPULSION OF PASSENGER FROM STREET CAR.... 124
EVIDENCE IN CRIMINAL CASES.... 248
EXTRADITION CASES.... 208
EXTRADITION LAW.... 312
EXTRADITION—THE TYNAN CASE.... 314

FIRE INSURANCE AND SUBROGATION.... 361
FREDERICK THE GREAT AND THE LAWYERS.... 41

GENERAL NOTES:

Administration of the oath in courts of law.... 96
Alimony claimed by husband.... 319
Appointments.... 174
Appointment of Queen's Counsel in Canada.... 256
Appointments of Queen's Counsel.... 260
Baker, G. B., Mr.... 16
Bar Elections.... 160
Blackburn, Lord, The late.... 142
Consent in larceny.... 64
Codification of mercantile law.... 239
Cheque, A lost.... 62
Demers Trial, An incident of the.... 63
Directors' right to prefer themselves.... 143

GENERAL NOTES:—*Continued.* PAGE
Dog-law in England.... 304
Equivocal.... 79
Fictitious capital.... 112
Flagler, Miss, The case of.... 128
Geoffrion, Q.C., C.A., Appointment to Privy Council.... 260
Hawkins, Mr. Justice, and the oath.... 48
Implied contracts.... 240
Imprisonment and separate confinement.... 335
Incidents of Lord Russell's Tour.... 303
Ingress and egress.... 144
Irish Bench, The.... 62
Judges' Titles.... 16
Judicial knowledge.... 368
Juror, A formidable.... 63
Larceny, The law of.... 80
Libel.... 144
Marriage in a wrong name.... 143
New competitors.... 368
Penn, William, A peculiar litigation.... 63
Professional pleasantries.... 143
Proximate cause of injury.... 128
Publications, The stream of.... 79
Queen's Counsel and Serjeants-at-Law.... 336
Responsibility of hypnotist.... 352
Restraint upon trade.... 79
Rules of evidence.... 112
Seizure of wages.... 79
Selborne, The late Lord.... 352
Suicide and Life Assurance.... 320
"Teaser," A.... 384
Transferability of sleeping car tickets.... 335
University education.... 64
Use of X rays in Court.... 176
GERMAN POLICE, THE.... 75

HOMICIDE—SELF DEFENCE.... 300

IMMUNITY OF JUDGES....313, 375
INNKEEPER'S LIEN.... 47

LAW OFFICES—HOW GREAT LAW OFFICES WORK.... 357
LAWYER (THE) AS HE IS.... 222
LEGAL EDUCATION—THE TEACHING OF ENGLISH LAW AT UNIVERSITIES....327, 344
LOST PROPERTY.... 125
LUNATIC, LIABILITY OF, FOR NEGLIGENCE.... 323

PAGE

MALICIOUS EXERCISE OF A LEGAL RIGHT 155
MONROE DOCTRINE 14, 59

OBITUARY:
Denman, Mr. Justice 307
Fournier, Mr. Justice 146
Laflamme, Leopold 114
Lunn, A. H 19
Marchand, L. W 141
OPTIONS AND DAMAGES 219

PREVIOUS OCCUPATIONS OF FAMOUS LAWYERS 174
PRIVACY, THE LAW OF 221
PRIVILEGE OF THE CONFESSIONAL 52

PUBLICATIONS:
Abbott on the Railway Law of Canada 115
Bardeen's Manual of Common School Law 291
Coté's Political Appointments 149
Emery's Handy Guide to Patent Law 149
Foster on the Constitution of the United States 164
Lemieux on "Contrainte par Corps" 262
Maclaren on Banks and Banking 148
Maclaren on Bills, Notes and Cheques 164
Mignault on "Le Droit Civil Canadien" 261

QUEEN'S COUNSEL APPOINTMENTS—REPORT OF SIR OLIVER MOWAT, MINISTER OF JUSTICE 284
QUIBBLING, SOME NOTES ON 70

RUSSELL, LORD CHIEF JUSTICE, ON LEGAL EDUCATION 30
RUSSELL, LORD CHIEF JUSTICE, ON INTERNATIONAL LAW 249, 266, 276
RUSSELL, LORD CHIEF JUSTICE, AT MONTREAL 286

SEAWORTHINESS 325
SCOTCH OATH IN THE COURTS OF LAW 93

TOO MANY WORDS 92
TRADES UNIONS AND PICKETING 310

VESTRY MEETINGS, PENALTIES FOR DISTURBING 60
VEXATIOUS ACTIONS 220