The Legal News.

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THE FUNCTION OF THE LEGAL PROFESSION.

In an address delivered by the Hon. Stanley Matthews, Sept. 20, before the N. Y. State Bar Association, the function of the legal profession in the progress of civilization was considered. The essayist is evidently at one with Mr. Gladstone (see 3 L. N., p. 73) in believing that the age of law and lawyers is not likely soon to pass away. "It may be thought," says Mr. Matthews, "that the advancement of society, in cultivation, intelligence, virtue, and all that enters into civilization, would necessarily diminish the area of enforceable obligations, and lessen the number of occasions for the intervention of the law. The result might be supposed to follow from the increased knowledge on the part of the community of what duty required in particular circumstances; increased efficiency on the part of the extra-judicial forces of the community, in their influence over individuals, resulting in a more ready and voluntary compliance with obligations generally recognized by the public conscience. But new questions of law arise with new facts and new relations among men; and as society progresses in its development, its organization becomes more intricate, men are brought nearer and into novel situations, and with unprecedented relations, which will constantly furnish new studies for the jurist and the legislator, and the area of enforceable obligations will enlarge and not diminish. Indeed, it is quite likely that many cases now occur, in which no remedy exists, which a more highly organized state of society, and a more perfect justice, may not be willing to leave to the mere good will of private conscience." And in support of this conjecture, Mr. Matthews cites the opinion expressed by Mr. Charles O'Conor, in his argument in the case of the "General Armstrong," that jurisprudence, as administered by human tribunals, "deals only with the means of enforcing rights which are recognized as perfect; but like all moral sciences, it is capable of improvement. As the general mind of a nation advances in that freedom which is the result of increased knowledge, the legislative authority will constantly enlarge the sphere assigned to jurisprudence, and increase its power of establishing justice." So, too, Sir Henry Maine, in his "Early History of Institutions," (p. 49), says, "The truth is that the facts of human nature, with which courts of justice have chiefly to deal, are far obscurer and more intricately involved than the facts of physical nature; and the difficulty of ascertaining them with precision constantly increases in our age through the progress of invention and enterprise, through the ever growing *miscellaneousness* of all modern communities, and through the ever-quickening play of modern social movements. Possibly we may see English law take the form which Bentham hoped for and labored for: every successive year brings us in some slight degree nearer to this achievement: and consequently little as we may agree in his opinion that all questions of *law* are the effect of some judicial delusion or legal abuse, we may reasonably expect them to become less frequent and easier of solution. But neither facts, nor the modes of ascertaining them tend in the least to simplify themselves, and in no conceivable state of society will courts of justice enjoy perpetual vacation."

AMERICAN REPORTS.

The thirty-fifth volume of American Reports, edited by the conductor of our contemporary the *Albany Law Journal*, contains a number of cases of general interest. A peculiar form of burglary is disclosed in *Walker* v. *State*, in which it was held that one who, intending to steal shelled corn, bores a hole through the floor of a corn crib from the outside, and thus draws the corn into a sack below, is guilty of the above mentioned crime.

Continued strictness of Sabbath observance in New England is indicated by the Massachusetts case of *Davis* v. *Somerville*, in which the Court held that one who is injured by a defect in a highway, on his return from a funeral, on Sunday, having diverged from his ordinary route to make a social call, is without remedy. Under the head of common carrier may be noticed the decision in *Nashville and Chattanooga Railroad Co.*, v. *Sprayberry*, that a passenger by railway, purchasing a ticket over the line of the seller and connecting lines, and

injured by the negligence of one of such connecting lines, cannot maintain an action therefor against the seller. In *State* v. *Littlefield* it was held that a former conviction of assault and battery is no bar to an indictment for manslaughter, where the injuries resulted in death after the former conviction.

Under the subject of evidence may be mentioned the case of *Reese* v. *Reese*, in which it was decided that an expert, who has no knowledge of a handwriting in dispute, except from having seen the alleged penman write several times, and that only for the purpose of testifying, is incompetent to give an opinion thereof; and *Alleman* v. *Stepp*, in which the Court decided that evidence is competent to show that the mind and memory of a witness have become impaired by disease and are in a feeble condition. In another case, *Estate of Toomes*, it was decided that a Roman Catholic priest, regularly educated and officiating as such, and required by the duties of his office to pass his judgment upon the mental condition of invalids and dying persons, to the end that he may administer the sacraments only to those whose minds are in a proper state to reason or act of their own volition, is an expert as to the sanity of a person whom he so attends.

Under the head of contract, it was held in *McMillan* v. *Malloy*, that on a contract to thresh an entire crop of wheat at a given price per acre, the employee, failing fully to perform, may recover at the contract price for what he has done, less the damages sustained by the employer by the breach of contract. And in *Hanks* v. *Naglee* it was adjudged that a promise of marriage in consideration that the promisee should before marriage have sexual connection with the promisor, in void. A striking case of fraud is to be found in *Hall* v. *Carmichael*, in which the Court was asked to pronounce upon a secret conveyance by a woman of her property to an insolvent for an inadequate consideration, pending negociations for her marriage and three days before marriage, which was held fraudulent as to the husband. We conclude with two insurance cases. In *Williams* v. *Hartford Insurance Co.*, held, in case of insurance against fire upon a building, if the building loses its identity and specific character by fire, although a large part of the walls and some of the iron attached thereto are left standing, it is a "total destruction" within the meaning of the policy. In *Knecht* v. *Mutual Life Ins. Co.*, the Court seems to have interpreted the contract with considerable liberality to the insured. In an application for a life insurance policy the applicant declared "that he does not now nor will he practice any pernicious habit that obviously tends to the shortening of life." The policy contained a condition "that if any of the statements or declarations made in the application shall be found in any respect untrue, the policy shall be void." At the time of the application, applicant's habits were correct and temperate; afterwards he took to excessive drinking, whereof he died. Held, that the policy was not avoided.

OBITUARY.

Within a few days two members of the Quebec judiciary have departed this life. Mr. L. A. Olivier, Judge of the Superior Court for the District of Joliette, died Sept. 19th. On Saturday, Sept. 29th, Judge Bossé, a retired judge of the Superior Court, District of Quebec, also died.

M. Olivier was born about 1817, called to the bar, 1839; created a Q. C. in 1864. He sat for De Lanaudière Division in the Legislative Council of Canada from 1863 to the Union, when he was called to the Senate by Royal proclamation. On the 6th September, 1873, he was appointed to the bench.

M. Bossé was born at Cap St. Ignace, P.Q., 25th December, 1806. He was educated in Quebec; studied with the late A. R. Hamel of Quebec, and was called to the bar in 1833. In 1867 he was made Q. C. He represented the De La Durantaye Division in the Legislative Council of Canada from 1862 until the Union, when he was called to the Senate by Royal proclamation. On the 18th January, 1868, he was appointed a Judge of the Superior Court. He retired towards the close of last year, when he was succeeded by Mr. Angers (3 L. N. 378).

NOTES OF CASES.

SUPERIOR COURT.

MONTREAL, Sept. 27, 1881.

Before MACKAY, J.

ROBERTSON v. LA BANQUE D'HOCHELAGA.

Shares—Cancellation—Putting en demeure.

Shares of bank stock cannot be declared confiscated for non-payment of calls, without notice putting the owner en demeure.

MACKAY, J. The plaintiff, who in 1876, and up to October, 1880, owned fifty shares in the capital stock of defendant's bank, sues to have certain calls made by the directors, declared irregular, null and void, and certain resolutions by them under which the plaintiff's stock was confiscated in October, 1880, declared illegal, and to have the defendant ordered to restore the said stock and to register plaintiff as owner of it.

Seven calls on the stock appear to have been made by one resolution in July, 1874. That was irregular, says plaintiff; there ought to have been seven resolutions for seven calls, and at seven different meetings; moreover, says the plaintiff, that resolution was abandoned, and it does appear that no action was had under it up to 1880. This calls for observation, as also does the resolution, as it states no amount of any call, nor appoints any place for payment, but my decision will not turn upon this. In January, 1880, the directors made a new call, and for eight instalments, or calls; plaintiff complains again of this, on the ground that by a single resolution such eight calls could not be legally made; besides (says the plaintiff) the resolution in its language is not a call but a resolution to notify of calls that afterwards would be made, but never were made. The declaration complains of a resolution of the 27th of October, 1880, confiscating plaintiff's stock, upon which two thousand nine hundred dollars had been paid; and claims that the resolution and confiscation were illegal. Then the declaration alleges a tender by plaintiff, in November, of $2,136.50, being for all that possibly could be lawfully claimed by the Bank or be due to complete full payment with interest for all the 50 shares that plaintiff had owned, which tender was refused.

The defendant's plea is very long because it justifies, at length, each and all of the Bank Directors' resolutions and doings, states particulars of all notices given to the stockholders, the plaintiff among them, insists upon the strict formality of all done, claims that plaintiff was wilfully in default, that so he incurred the penalty of confiscation; that the defendants gave all notices public and by registered letters to the plaintiff; that the plaintiff always acquiesced in the calls as made, and promised to pay their amounts, but always has neglected to pay, this because of the low price at which the stock could be bought in the market; the stock has risen, and now, because of that, the plaintiff wants to get it back; that the Directors, in confiscating the plaintiff's stock, acted as they were bound to do, and no more, &c.

Our Bank Act of 34 Vic. (1871) is far less complete than the English Act—the Companies' Act 25-26 Vic. c. 89, to be found in Smith's Mercantile law. Our Act allows the Directors to make calls, and to sue for them, and to confiscate shares to the profit of the bank, in case of non-payment of calls (Sec. 34). Yet no formalities preliminary to resolution to confiscate are enacted. The 25–26 Vic. orders a notice to pay with a threat of confiscation, after which if the calls due remain unpaid, forfeiture may be made upon a vote of the Directors. Sec. 35 of our Act allows a penalty of 10 per cent. on all shares on which calls are not paid duly, and further the directors may sell by public auction any shares on which calls are unpaid, giving 30 days' public notice of their intention. In the multitude of the remedies that the defendants had towards securing payment of the bank stock they became bewildered apparently, and, so on the 27th October, they confiscated plaintiff's stock without any previous decision to confiscate it if the plaintiff did not pay up. The confiscation is defended by reference to Sec. 34, which says that the directors may confiscate. We have only to read Brais' (the cashier's) deposition, pp. 18, 19, 21, to see that the directors were uncertain as to what rights they possessed, and Brais' notes to the plaintiff are studiously enigmatical. The stock-holders in general meeting had directed the directors to take steps to get in the capital of the bank. Brais writes therefore to plaintiff that if he do not pay, the bank will take legal proceedings to recover the amount. After a while he writes again: "If you do not pay, the account will be sent to our attorneys for collection" Finally he writes: "If you do not pay, the directors will serve themselves as regards you to the privileges that the law gives them."

Confiscation is not favorable. Suppose a banking act to say that the bank might make by-laws to compel payment of the stock, and even confiscate shares on which calls remained

unpaid. Surely a by-law that would enact confiscation, without previous notice to pay up, else to suffer confiscation, would be unreasonable, and therefore of no use I think that Sec. 34 of our Act of 1871 ought not to be interpreted to justify defendant's conduct in confiscating plaintiff's shares without previous clear putting of him *en demeure*. The directors after his default threatened twice to sue him, not saying one word about confiscation. Their cashier's third letter purposely omitted mention of confiscation. The directors had not, before the 27th of October, passed any kind of resolution to confiscate, but, on that day, confiscated. As it seems to me, their conduct was unreasonable, oppressive and illegal. It could not stand for a moment under the legislation of the mother country; but, as I have said, our law is not so full and clear as is the English. Nevertheless, I feel that I ought to disapprove such a confiscation as has been here. If I had doubt, I would have to lean against confiscation. I therefore give judgment for the plaintiff.

Maclaren & Leet for plaintiff.

Beïque & McGoun for defendant.

SUPERIOR COURT.

MONTREAL, Sept. 27, 1881.

Before MACKAY, J.

ROSS v. VANNECK.

Loan—Admission of liability.

Where A applied to B for a loan, and B accepted a draft drawn by C, which A subsequently admitted was for his assistance, and he paid B part of the amount of the draft, and promised to pay him the balance, held, that A was liable to B for such balance.

MACKAY, J. The defendant is sued for $4,092.34, balance alleged to be due to plaintiff as for moneys lent in 1874. That is the nature and substance of the plaintiff's action, though the words "money lent" do not occur in the declaration, which in its architecture is out of the common. It sets forth, *en toutes lettres*, a parcel of letters, seven from plaintiff to Alexander Torrance, five from plaintiff to defendant, four from Torrance to plaintiff, and three from the defendant to plaintiff. It commences by alleging that defendant applied to plaintiff in 1874 for a loan of $5,000, which was refused; that the defendant renewed his application, whereupon the plaintiff agreed to "advance" it if Alexander Torrance became security, as he did. The money was, says the declaration, then advanced to the defendant, at the Bank of Montreal, in August, 1874, upon Torrance's draft on plaintiff at 6 months, delivered to the defendant, cashed by the Bank, and ultimately paid by the plaintiff, and now exhibited. The declaration claims that under the correspondence exhibited, Vanneck made it his personal affair to save plaintiff from liability from his acceptance of Torrance's draft, before referred to; that he, the defendant, made payment on account of it, and promised to pay the rest, but that the sum sued for remains due. Torrance has died.

The defendant pleads that the advance "was to Torrance, without any reference to any undertaking, or responsibility, by the defendant. That the debt is Torrance's, and cannot be converted into a debt of the defendant." "That the defendant refused always to endorse or incur any liability with respect to the said $5,000 advanced to Torrance," etc.

It would have been satisfactory to have had Vanneck examined. It does not appear who got the cash for the draft from the Bank of Montreal. What is proved, taken with the correspondence, leads the Court to believe true and honest the plaintiff's demand. Ross advanced the money intending to look to both Torrance and Vanneck for return of it. It would have been better for him to have gotten Vanneck's endorsement on Torrance's draft, but the Bank of Montreal cashed the draft before Ross had it presented to him for acceptance, and he (without insisting upon anything specially) accepted; apparently not doubting that good faith would be observed to him, by Vanneck and Torrance. Ross considered both his debtors; he addresses Torrance as his debtor, who does not repudiate yet refers to defendant as having burden to pay. Defendant's letter of 23rd April, 1875, is admission clear in favor of Ross. Says defendant, "I enclose a cheque for $2,000 "gold which you can put to my credit in the "account, and I will pay the rest as soon as I can." In August 1875, Ross writing to Torrance refers to balance due by him, and Jack (meaning the defendant). Torrance does not repudiate, and the defendant writes to Ross:—"Alick has "handed me your letter. I have not forgotten "the debt, but times are so bad that I have no

"money to spare. The first money I have to "spare I shall send to you, and I hope you will "let the matter lie over for the present." Four months after that, defendant writes (among other things), "when business was good I allowed uncle Alick to draw out of our office more than sufficient to cover the proceeds of his draft upon you *for my assistance;* so that as you had his security for that money I feel morally relieved of the responsibility for the debt." How, in the face of such correspondence, the defendant, having gotten plaintiff's money, can expect Court or Judge to find for him is past comprehension. It was argued that Vanneck was a mere agent for Torrance in these matters, but what of that in the face of his making it his own personal affair to pay Ross? Just nothing at all. See Troplong, also Paley, by Dunlap.

Judgment for plaintiff.

Kerr, Carter & McGibbon, for plaintiff.

R. & L. Laflamme, for defendant.

COUR DE CIRCUIT.

MONTREAL, Sept. 27, 1881.

Before CARON, J.

POULIN v. FALARDEAU.

Réclamation d'un tiers contre une faillite—Solidarité de la masse—Sec. 135 *de l'acte de faillite, pas applicable—Recours de droit commun.*

Le 17 février 1880, A. B. Stewart, syndic à la faillite C. E. Pariseau, prit une action contre H. E. Poulin, en nullité d'une vente faite par lui, dit syndic, à Poulin, sous prétexte de fraude et de fausses représentations. Cette action fut renvoyée le 30 Dec. 1880, par son Hon. le juge Chagnon. Une exécution fut émanée contre le syndic, pour les dépens taxés à $103 en faveur de MM. Lareau et Lebœuf, avocats de Poulin. Le syndic n'avait rien appartenant à la faillite Pariseau. L'huissier fit un retour de *Nulla Bona*. Pour se faire payer, Poulin divisa le montant de sa dette entre les créanciers de la faillite Pariseau, chacun d'eux pour sa part et portion, au *pro rata* du montant de leurs créances respectives. Falardeau, un des créanciers, ayant refusé de payer sa part, fut poursuivi.

M. *DeLorimier* pour le défendeur, dit :—1o Que le syndic n'a pas été autorisé par les inspecteurs à procéder contre Poulin (le contraire fut prouvé); 2o Le demandeur n'a pas régulièrement établi l'insolvabilité de la faillite; cela ne pouvait être fait par un retour de *Nulla Bona*. Le seul moyen régulier était la procédure indiquée dans la section 135 de la loi de faillite, à savoir une requête au juge pour enjoindre le syndic à préparer une feuille de dividende en faveur de Poulin.

M. *Lareau*, pour le défendeur, dit : Que la section 135 ne s'applique pas à la cause, puis que le demandeur ne s'adresse pas directement au syndic; que son recours est de droit commun; que la sec. 135 n'a en vue que les créanciers à la faillite, cherchant à procéder contre le syndic au cours d'une liquidation; que pratiquement la procédure proposée deviendrait illusoire, puisqu'il dépendait du bon plaisir des créanciers de se taxer en faveur d'un tiers dont la créance serait toujours sujette à objection.

La COUR, après délibéré, a donné jugement au demandeur, avec dépens.

Lareau & Lebœuf, pour le Demandeur.

T. & C. De Lorimier, pour le Défendeur.

⁂ Autorités du demandeur : Acte de faillite de 1875, §§ 35, 39, 96. Renouard, faillite, vol. II, pp. 202, 203, et suiv., 307.

ALMANACS AS EVIDENCE.

In *State* v. *Morris*, 47 Conn. 179, a trial for burglary, for the purpose of showing that the offence was in the night the State was permitted to introduce in evidence a copy of an almanac. The court said: "There is no error in this. The time of the rising or setting of the sun on any given day belongs to a class of facts, like the succession of the seasons, changes of the moon, days of the month and week, etc., of which courts will take judicial notice. The almanac in such cases is used, like the statute, not strictly as evidence, but for the purpose of refreshing the memory of the court and jury." In *Munshower* v. *State*, Maryland Court of Appeals, October, 1880, 2 Cr. L. Mag. 320, an almanac was admitted to show the time of the rising of the moon on a given night. The court said: "The precise periods at which the sun and moon will rise or set in any particular 24 hours in the future, are as certain and as capable of exact mathematical ascertainment as is the occurrence of the day in which such rising or setting shall take place. Courts have received as evidence weather reports, reports of the state of the markets, prices current, and insurance

tables, tending to show the probable duration of human life, though these are records which are not capable of mathematical demonstration, which cannot be tested by any certain law, and which may or may not omit the record of changes which have actually taken place. But an almanac forecasts with exact certainty planetary movements. We govern our daily life with reference to the computations which they contain. No oral evidence or proof which we could gather as to the hours of the rising or setting of the sun or moon could be as certain or accurate as that which we may gather from such a source." In *Sutton* v. *Darke*, 5 H. & W. 647, Pollock, C. B., said, *obiter:* "The almanac is part of the law of England. In *Regina* v. *Dyer*, 6 Mod. 41, it is stated that all the courts agreed it was: but it does not follow that all that is printed in every printed almanac is part of it, as for instance, the proper time of planting and sowing. Also in *Brough* v. *Perkins*, 6 id. 81, it is said that the almanac is part of the law of England; but the almanac is to go by that which is annexed to the common prayer book. Looking at that, I find it says nothing about the rising or setting of the sun, and I rather think that any information on that subject is quite recent." So Taylor (Ev., 1230) says: "The hour at which the moon rose is a fact, and it can fairly be argued upon the general principles of the law of evidence, that the best evidence of that fact is the testimony of some one who observed its occurrence. Books of science are generally not evidence of the facts stated in them, although an expert may refresh his memory by their use." In *Collier* v. *Nokes*, 2 C. & K. 1012, the court held that although they would take judicial notice of days, they would not of hours, as of the hour of sunrise or sunset. In *Allman* v. *Owen*, 31 Ala. 167, it was held that courts will judicially take cognizance of the coincidence of days of the month with days of the week, as disclosed by the almanac.

Wharton says (Ev., § 282) that a judge "may refer to almanacs." So says Best. Now if the judge may turn to an almanac to satisfy himself when the sun set on a particular day, why may not the almanac be put in evidence to satisfy the jury of the same fact?

In *Sisson* v. *Cleveland, etc., R. Co.*, 14 Mich. 497, it was held, Cooley, J., giving the opinion, that newspaper reports of the state of the markets are receivable in evidence. The learned judge remarked: "Courts would justly be the subject of ridicule if they should deliberately shut their eyes to the sources of information which the rest of the world relies upon, and demand evidence of a less certain and satisfactory character." The reason in favor of the mathematical demonstrations recorded in the almanacs is much stronger than that in favor of the comparatively inexact and discordant reports of newspapers, dependent solely on hearsay.

In speaking of books of exact science, Wharton says (Ev., § 667): "The books containing such processes, if duly sworn to by the persons by whom they are made, are the best evidence that can be produced in that particular line. When the authors of such books cannot be reached, the next best authentication of the books is to show that they have been accepted as authoritative by those dealing in business with the particular subject."

In *Morris* v. *Hanner's Heirs*, 7 Pet. 559, it was held that although historical works are evidence of ancient occurrences, which do not presuppose the existence of better evidence, yet if the facts related by a historian are of recent date, and may fairly be presumed to be within the knowledge of many living persons, then the book is not the best evidence within the reach of the parties. But there is great difference between matters of historical difference and mathematical certainty; between the accounts of the late civil war by Jefferson Davis, or Mr. Pollard, on the one hand, and Gen. Badeau or Gen. Sherman on the other, and the tables of the tides, an almanac, or the multiplication tables. We agree with the annotator of the Maryland case in the *Criminal Law Magazine*, that "we govern our daily life by reference to the computations of the almanac, and these computations are more satisfactory to us than the computations of persons who have actually observed the events, predicted by such computations. The world at large regards the statement of an almanac in regard to the hour of sunrise as more certain and satisfactory than the recollection of individuals. A rule which would exclude the evidence of an almanac is too narrow and technical to find favor in modern jurisprudence." It would be almost impossible, in a great majority of cases, to prove, by human testimony, the precise hour

of the rising or setting of the sun or moon on any particular day a number of years, or perhaps a few months, ago. To ascertain an individual who happened to observe and note it, would be like hunting for a needle in a haystack. If the English judges are determined to wait until the church shall recognize the fact that science has predicted these occurrences for many years in the past, and shall conform her prayer book accordingly, they are welcome to do so, but for us a Poor Richard's Almanac is much better practical evidence on such subjects than the prayer book. The church has always been slow to accept the demonstrations of science; witness the cases of Galileo and Columbus. Perhaps the English judges may regard a scientific discovery several centuries old as "recent," but it seems old enough for acceptance by courts of justice without waiting for the bishops. A knowledge of the times of the rising and setting of the sun and moon may be of no consequence to the church, but it frequently is important in worldly affairs, and laymen will take the most convenient and certain means of acquiring it.—*Albany Law Journal.*

RECENT ENGLISH DECISIONS.

Maritime law—Conflict of law—Collision on high seas between vessels of different nationalities.—Collisions between ships when one or both are foreign, on the high seas, are questions *communis juris,* and liabilities created by them are to be decided by the general maritime law of liability as administered in the court where the cause is tried. By general maritime law the liabilities of the ship and of the owners are identical for damages arising from collision. A collision took place on the high seas between a British and a Spanish ship; both vessels sank. The English owners commenced a suit against the Spanish shipowners, who had an office in England. The Spanish shipowners appeared, and pleaded that by Spanish law there was no personal liability. *Held,* a bad defence, as the liability was governed by general maritime law, and not by Spanish law. The Druid, 1 W. Rob., at p. 399; The Volant, id. 387; The Johann Friederich, id. 35, at p. 40; The Wild Ranger, 7 L. T. Rep. (N. S.) 725 S. C., Lush, 553; The Zollverein, Swabey, 99. Prob. D. & Ad. Div., May 11, 1881. *The Leon.* Opinion by Sir R. Phillimore, 44 L. T. Rep. (N. S.) 613.

Patent—Infringement of—Transfer of patented article made abroad through Custom House for exportation not vending, making or using—Agency.—The plaintiffs were holders of a patent for rendering capable of safe transportation a powerful explosive, which had previously been practically useless, and its transportation prohibited by statute, by reason of its extreme sensitiveness to shocks. The defendants, who were export merchants, had transhipped in the Thames, for exportation to Australia, large quantities of the explosive, which had been consigned to them from abroad for that purpose, and had been rendered safe in the mode prescribed by the plaintiff's invention. *Held* (reversing the decision of Bacon, V. C.), that there had been no interference by the defendants with the plaintiff's invention. The defendants never had any interest in, or any control over, the goods; and it could not be said that writing to the Custom House, in order to get power to transfer them from one ship to another, was making, or using, or vending the patented article. The court always hold a hand over agents, but they must be actual agents directly employed in the transaction in question, and it would not extend its doctrine, and say that any person who had anything to do with the removal of goods from a manufactory to a storehouse would be liable to damages or an injunction, if it turned out that the goods were an infringement of a patent or trademark. Ct. of Appeal, April 29, 1881. *Nobels' Explosive Co.* v. *Jones, Scott & Co.* Opinions by James, Baggallay and Lush, L. JJ., 44 L. T. Rep. (N. S.) 593.

GENERAL NOTES.

We have received Nos. 2 and 3 of "The Kentucky Law Journal" (for August and September, 1881), conducted by Mr. George Baber, and published at Louisville. In an article on "Legal Humbugs," we find the following:—"A day rarely passes which does not mark the receipt of a circular informing the person addressed, that he, of all living men, has been selected as a member of the most popular and thorough legal association in the world—one whose members are seen amid the burning sands of Sahara, the delightful isle of Terra Del Fuego, or the classic fields of Patagonia. So it is; only one dollar is asked for the privilege of allowing a member of the noblest profession on earth to "nose" among the affairs of his neighbor and report his finan-

cial standing. * * * Why should this species of huckstering among the profession be longer tolerated? Why should not the attorneys meet in every town in Kentucky, and, by unanimous consent, resign their membership in such bodies? The present system is the outgrowth of a morbid desire to advertise—a modern sentiment that found no place in the honest and primitive, though solid and learned, days of the profession."

A judge in the West, it appears, has created amusement for some wise people, by pronouncing *route* like "root," instead of "rowt."

The will of the Hon. Arthur Annesley, formerly a captain of the Grenadier Guards, which was proved July 28, was in these words: "All that I possess in the world I leave to my wife."

A lawyer of Portland, Maine, has sued a man for 27 cents which he had lent to him. This Portland Crœsus has probably learned ere this that financial loans had better be left to the Barings and Rothschilds of the world.

At a meeting of the members of the Bar, the Hon. R. Laflamme, Q.C., and the Batonnier. Mr. W. W. Robertson, were named delegates to the General Council, and the following gentlemen appointed examiners: S. Bethune, Q.C.; S. Pagnuelo, Q.C.; N. W. Trenholme and C. C. De Lorimier.

The new court house has so far advanced towards completion that the courts will now be held there. On Monday next the judges of the Superior and Circuit Courts will resume business upon the calendars. Much, however, remains to be done to fully fit the different rooms for court purposes.—*Chicago Legal News.*

Judge Black has long worn a black wig. Having lately donned a new one, which looks still darker, and meeting Senator Bayard, of Delaware, the latter accosted him with, "Why, Black, how young you look; you are not as gray as I am, and you must be twenty years older." "Humph," said the judge, "good reason; your *hair* comes by descent, and I got mine by purchase."

The *Southern Law Review* for August-September contains the following leading articles:—Rights of parties who acquire an interest in lands subject to a lien, by Orlando F. Bump; Power of the State and National Governments to regulate and control railroads, by David Wagner; American Law Schools, past and future, by W. G. Hammond; Stock, its nature and transfer, by Henry Budd, Jr.

The Supreme Court of California, in a recent case, *Fratt* v. *Whittier*, rendered a decision upon the much-mooted question of fixtures, holding that chandeliers were permanent parts of a building. The decision seems to have been based upon the intention of the parties, as gathered from the written and oral testimony. The decision of the court in this case seems to be at variance with that of the New York Court of Appeals, in *McKeage* v. *Hanover Fire Ins. Co.*, where chandeliers attached to gas pipes running through the house were held not to be fixtures so as to pass with the realty.

Speaking of the justices of the peace whose names were stricken from the rolls for corrupt practices, the London *Law Times* says:—The Government have resolved not to publish the names of the justices of the peace who have been struck off the roll of magistrates by the Lord Chancellor for corrupt practices. The reason assigned for the non publication is that there would be considerable difficulty in distinguishing the merits of cases to which the same measure of punishment has been meted. The total number of magistrates struck off the roll is twenty-five, and two cases are still under consideration.

A. was prosecuted for bigamy. He pleaded, first, that his first marriage had no legal existence, because his intended wife had deceived him, being *enceinte* by another man, and because he was a minor, and did not obtain his father's consent to the marriage. The court held these things might have made the first marriage voidable, but not void. A. further pleaded the statute of limitations. The Court of Cassation decided that in bigamy the statute did not begin to run till one of the marriages was dissolved; "for while the double bond of matrimony exists, the illegality continues, which makes the essence of said crime."—*Vienna Juristische Blætter.*

Samedi dernier (Sept. 24) il y a eu réunion du conseil général du barreau de la province de Québec, sous la présidence de W. W. Robertson, batonnier général. Etaient présents l'hon. W. G. Malhiot et William White, batonniers; l'hon. George Irvine, l'hon. R. Laflamme, E. T. Brooks et C. J. B. L. Hould, délégués; et C. T. Suzor, sec.-trésorier. Le conseil était au complet à l'exception de M. Joseph G. Bossé, batonnier du district de Québec, dont le père, M. le juge Bossé, vient de mourir à Québec. Un comité spécial composé de MM. Laflamme, White, Hould, Suzor et Payment a été nommé pour élaborer des réglements. La question de nommer des sous-examinateurs d'après la section 34 de la charte a été prise en considération et approuvée. Mais avant de faire ces nominations on a cru préférable de consulter les quatre examinateurs de chaque district et de leur demander de suggérer les réglements qu'ils jugeront convenables pour définir les devoirs de ces sous-examinateurs. Il y aura une nouvelle réunion du conseil général dans le mois de Novembre. Le comité des règlements fera alors son rapport.

At the assizes, on Friday, the 5th August, at Norwich, before Mr. Justice Denman, a well-known inhabitant of that city, being called as a juror, and directed to take the New Testament to be sworn, said he thought he had better affirm; on which the learned judge, referring to the statute, asked him if he objected to be sworn; to which he answered, "Certainly not." The learned judge then said, "Then you can be sworn." The juror said, "My position is this, that I have no religious belief, and that the oath would have no effect on my verdict." The learned judge then read the terms of the statute, 24 & 25 Vict. c. 16, in which the form provided is: "I do solemnly, sincerely and truly affirm and declare that the taking of an oath is, according to my religious belief, unlawful," and then inquired of the juror if that would be true of him. To which he again answered that he had no religious belief. The learned judge then said that in his opinion the juror could neither be sworn nor affirm, and directed him to stand aside, which he accordingly did, and another juror was sworn and served in his place.—*Law Journal* (*London*).