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MONTHLY LAW DIGEST

AND REPORTER.

VOL. I. AUGUST, 1893. No. 8.

ACCIDENT INSURANCE — See Insurance, Accident.

ADVERTISEMENT—WAGER—See contracts 4.

AGENCY — See Principal and Agent —Bills and Notes 8—FACTOR—Insurance, Marine 14.

APPEAL.

TO SUPREME COURT.

1. RIGHT OF APPEAL—54 and 55 V., c. 25—CONSTRUCTION OF—QUEBEC.

By sec. 3, ch. 25 of 54-55 Vict., an appeal is given to the Supreme Court of Canada from the judgment of the Superior Court in Review (P. Q.), "where, and so long as no appeal lies "from the judgment of that court, "when it confirms the judgment "rendered in the court appealed from, "which by the law of the province of "Quebec is appealable to the judicial "committee of the Privy Council."

The judgment in this case was delivered by the Superior Court on the 17th November, 1891, and was affirmed unanimously by the Superior Court in Review on the 29th July, 1892, which latter judgment was, by the law of the province of Quebec, appealable to the Judicial Committee. The statute 54 and 55 Vic., ch. 25, was passed on the 30th September, 1891, but the plaintiff's action had been instituted on the 22nd November, 1890, and was standing for judgment before the Superior Court in the month of June, 1891, prior te the passing of 54 and 55 Vict., ch. 25. On an appeal from the judgment of the Superior Court in Review to the Supreme Court of Canada, the respondent moved to quash the appeal for want of jurisdiction.

Held, per Strong, C.J., and Fournier and Sedgewick, J.J., that the right of appeal given by 54 and 55 Vict., ch. 25, does not extend to cases standing for judgment in the Superior Court prior to the passing of the said act. Couture v. Bouchard followed; (21 S. C. R. 281.) Taschereau & Gwynne, JJ., dissenting.

Fournier, J.—That the statute is not applicable to cases already instituted or pending before the courts, no special words to that effect being used.

Appeal quashed with costs. *Williams* v. *Irvine*, Supreme Court, Canada, May 1893.

TO PRIVY COUNCIL.

2. PLAINTIFF'S RIGHT TO APPEAL—APPEALABLE AMOUNT—MESNE PROFITS.

The measure of value for determining a plaintiff's right of appeal is the amount for which the defendant has successfully resisted a decree. Mesne profits, if demanded by the plaint, must enter into the calculation of the appealable value. *Mohideen Hadjiar Pitchey*, 1893 App. Cas. 193.

ARBITRATION — See Expropriation 3, 4—Insurance, Fire 5, 7.

ASSAULT — See Crim. Law 2 — Damages.

BAILMENT — SEE ALSO WORKMANSHIP.

STORAGE OF WHEAT—LOSS BY FIRE "OWNER'S RISK."

A quantity of wheat was delivered by the plaintiff to the defendant, a miller, under a receipt stating that the same was received in store at owner's risk, and that the plaintiff was entitled to receive the current market price when he called for his money. The wheat, to the plaintiff's knowledge, was mixed with wheat of the same grade and ground into flour. The mill, with all its contents, was subsequently destroyed by fire, but there had always been in store a sufficient quantity of wheat to answer the plaintiff's receipt.

Held, that the receipt and evidence in connection therewith, showed there was a bailment of the wheat and not a sale.

Negligence on the part of the defendant was attempted to be set up, but the evidence failed to establish it. *Clarke* v. *McClellan*, Common Pleas Division Ontario, March 4, 1893.

BANKS AND BANKING — SEE ALSO BILLS AND NOTES 11.

1. NEW SOUTH WALES—SURETYSHIP PAYMENT.

Where a bankrupt and others had become guarantors to the appellants of a principal debtor's liability for the sum of £6,250, and three of the guarantors thereafter entered into agreement with the appellants that their liability should be limited in this way, that there should be substituted for it a deposit of £3,000 in the bank, to be carried to a suspense account, with power to the appellants to appropriate that sum whenever they thought fit in discharge *pro tanto* of the principal debt.

Held, that such deposit did not until appropriation operate as payment, and that the appellants were entitled to prove for the full amount of their debt against the estate of a bankrupt co-surety who was not a party to the above agreement. *Commercial Bank of Australia & Official Assignee of Estate John Wilson & Co.*, 1893 App. Cas. 181.

2. BANKER—LOAN TO BROKER—DEPOSIT OF CUSTOMER'S SECURITY — RIGHT OF REDEMPTION—"CONTANGO."

The plaintiff bought stocks and shares through a broker, the broker lending the plaintiff money to "carry over" when necessary. The broker borrowed money of a bank to pay for the stocks and shares, depositing them with the bank as security. Such stocks as required registration were transferred to and registered in the name of trustees for the bank, sometimes by the vendors and sometimes by the plaintiff himself for a nominal consideration:

Held, that the plaintiff could not redeem because (1) the plaintiff, in view of the "contango" system, which was common on the Stock Exchange, had not discharged the *onus* of shewing that the broker had exceeded his authority; (2) that as to "bonds payable to bearer," which were negotiable securities, there was nothing to put the bank on its inquiry; (3) that as to the stocks transferred by the vendors the bank had the legal estate and could not be deprived of it; and (4) as to the stock transferred by the plaintiff he was estopped from denying the bank's title. *Bentinck* v. *London Joint Stock Bank*, 1893, 2 Ch. 120.

3. LIEN—CASH-CREDIT BOND—NEGOTIABLE SECURITIES DEPOSITED IN SECURITY.

In 1881 a bank agreed to allow a firm of merchants in Glasgow credit upon a cash account to the extent of £10,000, and a cash-credit bond for that amount was executed by the firm and the individual partners in favour of the bank. By the bond it was stipulated that the sums to be placed to the debit of the cash account, should include, not only all sums advanced by the bank to the firm but also any sum or debt for which the firm might be liable, and to which the bank should be in right as creditors.

In 1884 one of the partners, acting for the firm, informed the bank that it would suit the firm to have the credit reduced to £5,000. This was agreed to by the bank, on the stipulation that securities of a value 20 per cent. in excess of the amount of the credit were placed in their hands. In compliance with this request the part-

ner of the firm deposited with the bank securities of that value.

The firm having been sequestrated *held* (*rev.* Lord Low) that the defenders were entitled to retain the securities, and apply the proceeds thereof, not only in satisfaction of the sum of £5,000 which the bank were bound to advance to the firm under the cash credit-bond, but in satisfaction of all debts due by the firm to the bank, *Alston's Trustees* v. *Royal Bank of Scotland*, 30 Scot. Law Rep. 775.

BILLS AND NOTES — See also Intoxicating Liquors — Principal and Agent 1.

AMERICAN CASES.

1. Fraud—Burden of Proof.

Where a promissory note has its inception in fraud, the burden of proof is cast upon a subsequent indorsee to show that he is a *bona fide* holder for value. *American Exchange National Bank* v. *Oregon Pottery Co.*; U. S. C. C. (Oreg.), 55 Fed. Rep. 265.

2. New Note—Illegality.

A new note given to raise money with which to pay off a prior note, which had been given to obtain means whereby to prosecute an unlawful business, is not affected by the illegality of the first note. *Buchanan* v. *Drovers' Nat. Bank of Chicago*, U. S. C. C. of App. 55 Fed. Rep. 223.

3. Protest.

The general rule is that where a bank delivers a note or bill to a notary public for demand, protest, and notice, it will not be liable for the default of the latter. *Wood River Bank* v. *First Nat. Bank*, Neb., 55 N. W. Rep. 239.

4. Note—Liability of Indorsers.

In an action by the indorsee of a note against the maker and two indorsers, it appeared that, before the note was delivered to the payee, the maker procured the other defendants to indorse it as further security, to enable the payee to raise money on it; and that, when the payee indorsed it to plaintiff, he inadvertently wrote his name above the names of the two other indorsers, with the words "without recourse" above his name:

Held, that such indorsers were liable on the note as makers, without demand on the maker, and notice of non-payment and protest. *Bank of Jamaica* v. *Jefferson*, Tenn., 22 S. W. Rep. 211.

CANADIAN CASES.

5. Note—Question Whether one of the Signers, a Joint Maker or Witness Only — Evidence — Presentment.

Action on a promissory note which had the names of the two defendants written at the bottom. The syllable "wit." appeared before the signature of the defendant Rolston, who alleged that he signed as a witness and not as maker of the note. The plaintiff stated that Rolston hesitated a moment in backing Shaver's note, and wanted to sign as witness only. The plaintiff, who had written the note, went on to write "wit.," then he refused to take the note so signed; they talked the matter over, and finally Rolston signed as maker. The plaintiff's version was in part corroborated by Shaver. In cross-examination he stated he thought the plaintiff understood he had a backer on the note in Rolston.

Held, on the evidence that the plaintiff's statement was the correct version, and that Rolston signed the note as maker.

It was contended that Rolston being only a surety for Shaver, the note should have been presented for payment and notice of dishonour sent to him.

Held, that although the principal debtor was Shaver, and Rolston undertook to be his surety, as he consented to sign his name as maker on the face of the note, the payee or any indorsee of the note could not be bound to treat him or deal with him otherwise than in that capacity.

Verdict entered for plaintiff. *Gardner* v. *Shaver*, Manitoba Q. B., May, 1893. (Can. L. T.)

6. Note — Prescription — Interruption.

A judgment obtained against the

maker and first indorser of a promissory note interrupts prescription as against the other endorsers. *Thibaudeau* v. *Pauzé*, S. C., Montreal 1892, (*Leg. News.*).

7. ACTION ON.

The maturity of a note during the pendency of an action prematurely brought upon it, is no answer to the exception of the defendant that such note was not payable at the moment of the institution of the action. *Wark* v. *Perron*, S. S., Quebec 1893, (*Leg. News.*)

8. PROCURATION — ACCEPTANCE OR INDORSEMENT "PER PRO"—AGENT'S AUTHORITY.

Where an agent accepts or indorses "per pro," the taker of the bill or note so accepted or indorsed is bound to inquire as to the extent of the agent's authority; where an agent has such authority, his abuse of it does not affect a *bonâ fide* holder for value. *Bryant, Powis & Bryant* v. *Banque du Peuple. Same* v. *Bank of Quebec*, 1893 A. C. 170.

ENGLISH CASE.

9. INDORSEMENT — NEGOTIATION — CONTEMPT OF COURT.

A defendant was restrained from negotiating certain bills payable to his order. The bills at the date of the order were in Y.'s possession as security for a debt. Subsequently defendant, at Y.'s request, indorsed one of the bills:

Held, that the delivery of unindorsed bills to Y. was not negotiating them; that the indorsement by converting Y. from a transferee into a "holder" was negotiation; and that Y., by exercising his right to call for indorsement under s. 31, sub-s. 4, of the Bills of Exchange Act, 1882, was, under the circumstances, guilty of a contempt of Court. "Bearer" and "holder," s. 2, explained. *Day* v. *Longhurst*, 1893 W. N. 3.

FRENCH CASE.

10. DRAFTS ACCEPTED FOR MARRIAGE COMMISSION—ILLEGAL CONSIDERATION—ACCOMMODATION INDORSER—HOLDER IN BAD FAITH.

Where drafts are given in settlement of a commission for negotiating a marriage, and a third party holder with full knowledge of the circumstances, sues the acceptor for payment, the indorsement to the third party being purely an accommodation one made to facilitate the negotiation of the draft, the acceptor is not liable thereon. *Richebois* v. *Dusaw*, Court of Appeal, Paris 1892. (*Journal des Tribunaux*) 1892, 1340, (*Gaz. du Palais.*)

SCOTCH CASE.

11. CHEQUE—PERSON WHO CASHED CHEQUE HELD TO BE NOT AGENT OF PAYEE BUT HOLDER—BILLS OF EXCHANGE ACT 1882 (45 AND 46 VICT. C. 61,) SEC. 27, SUB-SEC. 1, AND SEC. 29.

A, residing in Ayr, was the holder of a cheque in due course. The cheque was drawn on a bank at Inverness. A, who had no bank account, in order to get the cheque cashed, indorsed the cheque, handed the cheque to her brother B, to whom she owed money. B indorsed the cheque, cashed it at his bank, handed part of the sum to A, and kept the balance till the amount due to him by A could be ascertained on a settlement of accounts between them. The granter of the cheque countermanded the cheque before it arrived at the bank in Inverness. B having repaid the amount of the cheque to his bank, raised an action against the granter for that sum. The defender failed to prove mis-representation on the part of either A or B.

Held, that B, in cashing the cheque, did not act as A's agent, but as a holder of the cheque, and that he was entitled to the amount of the cheque, either as a holder in due course or as a holder deriving his title through a holder in due course. *Wright* v. *Guild & Wyllie*, 30 Scot. Law, Rep. 785.

BONDS.

JAMAICA—CONSTRUCTION—YEARLY OF HALF-YEARLY BONDS—ACCOUNTS.

Where, by agreement between the

appellant company and the local government, second mortgage bonds were to be issued with the interest (non-cumulative) dependent on the yearly earnings; then, by a law passed to give effect thereto, the bonds were treated as half-yearly bonds with interest contingent on half-yearly profits; then bonds were issued in terms of the agreement and not the law; and then, by a certificate of the local government, the bonds were erroneously certified to be according to the law:

Held, in a suit by the holders of the said bonds to expunge certain items debited against the half-year's income to the prejudice of the claim for half-yearly interest, that, reading the agreement and the law together, the intention was that the account should be taken at the end of each year and not upon the footing that there was to be a rest at the end of every half-year:

Held, further, that costs of issuing the bonds could not be charged against income to the prejudice of their holders; and that, with regard to the expenditure on stores, the amount chargeable to any one year must be regulated by what is fair in the interest of all concerned. *Jamaica Railway Company* v. *Attorney-General of Jamaica*, 1893, App. Cas. 127.

BOYCOTT—See Trade Unions 2.

BROKER—LOAN TO BANK—See Banks and Banking 2.

BUILDING ASSOCIATION — See Companies 7.

BUILDING SOCIETY.

MEMBER—NOTICE OF WITHDRAWAL—ALTERATION IN RULES AFTER NOTICE AND BEFORE PAYMENT.

The plaintiff was the holder of four fully paid-up shares in a building society. By one of the rules of the society a member on giving one month's notice in writing might withdraw his shares. The rules also provided that they might be altered by a majority of three-fourths of the members.

The plaintiff gave the requisite notice of withdrawal; but after such notice and before he was repaid the above rule was altered by giving the directors power to pay off in priority members holding less than £50 in the society:

Held, that although the plaintiff had at the date of his notice of withdrawal under the rule then in force a vested right to be paid the amount due on his shares, he being still a member of the society, was liable to have this right divested by a subsequent alteration in the rule duly made, and that he was therefore bound by the altered rule. *Pepe* v. *City and Suburban Permanent Building Society*, [1893] 2 Ch. 311.

BURDEN OF PROOF—See Carriers of Passengers 4.—Negligence 4.

CARRIERS—See also Railway Comp. 2 (Goods)—Street Rly. Co. 2

OF GOODS.

1. FREIGHT CHARGES — WHO LIABLE.

When the vendor of goods delivers them to a railroad to be carried to the purchaser, though the title may pass to the purchaser by such delivery, and the name and address of the consignee, who is the purchaser, may be known to the company, the vendor is presumed to make the contract for transportation on his own behalf, and is liable for the freight, but such presumption may be rebutted by evidence showing that it was understood that the consignee should pay the freight.

An employee of defendants, who had sold ice to one H, told the agent of a railroad company that there was a car to go to him, without further instructions. The company billed the car to H *via* connecting carriers. No bill or receipt was given defendants, and the freight charges were made to H by all the carriers, and bills for freight sent to him.

Held, sufficient to show that it was understood that H, and not defendants, should pay the freight. *Union Freight R. Co.* v. *Winkley*, Supreme Judicial Court of Massachusetts, May 19, 1893, (*Central L. Journal.*)

Field C. J. The plaintiff is the second in a line of three connecting railroads over which the ice was transported, and the freight due to the first two roads has been paid by the last. We assume, without deciding it, that

the right of the plaintiff to maintain this action is the same as if it were the first road, and the freight had not been paid. With whom, then, did the Boston & Main Railroad make the contract for transportation, and who promised that company to pay the freight? There was no express contract. The defendants, through their servants, might have contracted with the railroad to pay the freight, although, as between themselves and Merrick, he was bound to pay it, but they made no such contract, in terms. *A consignor of merchandise delivered to a* railroad for transportation may be the owner and act for himself, or be an agent for the owner, and act for him, and this may or may not be known to the railroad company. In the present case the railroad company knew the name and the residence of the consignee. From the agreed facts it appears that the title to the ice passed to Merrick when it was put on board the car, and that it was transported at his risk. The doctrine of the courts of the United States seems to be that the property in goods shipped is presumably in the consignee, although this presumption may be rebutted by proof. Lawrence v. Minturn, 17 How. 100; Blum v. The Caddo, 1 Woods, 64. In Dicey on Parties to Actions (pages 87, 88,) the result of the English decisions is stated to be as follows: "The contract for carriage is, in the absence of any express agreement, presumed to be between the carrier and the person at whose risk the goods are carried, *i. e.*, the person whose goods they are, and who would suffer if the goods were lost. * * * When, therefore, goods are sent to a person who has purchased them, or are shipped under a bill of lading by a person's order, and on his account, the consignee, as being the person at whose risk the goods are, is considered the person with whom the contract is made. He is liable to pay for the carriage, and is the proper person to sue the carrier for a breach of contract. And (*Id.* page 90, note): "When the consignor acts as agent of the consignee, but contracts in his own name, it would appear that either the consignor or consignee may sue." Dawes v. Peck, 8 Term R. 330; Domet v. Beckford, 5 Barn. & Adol. 522; Coombs v. Railway Co., 3 Hurl. & N. 1; Sargent v. Morris, 3 Barn. & Ald. 277; Dunlop v. Lambert, 6 Clark & F. 600; Railway Co. v. Bagge, 15 Q. B. Div. 625; Cork Distilleries Co. v. Great Southern & W. Ry. Co., L. R. 7 H. L. 269. The cases generally are collected in Hutch. Carr. § 448 *et seq.*; *Id.*, § 720 *et seq.* Most of the English cases were reviewed in Blanchard v. Page, 8 Gray, 281. That was a case of the carriage of goods by sea under a bill of lading, and it was held that the bill of lading was a contract between the shipper and the shipowner, and that although it was shown that the shipper acted as agent of the consignees, who had bought and paid for the goods before shipment, yet he could bring an action in his own name for breach of the contract of carriage, unless he was prohibited by his principal, and it was said that he would be liable for the freight. In Wooster v. Tarr, 8 Allen, 270, it was decided that under a bill of lading in the usual form the shipper was liable to the carrier for the freight, although the bill contained the usual clause that the goods were to be delivered to the consignees or their assignees "he or they paying freight for said goods," etc. It was said "to be the settled doctrine that a bill of lading is a written simple contract between a shipper of goods and the shipowner; the latter to carry the goods, and the former to pay the stipulated compensation when the service is performed." Both these cases were upon express contracts.

The strongest case for the plaintiff is Finn v. Railroad Co., 102 Mass. 283, which was upon an implied contract. In that case one Clark had ordered shingles of Finn, who shipped them on his own account, under a bill of lading, on board a canal boat, to be delivered to "the Great Western Railroad Company, or their assignees, at Greenbush, N. Y. Consignee to pay freight on the delivery." And the shingles arrived by boat at the freight station of the railroad company at Greenbush, N. Y. The shingles were described in the bill of lading as marked "J. S. C. Extra," or "J. S. C." They were burned, while in the freight house, by an accidental fire. They were intended to be transported to Joseph S. Clark, Southampton, Mass. Clark accepted and paid a draft drawn by Finn for the shingles; and, in a suit by Finn against him, Clark pleaded the amount of the draft in set-off, and recovered the amount, on the ground that "the omission of the plaintiff [Finn] to forward the goods with proper directions to the consignee and the place of delivery authorized the defendant [Clark] to treat the alleged sale as one never perfected, and to recover back the money paid upon the draft." Finn v. Clark, 10 Allen, 479, 12 Allen, 522. Finn then brought suit against the railroad company for its failure to forward and deliver the shingles to Clark. It was held that although the case of Finn against Clark settled the fact that, as between them, the title to the property remained in Finn, yet the railroad company, not being a party to that suit, could not set up the judgment in it "as an estoppel against Finn upon the question of" delivery. Finn v. Railroad, 102 Mass. 283. At the second trial the plaintiff obtained a verdict, and the facts stated in the exceptions showed "that the title to the property had passed to Clark before the loss occurred, leaving Finn, at most, only right of stoppage *in transitu;*" and it was in this aspect of the case that the opinion in 112 Mass. 524, was delivered. The contention of the plaintiff was that the shingles had been delivered to the railroad company with proper directions for their transportation, and that the defendant had neglected to transport them, whereby they had been burned. In the opinion the court say of the liability of a common carrier that, "*prima facie*, his contract of service is with the party from whom, directly or indirectly, he receives the goods for carriage; that is, with the consignor. * * * When carrying goods from seller to purchaser, if there is nothing in the relations of the several parties except what arises from the fact that the seller commits the goods to the carrier

as the ordinary and convenient mode of transmission and delivery, in execution of the order or agreement of sale, the employment is by the seller, the contract of service is with him, and actions based upon the contract may, if they must not necessarily, be in the name of the consignor. If, however, the purchaser designates the carrier, making him his agent to receive and transmit goods, or if sale is complete before delivery to the carrier, and the seller is made the agent of the purchaser in respect to the forwarding of them, a different implication would arise, and the contract of service might be held to be with the purchaser." Although this was not a suit to recover freight, the principles on which it was decided are applicable to such a suit, and the effect of this and the previous decisions, we think, is that in this commonwealth, when the vendor of goods delivers them to a railroad to be carried to the purchaser, although the title passes to the purchaser by the delivery to the railroad company, and the name and address of the consignee, who is the purchaser, is known to the company, the vendor is presumed to make the contract for transportation with the company on his own behalf, and is held liable to the company for the payment of the freight. This presumption, however, is a disputable one, and may be rebutted or disproved by evidence; and if the vendee has ordered the goods to be sent at his risk, and on his account, he also may be held liable as the real principal in the contract. See Byington v. Simpson, 134 Mass. 169. But, whether the presumption be one way or the other, it is a matter of inference from the particular circumstances of the case, and the question which is always to be considered is the understanding of the parties. See Railroad v. Whitcher, 1 Allen 197. In the present case there is no bill of lading or receipt signed by the railroad company, and accepted by the defendants. There was a way bill but it does not appear that the names of the defendants were in it. The freight charges were made in every instance to Merrick, the consignee, and the bills for freight were sent to him. These facts, and perhaps some others stated in the agreed facts, afford some evidence that the railroad company understood that Merrick was to pay the freight to the company. Upon an agreed statement of facts this court cannot draw inferences of fact, unless they are necessary inferences. Railroad v. Wilder, 137 Mass. 536. The agreed facts in this case, we think, contain some evidence that the understanding of all the parties was that Merrick should pay the freight to the railroad company; and we cannot hold, as matter of law, that the defendants made a contract on their own behalf to pay the freight. Judgment affirmed.

2. LIVE-STOCK—LIMITING DAMAGES.

In an action by a shipper against a railroad company to recover the value of hogs killed in transit, under a contract releasing the company from liability for loss from overloading, heat, suffocation, fright, viciousness, or fire, and from all other damages incidental to railroad transportation, "which shall not be established by positive evidence to have been caused by the negligence of some officer or agent," plaintiff is entitled to a recovery where it does not appear from what cause the hogs died. *Johnstone* v. *Richardson & D. R. Co.*, S. Car., 17 S. E. Rep. 512.

OF PASSENGERS

3. LIABILITY TO PASSENGERS—ROBBERY IN TRAIN—OVERCROWDING.

A passenger claimed damages for loss by robbery in the defendants' train on the grounds (1) that the station-master at the station where the robbery occured refused to detain the train to enable him to recover the money and arrest the thieves, and (2) that the robbery was directly due to overcrowding:

Held, (1) that, under the circumstances, there was no duty cast on the station-master to detain the train, and therefore no cause of action was shewn; (2) that the damage was too remote. *Cobb* v. *Great Western Railway Co.*, C.A. [1893], 1 Q. B 459.

4. LOSS OF BAGGAGE — CONNECTING LINES—BURDEN OF PROOF.

In an action against a receiving carrier for the loss of baggage by a passenger whose ticket over connecting lines recited "that, in selling this ticket," defendant "acts only as agent, and is not responsible beyond its own line," the burden is on defendant to show that the loss did not occur on its line. *International & G. N. R. Co.* v. *Folts*, Tex. Civ. Court App. 1893. (Alb. L. J.)

The authorities are not entirely clear upon the question presented. But it may be said that where goods are shipped over several lines, and they are found, upon arrival at destination, to be damaged, only, the burden of proof is upon the last carrier to prove that it received the goods in such damaged condition. By making this proof it would be relieved of liability. But when there is a total loss, and the goods do not arrive at their final destination, the receiving company would be held liable, unless there be proof that the goods were delivered to the next succeeding line. Railway Co. v. Culver,

75 Ala. 587; Brintnall v. Railway Co., 32 Vt. 665; Express Co. v. Hess, 53 Ala. 19. There are cases where goods are shipped in boxes, and at destination it is found that some of the goods have been abstracted on the way, and it has been held that the last carrier would be *prima facie* liable. But the holding seems to be upon the principle that a partial loss would be only a damage to the entire lot or package. Laughlin v. Railway Co., 28 Wis. 204; Railway Co. v. Holloway, 9 Baxt. 188. In the case of Railway Co. v. McIntosh, 73 Ga. 532, where a passenger's baggage, checked through, was lost, it was held that the last road was liable, not withstanding the first road would also be liable, as had been before decided by the same court. Jones v. Screven, 62 Ga. 347. Of course, the receiving company may shift responsibility by showing that the freight was delivered to its connecting line; and so may the delivering company, of damaged goods, by making proof that it received the goods in a damaged condition. Shaefer v. Railroad Co., 60 Ga. 39; Dixon v. Railroad Co., 74 N. C. 538; Leo v. Railway Co., 30 Minn. 438; Smith v. Railway Co., 43 Barb. 225; Railroad Co. v. Kirkwood, 45 Mich. 51; Hutch. Carr., §§ 760, 761; Schouler Bailm., § 606. In a case like the one at bar, where it is shown that the jewelry contained in a locked trunk was a total loss, and was never delivered at destination in any condition, it would be more in consonance with the principle upon which the distinction rests to hold the receiving company liable. If there is to be a presumption at all, it ought to be against the company who is proved to have received the goods rather than the company who has not been known to have had possession of them, in any condition. When defendant received the goods it became liable to carry them, and deliver them, to the next line, but was not liable for the further carriage, under the contract. The contract specially excepted such liability. In the absence of all testimony explaining the loss, it devolved upon defendant to show that the loss fell within the exception. It is impossible to say that the exception exists. This being so, and the reason of the rule authorizing a presumption against the last carrier having no application in case of a total loss, we think defendant should be required to show that the contracted exception applies. The trunk was delivered, locked and strapped as it was at first, and there was nothing in its appearance to indicate that it had been tampered with—nothing to cause the last or intermediate carriers to inquire, or to give them any notice, as in case of damage or injury. Under the circumstances of this case, we conclude that the *onus* was upon defendant to show that it came within the exception stipulated in the ticket contract. Ryan v. Railway Co., 65 Tex. 14. But see Railway Co. v. Adams, 78 id. 372.

CHARTER-PARTY — See Ships and Shipping 3.

CHEQUE—See Bills and Notes 11.

COMPANIES — SEE ALSO RAILWAY COMPANIES (BONDS) 1.

1. JOINT STOCK COMPANY — COMPANIES' ACT, 1862-83 (IMPERIAL) — WINDING-UP ACT—LIQUIDATOR, STATUS OF, BEFORE CANADIAN COURTS—INTERVENTION — DEPOSIT — SAISIE-ARRÊT.

Held, where Canadian creditors of a joint stock company incorporated under the (Imperial) Companies' Act, 1862-83, are proceeding to execute a judgment obtained in the courts of this province upon assets of the company situated within the province, a liquidator named in Great Britain to the voluntary winding-up of such company cannot intervene and demand that the company's assets be removed to Great Britain, to be there by him distributed in accordance with the provisions of the said Companies' Act. *Quære*, has such liquidator any standing before the courts of this province. *Quebec Bank* v. *Bryant et al*, Quebec, S. C. 1893. (Leg. News).

2. (*a*) PROMOTION — DIRECTORS — LIABILITY OF FOR PROMOTION EXPENSES.

Where parties lend their names as provisional directors to a projected company, in order to obtain an Act of Parliament to incorporate the same, and who sign the petition to that effect, they are liable for the fees of the solicitor whose services have been retained to promote the company. *Augé* v. *Corneillier*, Montreal 1892, Q.B. in Appeal. (Leg. News).

2. (*b*) LIABILITY OF PROMOTORS FOR PROMOTION EXPENSES—PARTNERSHIP —ONTARIO COMPANY.

This was a claim by E. for $1,800 being the half of $3,600 paid by him in satisfaction of a judgment against an association called the "Home Benefit Life Association" of which E. and four others and D. were promotors. This company owing to the refusal of the Inspector of licenses to grant a license, never did any business, and the debts incurred by it arose from promotion expenses. E. claimed that under the law of Ontario, in which province the association was organized, as well

as of this province they were liable as partners under a certain declaration signed by them, and that D. was bound to indemnify him for the half of the amount paid out by him, the other promotors having become insolvent.

D. contested this action on the grounds that under the law of Ontario, the fact of signing such declaration does not constitute the parties thereto partners, and he was therefore not liable as a partner; that he never had any interest in the association, but simply lent his name as promotor, it being understood that when the association was organized he should retire and not incur any further risk or liability and that at a meeting of promoters he insisted upon his resignation being accepted. It was accordingly accepted by resolution on 9th Dec. 1889 discharging him from any liability which may have been incurred.

Held, that in order to hold the defendant as a partner, either towards his associates or towards third parties, it must be shown that it was the intention of the co-adventurers to form a partnership. Reid v. MacFarlane, (1893) B. R. Q. 130.

That, under the facts of the case, where the parties signed a declaration under Rev. Stats. Ont., c. 172 for the purpose of carrying on the business of life insurance, and were prevented from doing so by the refusal of the Inspector of Insurance to issue a license, one of the signers of the declaration who was compelled to pay the debts incurred by him in promoting the company cannot hold the others liable to contribution as partners. *Ellis* v. *Drummond*, Montreal, S. C. April 1st 1893. Davidson, J.

Note.

See Central City Sav. Bank v. Walker, 5 N. Y. 424.
Fuller v. Rowe, 57 N. Y. 23
Lindley Comp., p. 143-4.
Wood v. Duke of Argyll, 6 Man. & Granger 928.
McEwan v. Campbell, 2 McQueen's App. Cas. 499,
2 Morawetz Priv. Corp. sec. 748.
Taylor Priv. Corp. sec. 77, 80, 81.
Barker v. Stead, 3 C. B. 946.
Gartside Coal Co. v. Maxwell, 6 Am. & Eng. Corp. Cas. p. 40.
Louis Snider Sons & Co. v. Troy, 11 Lawyer's Ann. Rep. 515.
Dewitt v. Hastings, 69 N. Y. 518.
Newton v. Belcher, 12 Q. B. 921.
Scott v. Berkely, 3 C. B. 923.
Cook's Stockholder's & Corp. Law, 2nd Edit. 1889.
Lake v. Duke of Argyll, 6 Q. B. 477.
Barnett v. Lambert, 15 M. & W. 489.
Collingwood v. Berkley, 15 C. B. N. S. 145.
Maddick v. Marshall, 17 C. B. 828.
Fay v. Noble, 7 Mass 188.
Ward v. Brigham, 127 Mass 24.

3. PURCHASE OF SHARES—SALE OF ASSETS.

A company sold part of its assets of an onerous nature to some shareholders. Part of the consideration was that the purchasing shareholders should surrender their shares. The company proposed to reduce their capital to the extent of the surrendered shares:

Held, that under the circumstances this was not a purchase by the company of their own shares. Reduction allowed. IN RE *Denver Hotel Co.* C. A. Revers. North, J. [1893] 1 Ch. 495.

4. DIRECTORS—LIABILITY—ULTRA VIRES ACTS.

Directors issued debentures and shares as fully paid to a contractor in order that he might do certain necessary works, and in addition might pay certain creditors sums in excess of their just debts, and take up shares in the company, and otherwise benefit the shareholders and the directors:

Held, that the directors were liable to return any benefit they had received, and were, except one who had not participated in the scheme, also liable to make good the excessive consideration and indemnify the company against loss on the shares issued as paid up. *London Trust Co.* v. *Mackenzie*, [1893] W. N. 9.

5. DIRECTORS—QUALIFICATION—BENEFICIAL OWNERSHIP.

A direction in articles of association or in an Act of Parliament that a director must, as his qualification, hold shares "in his own right," does not mean that he must be personally and beneficially interested in the shares. Pulbrook v. Richmond Consolidated Mining Co. (9 Ch. D. 610) followed reluctantly. *Howard* v. *Sadler*, [1893] 1 Q. B. 1.

6. VOTING—PROXY.

Where the charter of a railroad company provides that "each share entitles the holder thereof to one vote, which vote may be given by said stockholder in person, or by lawful proxy," and the appointment is without limitation, a vote by the proxy binds the stockholder, whether exercised in his interest or not, to the same extent as if the vote had been cast in person. *M. & O. R. R. Co.* v. *Nicholas*, Supreme Court of Alabama, 12 Southern Rep., 723.

7. WITHDRAWAL.

Knowingly and intentionally participating as a stockholder in stockholders' meetings held six and ten months after giving notice of withdrawal, constitutes a waiver of the right to withdraw under said notice. *Decatur Building & Inv. Co.* v. *Neal*, Supreme Court of Alabama, 12 Southern Rep., 780.

CONDITION PRECEDENT—See Insurance, Fire 7, 8.

CONSPIRACY — MALICIOUSLY PROCURING BREACH OF CONTRACT — See Trade Unions 1.

CONSTITUTIONAL LAW—LIQUOR LICENSE—See Intox. Liquors 1.

CONTEMPT OF COURT — SEE ALSO BILLS AND NOTES 9.

NATURE OF THE OFFENCE — OBSTRUCTION TO PUBLIC JUSTICE — POWER OF CROWN TO REMIT SENTENCE—APPEAL FROM THE BAHAMAS.

Where a letter published in a colonial newspaper contained criticisms on the conduct of the Chief Justice of the colony of such a nature that it might have been made the subject of proceedings for libel, but was not in the circumstances calculated to obstruct or interfere with the course of justice or the due administration of the law:

Held, that the same did not constitute a contempt of court.

It appearing that the editor had, on notice from the court, refused to discover the name of the writer, and had thereupon been sentenced to fine and imprisonment during pleasure for the publication, and to fine or imprisonment for the refusal, but had been released by order of the Governor:

Held, (1) that the Chief Justice had no legal authority to require either the name of the writer or the manuscript of the letter;

(2) That the Governor had, under his commission, power in the circumstances to remit the sentence.

There may not be imported into a case of this kind any matter which was not in evidence against the defendant, nor will their Lordships permit any such matter to be laid before them. *In the matter of a Special Reference from the Bahama Islands*, 1893, App. Cas. 138.

CONTRACTS — SEE ALSO MUN. CORP. 1. 2. 3. 5.—RESTRAINT OF TRADE 1. 2. — TIMBER, REMOVAL OF — TRADE UNION 1.—WATER COMPANIES —WORKMANSHIP.

1. INTERPRETATION OF — RAILWAY CO.—DEBENTURES.

The respondents the "Quebec Central Railway Co." finding themselves in financial difficulties, it was agreed by deed entered into on 2 April 1887 by the provisional directors on the one part and by the appellant on the other, that appellant who controlled the capital stock of the company of which he was president, in consideration of the transfer to be made to him, of debentures representing $250,000 should pay all the debts set forth in a certain schedule annexed to the deed, saving certain debts expressly excepted, so as to enable the new management to get control of the company, freed from all indebtedness, save that excepted; that the said debentures should be deposited with a trustee, who should transfer them to appellant in the measure that the payments made by the latter might justify. The schedule aforementioned, enumerated in the first part, the company's debts, and secondly the debts caused by the construction of the road.

Held, (reversing the decision of Brook, J. S. C., 14 L. N. 354); that appellant had the right in virtue of the above contract, to employ revenues of the company which had accrued before the date of the contract, towards liquidating the company's old debts, and

that the sum thus employed, should not be deducted from his claim for possession of the above mentioned debentures. *Robertson* v. *Quebec Central Ry. Co.*, Montreal 1893, Q. B. in Appeal.

2. CONSTRUCTION — PAROL EVIDENCE.

A written contract reciting that "on demand I promise to deliver to the order of F. $800 * * * in wall paper, at wholesale price, good, clean, assorted stock out of my store," is unambiguous, and means that such "wholesale price" is to be determined as of the time demand is made for the paper, and in an action for failure to deliver the paper at such price, parol evidence is inadmissible to show that at the time of making the contract the parties agreed that the wholesale price should be as stated on a printed card then delivered to the purchaser. *Fawkner* v. *Lew Smith Wall Paper Co.*, Iowa Supreme Ct. May 16 1893, Alb. L. J.

The words "wholesale price" have a fixed, certain and well-defined meaning in the mercantile world. They mean the price fixed on merchandise by one who buys in large quantities of the producer or manufacturer, and who sells the same to jobbers, or to retail dealers therein. Neither can it be successfully claimed that the written contract leaves it a matter of doubt or uncertainty as to what wholesale price should be used in determining the value of the paper. The plaintiff or his assignor, by the plain terms of the contract, had a right to demand its fulfilment whenever he chose so to do. The contract was by its terms to be satisfied by delivery of wall paper at wholesale price, the delivery to take place on demand. It was then a contract in all respects complete and perfect as to the parties, the subject-matter and the delivery. The evidence objected to would work a material change in the terms of the contract. It shows that the paper was to be received at a price which was agreed upon when the contract was executed, and outside of the provision of the written contract. It measured the amount of paper that should be received under the written contract by the then wholesale market price, when the written contract measured the amount of paper to be delivered under it by the wholesale price at the time of demand made for the goods. Whatever the law implies from the language used in the writing is as much a part of the contract as that which is expressed therein. Works v. Hershey, 35 Iowa, 343; Emigrant Co. v. Clark, 47 id. 673; Lumber Co. v. Mead (Minn.), 44 N. W. Rep. 396. Hence, if the contract as expressed, or viewed in the light of what the law thus implies from the language used therein, is clear, definite, and complete, the rule applies that it cannot be added to, varied, or contradicted by extrinsic evidence. It is said that a contract may rest partly in writing and partly in parol, and that in such cases extrinsic evidence is admissible to establish that part which is not written. This exception is as well settled as the rule itself. But extrinsic evidence in such cases is only admissible when that part of the contract sought to be thus established relates to some matter about which the writing is silent. If the proposed evidence is in any way inconsistent with the terms of the writing, such evidence is inadmissible. Blair v. Buttolph, 72 Iowa, 31; 17 Am. & Eng. Enc. Law, 443, 444; 7 id. 91; Taylor v. Galland, 3 G. Green, 22; Annis v. Annis, 61 Iowa, 220. In the case at bar the evidence introduced related to a matter as to which the contract itself speaks with certainty. The legal import of the contract determined that the wholesale price therein mentioned should be ascertained as of the date a demand and delivery of the goods was made. It was then impossible that in advance of that time, and at the time the contract was made, the parties could by parol engraft upon it a provision inconsistent with the written contract as interpreted by the law. While it is competent in construing a contract to show the situation of the parties, the subject-matter of the contract, and acts of the parties under the contract, as tending to show how they understood it, still this cannot be done to the extent of varying or contradicting a written contract, when such contract is certain, complete, and unambiguous.

3. ILLEGAL STIPULATION—VALIDITY OF OTHER STIPULATION.

A contract for employment of miners contained a stipulation as to certain deductions on weighing the mineral gotten, which the Court found were illegal:

Held, that the illegality of this stipulation did not prevent the mine-owners enforcing another stipulation of the contract, viz., that no miner should leave without giving fourteen days' notice. *Kearney* v. *Whitehaven Colliery Co.*, C. A. [1893] 1 Q. B. 700.

4. ADVERTISEMENT — FULFILMENT OF CONDITIONS—WAGER.

The proprietors of a medical preparation advertised that they would pay £100 to any person who caught influenza after using the preparation in and for a certain manner and period. A person who complied with these conditions caught the influenza:

Held, that the above facts established a contract which was neither a con-

tract by way of wagering (8 & 9 V. c. 109), nor a policy, (14 Geo. 3, c. 48, s. 2), and that the £100 was recoverable. *Carlill* v. *Carbolic Smoke Ball Co.*, [1892] 2 Q. B. 184; Affirm, by C. A. [1893] 1 Q. B. 257.

5. CONTRACTS BY CORRESPONDENCE —PROPOSAL BY TELEGRAM—ACCEPTANCE.

Where the plaintiff makes a proposal by telegram, with request to reply by telegram, and the defendant replies by a telegram which contains no acceptance of the proposal, but a new proposal, and no notice that a letter is to be written, the plaintiff may treat his proposal as rejected, although a letter subsequently arrives accepting plaintiff's proposal. *Goulding* v. *Hammond*, 54 Fed. Rep., 639.

CONTRIBUTORY NEGLIGENCE — See Negligence.

COPYRIGHT.

1. BOOKS—"MAP, CHART, OR PLAN" —PATTERN SLEEVE—SUBJECT-MATTER —LITERARY MERIT—COPYRIGHT ACT (5 & 6 V. c. 45), ss. 1, 2.

The plaintiff claimed copyright in a cardboard pattern sleeve containing a scale for adapting it to sleeves of any dimensions.

Held, that it was capable of copyright under 5 & 6 V. c. 45, as a chart or plan. *Hollinrake* v. *Truswell*, [1893] 2 ch. 377.

2. INTERNATIONAL COPYRIGHT — COPYRIGHT ACTS — INTERNATIONAL COPYRIGHT ACTS, 1844 TO 1886—ENGLISH COPYRIGHT IN FOREIGN PAINTING OR BOOK—RIGHT OF OWNER TO SUE FOR INFRINGEMENT WITHOUT REGISTRATION UNDER COPYRIGHT ACTS— THE BERNE CONVENTION OF SEPT. 5, 1887 — ORDER IN COUNCIL OF NOV. 28TH, 1887, ADOPTING THE BERNE CONVENTION—FINE ARTS COPYRIGHT ACT, 1862 (25 & 26 V. c. 68), s. 4—COPYRIGHT ACT, 1842 (5 & 6 V. c. 45), s. 13—INTERNATIONAL COPYRIGHT ACT, 1886 (49 & 50 V. c. 33), s. 6.

Held, by Charles, J., that registration in accordance with s. 4 of the Fine Arts Copyright Act, 1862 (25 & 26 V. c. 68), is not necessary in order to entitle the owner of the English copyright in a foreign painting to sue for infringement.—Sect. 6 of the International Copyright Act, 1886 (49 & 50 V. c. 33), enacts that "where an Order in Council is made under the International Copyright Acts with respect to any foreign country, the author and publisher of any literary or artistic work first produced before the date at which such Order comes into operation, shall be entitled to the same rights and remedies as if the said Acts, and this Act and the said Order had applied to the said foreign country at the date of the said production; provided that, where any person has before the date of the publication of an Order in Council lawfully produced any work in the United Kingdom, nothing in this section shall diminish or prejudice any rights or interests arising from or in connection with such production which are subsisting and valuable at the said date."—Such an Order in Council was made on November 28, 1887, and came into operation on December 6, 1887.

Held, by Charles, J., that the section applies to any literary or artistic work produced before December, 6, 1887, the date at which the Order in Council of November 28, 1887, came into operation, whether produced before or after June 25, 1886, the date of the passing of the Act; and that the interest contemplated by the proviso is a direct subsisting pecuniary interest in the continuation of the production. Fishburn v. Hollingshead ([1891] 2 Ch. 371) dissented from. Moul v. Groenings ([1891] 2 Q. B. 443) followed. *The Hansiaengl Art Publishing Company* v. *Holloway*. [1893] 2 Q. B. 1.

3. INFRINGEMENT—DIRECTORY.

In a trades directory the headings are the subject of copyright, although the letterpress consist only of advertisements, and also the arrangement of the advertisements, the Court holding that it was a fair inference that they had been composed or arranged on the terms that the plaintiff should have the copyright in them — Copyright Act, 1842, s. 18. *Lamb* v. *Evans*, [1892] 3 Ch. 462; affirm. by C. A. [1893] 1 Ch. 218.

CORPORATIONS — See Companies— Also Ry. Comp. 1.

CRIMINAL LAW.

1. THEFT.

Where in a game of "Baccarat" a player, afther having deposited a stake in the form of a 1,000 fr. note upon the table, withdraws the same upon perceiving that the banker had won, under the pretext that he had only intended to play for 100 fr., and puts it in his pocket, he is guilty of theft. Court of Cassation (France) 1892. *Journal des Tribunaux* 1892, 410.

2. ASSAULT—ATTEMPT TO.

A verdict of attempt to assault is not irregular. *Leblanc* v. *Reginam*, Montreal, Q. B. 1892. (Legal News).

3. CORONER'S JURY—PLEA OF AUTREFOIS ACQUIT.

The fact that the coroner's jury returned a verdict of accidental death in regard to the prisoner, does not justify the latter in pleading *autrefois acquit*. *Reg.* v. *Labelle*, Montreal, Q. B. 1892. (Legal News).

4. EVIDENCE—CONFESSION.

Before a confession can be received in evidence of criminality it must be proved affirmatively that the confession was free and voluntary, that is, that it was not preceded b · any inducement held out by any person in authority to make a statement. In this case the inducement was held out by the employer of the prisoner to his relatives, and it was inferred, not proved, that it was communicated to the prisoner. No sufficient proof was given that the confession was free and voluntary—Confession rejected. *Reg.* v. *Thompson*, C. C. R. [1893] W. N. 86; [1893] 2 Q. B. 12.

5. CARNAL KNOWLEDGE OF GIRL UNDER THIRTEEN — MALE UNDER FOURTEEN.

A boy who being under fourteen is entitled to be acquitted of the offence of carnally knowing a girl under thirteen may be convicted of an indecent assault. Whether he might have been convicted of an attempt at rape, *quære*. *Reg.* v. *Williams*, C. C. R. [1893] 1 Q. B. 320.

6. MANSLAUGHTER — NEGLECT OF PERSON OF FULL AGE.

A woman living with and entirely maintained by her aunt so neglected her in her illness by not providing food nor medical and other assistance that she died.

Held, that the woman was properly convicted of manslaughter. *Reg.* v. *Instan*, C. C. R. [1893] 1 Q. B. 450.

7. FORGERY — SIGNING NAME OF DEAD OR INCAPACITATED PERSON.

It is forgery to sign a dead person's name to an instrument with intent to defraud, and a person is guilty of forgery if, with intent to defraud, he signs an instrument with the name of a person who has no legal capacity to execute it, or if he makes a false instrument by signing a fictitious name. *Brewer* v. *State*, Court of Civil Appeals of Texas, S. W. Rep. 41.

DAMAGES—SEE ALSO CARRIERS OF GOODS 2. — SHIPS AND SHIPPING (WRONGFUL ARREST OF VESSEL) 1.

ASSAULT AND BATTERY — COLLEGE "RUSH".

A student who rushes upon and injures an unsuspecting fellow student who is not participating in a college "rush," is guilty of an assault and battery, and liable in damages, notwithstanding the fact that he was pushed against the plaintiff by other students without anticipating the consequences. *Markley* v. *Whitman*, Sup. Court of Indiana, 1893, 54 N. W. Rep. 763.

DEBENTURES—See Bonds.

DEED.

ACTION TO SET ASIDE—UNDUE INFLUENCE—EVIDENCE—NOVA SCOTIA.

C., executrix under a will, brought an action to have a deed executed by testator some two months before the date of the will, set aside and cancelled for undue influence by the grantees, and incompetence of the grantor to execute it. C. alleged in her statement of claim that testator was eighty years old and a man of childlike simplicity; that defendants, grantees under the deed, had kept him under their control and several times assaulted him when he wished

to leave their house; and that he had requested C. to live with him and take care of him until he died, which defendants would not permit her to do. The deed in question purported to be in consideration of grantees paying testator's debts and maintaining him for the rest of his life.

Held, affirming the decision of the Supreme Court of Nova Scotia, that the evidence showed that the deed was given for valuable consideration, and that undue influence was not established. C., therefore, could not maintain her action. Appeal dismissed with costs. *Corbett* v. *Smith*, Supreme Ct. of Canada, May, 1893.

DEMURRAGE—STRIKE—CONSIGNEE'S LIABILITY—See Ships and Shipping 4.

DONATION.

UNDUE INFLUENCE — RELIGION — CONFIDENTIAL RELATIONSHIP.

Gift *inter vivos* set aside on the ground that it had been obtained by the exercise of undue influence under the guise of religion:

Semble, in this case it might have been set aside on the ground of confidential relationship. *Morley* v. *Loughnan* [1893], 1 Ch. 736.

ELECTRIC LIGHT CO.—USE OF POLES—See Mun. Corp. 5.

ELECTRICITY—See Street Ry. Co. 1.

EMINENT DOMAIN—See Mun. Corp. 7.

ESTOPPEL—See Sale of Goods 2.

EVIDENCE—SEE ALSO CARRIERS 4 (BURDEN OF PROOF)—CONTRACTS 2 (PAROL)—CRIM. LAW 4—DEED.

DECLARATIONS BY ATTORNEYS.

Where an attorney is retained, not only to sue a railroad company for damages caused by an accident, but also to present the plaintiff's claim to the company, and obtain settlement of it without suit, if possible, a letter written by his clerk, under his directions, to an officer of the company, stating what purported to be the facts in the case, in response to an inquiry by the company, is admissible in evidence for the company as a declaration by the plaintiff as to the facts. *Loomis* v. *New York, N. H. & H. R. Co.*, Mass., 34 N. E. Rep. 82.

EXPROPRIATION — SEE ALSO MUNICIPAL CORP. 7 (MARKET STALL—LESSEE—EJECTMENT).

CITY OF MONTREAL—JUST INDEMNITY—COSTS OF WITNESSES AND ADVOCATES—Art. 407 C. C.

1. *Held*, that in expropriation proceedings under the charter of the City of Montreal, the production of witnesses and the retaining of counsel before the commissioners being a necessary proceeding by the expropriated party, the expenses of such witnesses and counsel form part of the just indemnity to which he is entitled under art. 407, C. C., and should be added by the commissioners to the price of the property taken. *Sentenne* v. *Cité de Montréal*, Montréal, Q. B. 1893. (Legal News).

2. JUST INDEMNITY—COUNTRY RESIDENCE.

Held, 1. Where part of a property occupied as a country residence is expropriated for railway purposes and its value as a country residence is thereby greatly diminished, the true test in estimating the indemnity to which the owner is entitled is, what was the commercial value of the property as an attractive country residence at the time of the expropriation, and what was the depreciation in the marketable value by reason of the expropriation of the strip of land by the railway company, and the intended working of its train service across it.

2. While the court has the right, under the Dominion Railway Act, to reconsider the evidence of value, and to vary the decision of the arbitrators or a majority of them, this power was intended only as a check upon *possible* fraud, accidental error, or gross incompetence, and should never be exercised unless in correction of an award which carries upon its face unmistakeable evidence of serious injustice. *Canada Atlantic Railway Co.* v. *Norris*, Montreal, Q. B. in Appeal 1892. (Leg. News).

3. AWARD—INTERFERENCE WITH.

Held, in cases of expropriation, when the arbitrators or commissioners a-

experienced in the valuation of real estate, and where in addition to hearing the opinion of the expert witnesses produced they have had the advantage of examining the property to be taken, the court, before making an increase or reduction of the award, will require either proof of improper motives on their part, or evidence showing conclusively that an error has been committed in fixing the amount of the compensation. *Compagnie du chemin de fer de Montreal & Ottawa* v. *Castonguay*, Montreal, Q. B. in Appeal 1893. (Leg. News).

4. AWARD OF ARBITRATORS—WHEN INTERFERED WITH BY THE COURT.

Held, in the matter of a railway expropriation, an award of arbitrators who have had the advantage of viewing and examining the property taken and also the property affected by the construction of the railway, should only be altered by the court when it is shown that the arbitrators were influenced by improper motives, or when the evidence clearly and conclusively establishes that they erred in fixing an amount undoubtedly too high or undoubtedly too low. *Compagnie du chemin de fer de Montreal & Ottawa* v. *Bertrand*, Montreal, Q. B. in Appeal 1893. (Leg. News).

FACTOR.

MERCANTILE AGENT—PERSON EMPLOYED TO SELL ON COMMISSION.

B., who was employed by the plaintiffs to sell goods at a salary and on commission, pledged, without authority, some articles with defendants, who received them in good faith and in the ordinary course of business:

Held, that B. was not a mercantile agent within the meaning of Factors Act, 1889, s. 1, and therefore s. 2 of that Act afforded no defence. The meaning of "mercantile agent" explained. *Hastings* v. *Pearson*, Div. Ct. [1893], 1 Q. B. 62.

FIRE INSURANCE — See Insurance Fire.

FOREIGN JUDGMENT—See International Law.

FORGERY—See Criminal Law 7.

GAMBLING—SEE ALSO LOTTERY.

GAMBLING DEBT—LOAN TO PLAYER CLUB WAITER—NULLITY.

Whereas the action which is refused under art. 1965 of the Civil Code for the recovery of gambling debts, is still accorded to one who lends money to the loser to enable him to meet his indebtedness, yet this is only on condition that the lender has not participated in, or in any manner whatever been interested in the game.

Therefore an action ought to be refused to a club waiter who, having lent to a player during the course of a game, money which would otherwise have gone towards his own support, has thus knowingly and intentionally participated in the illegal act which the law prohibits. *Chigot* v. *Thibault*, Court of Cassation (France) 1892, (*Journal des Tribunaux*, 1892, 921).

GIFT—UNDUE INFLUENCE—See Donation.

GOOD WILL—See Restraint of Trade.

GUARANTEE AND SURETYSHIP—See Banks and Banking 1.

INSOLVENCY — SALE OF GOODS BY INSOLVENT—See Sale of Goods 2.

INSURANCE.

ACCIDENT.

1. HORSE—WOUND CAUSED BY NAIL LAYING ON HIGHWAY—PLEA OF "CAS FORTUIT"—LIABILITY OF COMPANY.

The presence of a boat nail upon the public highway cannot be regarded as the result of "cas fortuit". Its presence there was owing to the inadvertence or design of a third party; consequently this accident arose from the *fault of third parties*, and the company cannot avail itself of the defense of "cas fortuit." *Tournaire* v. *Compagnie "Le Secours" Tribunal of Commerce of the Seine*, 1892, *Journal des Tribunaux* 1892, 1302, (Gazette du Palais).

2. POLICY, CONSTRUCTION OF — "EXTERNAL" INJURY.

A policy insured against accidents caused from "external and visible means," but not against accidents

arising from "natural disease or weakness or exhaustion consequent upon disease." The plaintiff injured his knee while stooping to pick up something from the floor. He had never suffered from any weakness of the knees or knee joint:

Held, that this accident arose from "external" means within the meaning of the policy. *Hamlyn* v. *Crown Accidental Insurance Co.*, C. A. [1893], 1 Q. B. 750.

FIRE.

3 LOSS PAYABLE TO MORTGAGEES—RIGHT TO CONSOLIDATE TWO MORTGAGES, ONE OF WHICH DOES NOT COVER THE INSURED PROPERTY.

G. Mortgaged land A. to a loan company for $1,000 and afterwards mortgaged lands A. and B. to the same company for $3,000. L. became the owner of the equity of redemption in both lands, and insured buildings on land B., "loss, if any, payable to the company as their interest may appear." The $3,000 mortgage was paid off, except the last instalment of $500, the $1,000 mortgage was overdue, and the $500 had become due by virtue of the acceleration clause, as the last gale of interest had matured, when a fire loss amounting to $1,203.30 occurred, and the company claimed the right to consolidate both the mortgages so as to retain the whole amount of insurance money.

Held, reversing the decisions of the Master in Chambers and Robertson, J., that the insured having a legal right to recover his insurance and not being driven to a Court of equity to enforce his rights, the company could not consolidate the two mortgages.

The trend of modern decisions is against extending the doctrine of consolidation. *In Re London & Canadian L. & A. Co. and Lang*, Ontario, Chy. Div. 1893, (Can. L. T.)

4. CONDITIONS ON BACK POLICY.

It is not necessary that the insured should accept or sign the conditions entered on the back of the policy, when the policy states that these conditions shall form part of the contract; and if the insured, after receiving the contract, does not repudiate it, but on the contrary uses it as the basis of an action to recover the amount covered by it, he cannot object to one part of it and retain the other. *Simpson* v. *Caledonia Insur. Co. of Quebec*, Montreal Q. B. in Appeal, 1893.

5. ARBITRATION — REFERENCE TO ARBITERS NOT KNOWN.

A term in a policy of insurance requiring a reference to arbitrators, to be hereafter chosen, to ascertain an amount payable on a loss before action can be brought:—*Held*, valid:

Held, also, that the contract could be enforced, notwithstanding the reference was to unnamed arbitrators, as the cause of action did not arise until after the arbitration. *Caledonian Insurance Co.* v. *Gilmour*, H. L. (S. C.) [1893], A. C. 85.

6. EXPLOSION.

Where an insurance policy provides that the insurer shall not be liable for loss caused by "explosion of any kind, unless fire ensues, and then for the loss or damage by fire only," no liability exists for damage done by an explosion produced by the ignition of a match in a room filled with illuminating gas. *Heuer* v. *Northwestern National Insurance Co.*, Illinois Supreme Court, January 19, 1893, 33 N. E. Rep. 411. (Alb. L. J.)

The use of the expression, "explosion of any kind," contemplates the existence of more than one kind of explosion. Without undertaking to make an accurate classification, we deem it sufficient to say that one kind of explosion is that which is produced by the "ignition and combustion of the agent of explosion," as where a lighted match is applied to a keg of gunpowder, and another kind of explosion is that which does not involve "ignition and combustion of the agent of explosion." as where steam, or any other substance, acts by expansion, without combustion. Scripture v. Insurance Co., 10 Cush. 356. The exemption clause is broad enough to embrace both kinds of explosion. As the present case, where it appears that a lighted match was applied to the illuminating gas confined in the basement of a building, furnished an instance of the first kind of explosion above specified, it manifestly comes within the terms of the exemption.

It is a well-settled principle in the law of insurance that the proximate, and not the remote, cause of the loss must be regarded

in order to ascertain whether the loss is covered by the policy or not. "*In jure non remota causa, sed proxima spectatur.*" Lord Bacon says: "It were infinite for the law to judge the causes of causes, and their impulsions one of another. Therefore it contenteth itself with the immediate cause, and judgeth of acts by that, without looking to any further degree." Everett v. London Assurance, 19 C. B. (N. S.) 126. Where a lighted match is applied to a keg of gunpowder, or to illuminating gas confined in a room, and an explosion thereby occurs which causes damage, but is not followed by combustion, the explosion is the proximate cause of the injury, and the lighted match is only the remote cause. In such case, fire does not reach the property injured, but the concussion resulting from the explosion damages it. Here the goods insured were not brought in contact with the fire produced by the lighting of the match, but with the explosive power of a fireless concussion, which caused the floor of the store in which they were situated to fall, and thereby occasioned the injury.

In Everett v. London Assurance, 19 C. B. (N. S.) 126, a powder magazine, more than half a mile distant from the house insured, ignited and exploded, shattering the windows and window frames, and damaging the structure generally by the atmospheric concussion caused by the explosion, but not burning, heating or scorching any part of the premises; and it was there held that "it would be going into the causes of causes to say that this was an injury caused by fire to the property insured;" that the expression, "loss or damage occasioned by fire," was to be construed as ordinary people would construe it; and that those words "mean loss or damage either by ignition of the article consumed or by ignition of a part of the premises where the article is." In Caballero v. Insurance Co., 15 La. Ann. 217, where a fire broke out in a building about two hundred feet distant, causing the explosion of gunpowder, which, by the concussion of the air, injured the building insured against fire, it was held that such a loss could not have been within the reasonable intendment of the parties, and was not covered by the policy.

In Briggs v. Insurance Co., 53 N. Y. 446, where the policy insured certain machinery in a mill against loss by fire, and contained a provision like the one in the case at bar, exempting the company from liability "for loss caused by * * * explosions of any kind unless fire ensues, and then for the loss or damage by fire only, vapors from the works in the mill where the business of rectifying spirits was carried on came in contact with a burning lamp in the mill, left there by persons repairing the machinery, causing an instantaneous explosion, which blew off the roof of the building, and blew down the greater part of the walls and injured the machinery, and also resulting in a fire which occasioned some damage, though slight compared with that caused by the explosion, and it was there held that the company was liable for the damages caused by the fire which followed the explosion, but not for those caused by the explosion itself, the court saying, among other things: "The exception, too, is general, including explosions by fire as well as others. There seems no reason for excluding an explosion like this from the exception. There was no fire prior to this explosion. The burning lamp was not a fire within the policy. The machinery was not on fire, as such term is ordinarily used, until after the explosion." So it may be said in reference to the case at bar, that there was no fire prior to the explosion, and that the lighted match was not a fire within the policy.

In Insurance Co. v. Foote, 22 Ohio St. 340, the policy insured a stock of merchandise against fire, and provided that the company should not be liable for "any loss or damage occasioned by, or resulting from, any explosion whatever;" and it appeared that a mixture of whisky vapor and atmosphere, coming in contact with the flame of a gas-jet in the still-room, ignited from it, and immediately exploded, setting a fire in motion which destroyed the insured property. It was held that the loss was from the fire occasioned by the explosion, and that the company was not liable for it under the broad language of the exemption clause, but it was at the same time held that the burning gas-jet "was not such fire as was contemplated by the parties as the peril insured against. The gas-jet, though burning, was not a destructive force, against the immediate effects of which the policy was intended as a protection. Although it was a possible means of putting such destructive force in motion, it was no more the peril insured against than a friction match in the pocket of an incendiary." See also Roe v. Insurance Co., 17 Mo. 301; Montgomery v. Insurance Co., 16. E. Monr, 427; St. John v. Insurance Co., 11 N. Y. 516; Insurance Co. v. Tweed, 7 Wall. 44; Wood Ins., § 104; Insurance Co. v. Robinson, 64 Ill. 265; Insurance Co. v. Dorsey, 56 Md. 70. The determination of the question whether the loss is attributable to fire, or to explosion, will sometimes depend upon the further question, whether the fire is an incident to the explosion or whether the explosion is an incident to the fire. The effects of explosion will be included in the loss occasioned by a precedent fire producing the explosion, if the fire is the direct and efficient cause of the loss, and the explosion but the incident. A loss other than by combustion, resulting from an explosion when the explosion itself is caused by a destructive fire already in progress, comes within the general risk of a policy against fire only. It is not apprehended that it makes any difference, in the application of the principle, whether the fire operating as the principle cause of the loss, and to which an explosion occurring during its progress is a mere incident, originates in the building where the insured property is located, or out of it. Insurance Co. v. Dorsey, *supra*; Insurance Co. v. Foote, *supra*; Briggs v. Insurance Co., *supra*.

In Briggs v. Insurance Co., *supra*, it was said by the New York Court of Appeals: "The explosion here was the principal, and the fire the incident. In such a case there can

be no doubt that the defendant is not liable for the damage caused by the explosion. Where however the explosion is the incident, and the fire the principal, a different question would be presented. Had the building been on fire, and in the course of the general conflagration there had been an explosion of a boiler, which injured some machinery that the fire was rapidly consuming, different views and considerations might well obtain."

7. CONDITION PRECEDENT—ARBITRATION.

A condition in a policy required that where a difference arose as to the amount payable in case of fire, the matter should be referred to arbitrators to be chosen by the parties; and also, that before an award no action should be brought.

Held, that an award as to damage was a condition precedent to bringing the action. *Caledonian Insurance Co.* v. *Gilmour*, H. L. (Sc.) [1893] A. C. 85.

8. CONDITION PRECEDENT — WARRANTY.

A policy was taken out which the plaintiff warranted to be identical in rate, terms, and interest with the policies of two other companies. The policy, as a fact, differed considerably from both.

Held, that the warranty was a condition precedent to the existence of any obligation, and the breach in the warranty avoided the policy. *Barnard* v. *Faber*, C. A. [1893] 1 Q. B. 340.

LIFE.

9. SUICIDE—PROOF—FORFEITURE —

When a life insuranee policy contains a clause exempting the company from liability in the event of the insured committing suicide, the burden is upon the company of proving that the suicide was accomplished by the free will of the deceased.

This proof is sufficiently established by showing that during the life of the insured there were no indications of his having lost his mental balance, that the antecedents of his family give no reason to suspect hereditary insanity, and that during the whole life of deceased, even up to the very moment of his death, there was nothing to lead to the belief that his death was caused by anything but his own free will. *Sipiere* v. *Cie d'assurances la France et la Nationale*, Court of Appeal, Paris, 1892. (*Journal des Tribunaux*) 1892, 1160.

10. STATEMENT OF INSURED — STIMULANTS.

An applicant for insurance, in answer to the question to what extent he used alcoholic stimulants, answered "None."

Held, that proof of a single use of liquor was not sufficient to prove the answer untrue, but that it would be necessary, for that purpose, to prove a habit or custom of using such stimulants. *Grand Lodge A. O. U. W. et al.* v. *Belcham*, Supreme Court of Illinois, 33 N. E. Rep. 886.

MARINE.

11. CHARTERED HOMEWARD FREIGHT — FOREIGN STATEMENT CLAUSE — GENERAL AVERAGE.

The plaintiffs, who were owners of a vessel chartered to proceed to a port in the United States, as ordered at port of call, and there load a cargo for the United Kingdom or Continent, and deliver the same on being paid the agreed freight, effected with the defendant an insurance on "chartered homeward freight," the voyage being described in the policy as from Liverpool to Delaware Breakwater, and thence to New York or one other named port, and thence to any port in the United Kingdom or Continent within named limits, and general average was to be payable "as per foreign statement if required."—The plaintiffs' vessel left Liverpool in ballast, under the above charter, and two days afterwards, in consequence of heavy weather causing her tanks to leak, put into Holyhead without incurring expense in so doing; but at that place some expense was incurred, and, three days later, she returned to Liverpool, where further expenses were incurred in repairs, but none of the items of expenditure at Holyhead or Liverpool were incurred for the preservation of ship and freight. The vessel then sailed for Delaware Breakwater, where she received orders for Baltimore, to which port she proceeded, and there

loaded, under the charter, a cargo which she delivered at Barrow. By an average statement, prepared in London, according to the alleged provisions of American law, general average charges in respect of the expenses incurred in Holyhead and Liverpool were shewn amounting to 186*l.* 6*s.* 5*d.*, including a sum of 154*l.* 3*s.* 8*d.* for wages and victualling of the crew whilst the vessel was at Holyhead and Liverpool. By the statement, the ship was made to bear 164*l.* 9*s* 10*d.* of these charges, and the chartered freight (valued for the purposes of contribution at 1526*l.*) was made to bear 21*l.* 16*s.* 7*d.* In respect of the defendant's proportion (11*l.* 16*s.* 4*d.*) of this latter sum, the plaintiffs brought their action, alleging that a general average loss had arisen, which had been properly adjusted according to American law, and that the plaintiffs must be treated as having contributed to the loss on the basis of the statement.

Held, that, as the ship was under charter outward bound in ballast to load for the return voyage, and the only persons interested in the ship, and chartered freight, were the shipowners, the expenses in question were not a general average loss for which the defendant could be liable under the policy on chartered homeward freight, and, as there was no necessity for any foreign adjustment, the "foreign statement" clause had no effect. *The Brigella*, 1893, P. 189.

12. Construction of Policy.

A policy of insurance on certain whiskies to be shipped was made "as per form attached," and by the attached form the insurer's liability was limited to the excess in value over $20 per barrel, carriers to have the right to limit their liability for loss to $20 per barrel, and the insured to have the right, on collecting that sum from the carrier, to give a release from all liability. The body of the policy, however, contained a provision that any claim against the carrier for loss should be assigned to the insurer.

Held, that the provisions of the attached form must prevail over the inconsistent provisions contained in the body of the policy, and that it was no defense to an action on the policy that the shipper, by accepting a bill of lading providing that the carrier should have the benefit of all insurance on the goods, had destroyed the insurer's right of subrogation. *St. Paul Fire & Marine Insurance Co.* v. *Kidd*, U. S. C. C. of App., 55 Fed. Rep. 238.

13. Attachment of Risk.

A policy insured goods to a port west of Gibraltar, and thence inland through Spain. By mistake the goods were shipped on a vessel bound to a port east of Gibraltar. The vessel was lost west of Gibraltar before touching any Spanish port.

Held, that the risk had never attached, and defendants were not liable. *Simon, Israel & Co.* v. *Sedgwick*, C. A., [1893] 1 Q. B. 303.

14. Authority of Agent—Local Usage.

A well-defined local usage, whereby marine insurance agents can make binding contracts to take effect on the day of application, without consulting their superiors, is presumably known to a foreign company engaged for years in insurance business at the place where the usage obtains, and is sufficient to prevail over the private instructions of such agents when the insured is in ignorance thereof, and is without notice of facts sufficient to put him upon inquiry. The fact that a local agent has no power to issue policies does not necessarily show that he is without authority to make binding preliminary contracts of insurance. *Greenwich Insurance Co.* v. *Waterman*, Circuit Court of Appeals of United States, 1893. 54 Fed. Rep. 839.

INTOXICATING LIQUOR.

1. Promissory Note—Action on—Plea that Notes given to Licensed Hotel Keeper for Liquor—Demurrer—Liquor License Act, R. S. Man. c. 90, s. 134—Intra Vires—Trade and Commerce.

The plaintiff sued to recover the amount of two promissory notes made by the defendant and payable to the plaintiff.

To each of the counts in the de-

claration the defendant pleaded that the plaintiff was a licensed hotel keeper under the provisions of the Liquor License Act, carrying on an hotel business, and that part of the consideration for which the note was given to the plaintiff was for and on account of liquor supplied by plaintiff to the defendant in his hotel, and that the note was received by the plaintiff in payment for the liquor so supplied to the defendant.

A further plea to each of the counts alleged that the note was received by the plaintiff as a pledge for the liquor supplied by him to the defendant.

The plaintiff demurred to these pleas, on the ground that they confessed without avoiding the plaintiff's claim.

The defence raised by the pleas in question was founded on s. 135 of the Liquor License Act, R. S. Man. c. 90, which declares that "if any hotel keeper receive in payment or in pledge for any liquor supplied in or from his licensed premises anything except current money or the debtor's own cheque on a bank or banker, he shall for such offence be liable to a penalty of $20, and, in default of payment, to one month's imprisonment."

Held, that there must be judgment for the defendant on the demurrer. The action was brought by the hotel keeper who took the note, and, as against him, the pleas demurred to disclosed a valid defence. It was illegal for the plaintiff to take the note sued on from the defendant, and if it was illegal for him to take it, he certainly could not bring an action against the defendant to recover its amount.

The defendant contended that the provision of the Liquor License Act was *ultra vires* of the Legislature, because it dealt with and interfereed with a matter relating to trade and commerce.

Held, that the provisions of s. 134 of the Liquor License Act are within the jurisdiction of the Legislature as a regulation for the good government of licensed premises and as tending to repress drunkenness, and it is a regulation and restriction without which any Act having in view both or either of these objects would be in a marked degree defective. It may be, too, that the Legislature has authority by virtue of its jurisdiction in matters relating to "property and civil rights" to enact, as it in effect does, that a hotel keeper who takes a note in payment of liquor cannot recover on the note, just as it has to say that an action cannot be brought on a note that is barred by the Statute of Limitations. *Benard* v. *McKay*, Manitoba, Q. B., May, 1893, (Can. L. T.)

2. It is no defense to a prosecution for selling intoxicating liquors that defendant did not know that they were intoxicating. *State* v. *Lindoen*, Iowa, 54 N. W. Rep. 1075.

INTERNATIONAL LAW.

FOREIGN JUDGMENT — PENAL ACTIONS — DISTINCTION BETWEEN PUBLIC AND PRIVATE PENALTIES.

To an action by the appellant in an Ontario Court upon a judgment of a New York Court against the respondent under sect. 21 of New York State laws of 1875, c. 611, which imposes liability in respect of false representations, the latter pleaded that the judgment was for a penalty inflicted by the municipal law of New York, and that the action, being of a penal character, ought not to be entertained by a foreign Court.

Held, that the action being by a subject to enforce in his own interest a liability imposed for the protection of his private rights, was remedial, and not penal in the sense pleaded. It was not within the rule of international law which prohibits the Courts of one country from executing the penal laws of another or enforcing penalties recoverable in favour of the State.

Held, further, that it was the duty of the Ontario Court to decide whether the statute in question was penal within the meaning of the international rule so as to oust its jurisdiction; and that such Court was not bound by the interpretation thereof adopted by the Courts of New York. *Huntington* v. *Attrill*, 1893, App. Cas. 150.

JOINT STOCK COMPANY—See Companies 1.

JUDGE.

POLICE MAGISTRATE — INTEREST — BIAS—RELATIONSHIP TO INFORMANT.

This was an application to discharge the applicant, who was confined in gaol under a conviction and commitment for an assault. At the trial objection was taken that the presiding police magistrate had no jurisdiction on account of relationship, but the existing relationship was not proved. Affidavits were produced on the application which showed that the grandfather of the magistrate was a brother to the informant's great grandmother. The magistrate's affidavit in answer stated that he had never known of such relationship and did not believe it existed. The informant also stated he had no knowledge of such a relationship.

Held, that the evidence in the case was not sufficient to prevent the police magistrate from trying the information on the ground of bias. There was a clear distinction between disqualification of a judge arising out of a pecuniary interest and that from relationship, which is a prejudice in favour of one side or the other, an inclination of the mind leaning to one side: Encyclopædia Dictionary; Crabb's Synonyms, tit. Bias; Clark v. Schoffield, 28 N. B. Reps. 259.

Ex parte Jones, 27 N. B. Reps, 552, distinguished.

Regina v. Gummer, 25 N. B. Reps. 424, referred to. *Ex parte Victory*, Supreme Ct. New Brunswick, May 1893, (Can. L. T.)

LABOR ORGANIZATIONS—See Trade Unions.

LAW PARTNERSHIP — See Partnership.

LESSEE OF MARKET STALL—EXPROPRIATION—See Mun. Corp. 7.

LIBEL AND SLANDER.

1. A letter, written by one of two rival milk sellers, advising a shipper to sell no more milk to the other unless he has surety for his goods, as such seller paid nothing to his shippers, is libellous *per se*. *Brown* v. *Vannaman*, 55 N.W. Rep. 183.

2. PLEA— DENIAL OF WORDS ATTRIBUTED—JUSTIFICATION OF OTHERS.

Defendant can plead that he never uttered the incriminating words, but that he said others and that those others were justified by the circumtances under which they were pronounced. *Langelier* v. *Casgrain*, Quebec, S. C. 1893.

3. INNUENDO — RELEVANCY—NEWSPAPER LETTER AND LEADERETTE.

A newspaper published a letter to the editor which stated that all the public-house keepers in a town did not shut their shops upon New Year's Day as recommended by the magistrates, and proceeded—"One I will name, and he is Mr. George Meikle, corner of Canal Street and Princes Street, who kept the thing in swing till ten o'clock, at times having to control the run by locking the doors." In a leaderette the editor commented upon this letter as follows—"Most of the publicans yesterday loyally observed their resolution to close their premises at 4 o'clock Those of the trade in the west end of the city seem to have been particularly strict in refusing drink after this hour. There were one or two black sheep, however, and a correspondent calls attention to the disgraceful scenes which occurred at Mr. Meikle's premises in Princes Street and Canal Street. The magistrates, we hope, will deal with this gentleman." Meikle sued the publisher of the newspaper for damages.

The pursuer did not allege that any of the statements in the letter were untrue, but he averred that the statements in the editorial comments and the letter "falsely, maliciously, and calumniously represents that the pursuer conducted his business on the 2nd day of January in a disorderly and illegal manner." It was finally conceded that the letter was not actionable.

The Court *held* that under the phrase "black sheep" the editor did not intend to say more than that some public-house keepers did not follow

the example set by the majority of the trade; that the words "disgraceful scenes" did not refer to the manner in which the pursuer conducted his business, or suggest that he carried it on in an illegal and irregular manner, but merely pointed to the disorder which arose in the street in consequence of the pursuer's shop being open till a late hour; that the editor was entitled to put forward the statements in the letter as a ground for consideration on the part of the magistrates, whether they should renew the pursuer's licence. The action was *dismissed* as irrelevant. *Meikle* v. *Wright*, 30 Scot Law. Rep. 816.

4. SLANDER — WRONGOUS APPREHENSION—PRIVILEGE — MALICE—REPETITION OF CHARGE OF THEFT ON WHICH APPREHENSION HAD FOLLOWED, TO MEMBERS OF PUBLIC.

In an action of damages for slander and wrongous apprehension the pursuer averred that on a date mentioned he travelled by rail from Glasgow to Wemyss Bay in the same compartment as the defender. There were other passengers in the compartment, and the defender sat at the farthest side from him. At Wemyss Bay he went on board the steamer for Millport, and the defender thereafter caused him to be apprehended on a charge of having stolen her watch. The defender persisted in this charge, though she was assured by some of the other passengers that he was a respectable person. On the way to Millport, after pursuer's apprehension, the defender frequently repeated in a loud tone before the other passengers that the pursuer had stolen her watch. The defender had never lost her watch.

Held, that the pursuer had sufficiently averred facts and circumstances from which malice might be inferred, and that he was entitled to two issues—(1) An issue (in which malice and want of probable cause were inserted) relating to his wrongous apprehension; and (2) an issue (in which malice and want of probable cause were not inserted) relative to the alleged repetition of the charge of theft to members of the public subsequent to the pursuer's apprehension. *Douglas* v. *Main*, 30 Scot. Law, Rep. 726.

5. LIBEL IN PLEA—ALLEGATIONS OF FRAUD — GOOD FAITH — PROBABLE CAUSE.

A plea containing an accusation of fraud can form the basis of an action for libel, if said plea, although pertinent to the issue, is made maliciously and in the intention of injuring. It is otherwise in the case of a plea made in good faith and when the party making it had probable cause to believe that the document attacked was fraudulent. *Matte* v. *Ratté*, Quebec, S. C., 1893.

6. PLEADING—ALLEGATION OF MALICE.

A complaint in an action for libel alleged that defendant, who with two others constituted a town board of school trustees, before whom plaintiff's application for employment as a teacher was pending, filed his written protest before such board, objecting to plaintiff's employment in "false, malicious and libellous language," viz.: "For claiming wages not due her, and making statements which, in my opinion, she knew to be false, in order to obtain them."

Held, that the complaint was demurrable because it did not allege that the libellous words were uttered maliciously and without probable cause, since the word "malicious," as used in the complaint, applied to the matter published, and not to the act of publishing. *Henry* v. *Moberly*, Appellate Court of Indiana, April 12, 1893. (Alb. L. J.)

LIEN—See Banks and Banking 3.

LIFE INSURANCE — See *Insurance* Life.

LICENSEE—See Negligence 2.

LOTTERY.

"MISSING WORD" COMPETITION—RETURN OF CONTRIBUTION — WAGER.

A paragraph was published in a newspaper with the last word omitted. Competitors were invited to guess the omitted word, and send it in on a coupon issued with the newspaper,

with one shilling. The fund so formed was divisible among the successful guessers. The word chosen was purely arbitrary, and the competition involved no skill:

Held, that the competition was a lottery and illegal, that the fund was not impressed by any trust which the court could administer, and *semble* that, notwithstanding the illegality of the competition, the unsuccessful competitors had a right to a return of their contributions, but the right could only be enforced in an action at law. Fund paid out to the newspaper proprietor on terms as to costs. *Barclay* v. *Pearson*, [1893] W. N. 25; [1893] 2 Ch. 154.

LOAN TO PLAYER AT CARDS — See Gambling.

LOCAL USAGE—See Insurance, Marine 14.

MALICE — ARREST OF SHIP — See Ships and Shipping 1.

MANDAMUS — See Mun. Corp. 6. (Public Officers).

MANSLAUGHTER — See Crim. Law 6.

MARINE INSURANCE—See Insurance Marine.

MARKETS—INTEREST OF LESSEE OF STALL—EJECTMENT FOR EXPROPRIATION—See Mun. Corp. 7.

MASTER AND SERVANT.

1. DUTY OF FENCING MACHINERY—FACTORY AND WORKSHOPS ACT 1878 (41 VICT., CAP. 16), SEC. 5, SUB-SEC. 3—FACTORY AND WORKSHOPS ACT 1891 (54 & 55 VICT., CAP. 75), SEC. 6.

A violation of the provisions of the Factory and Workshops Acts 1878 and 1891, in relation to the fencing of machinery, is fault on the part of the owners of the factory, which will *prima facie* entitle the workmen belonging to the factory to damages if they have been injured in consequence of the violation of the statutory provisions, although they may not have been actually engaged in the performance of the duties of their employment at the time of the injury. *Kelly* v. *Glebe Sugar Refining Company*, 30 Scot. Law, Rep. 758.

2. NEGLIGENCE — LOW OVERHEAD RAILROAD BRIDGE.

Where a railroad maintains a bridge over its track so low as to endanger any one standing on a refrigerator or other high car, and a brakeman, passing at night, without knowledge of the danger, is struck and injured, the company is liable. *Pennsylvania Co.* v. *Sears*, 34 N. E., Rep. 15, Indiana Supreme Ct., May 10, 1893.

3. LIABILITY OF MASTER—SERVANT LENT TO ANTOHER FIRM—NEGLIGENCE.

The defendants lent a crane with a man in charge to another firm. While under the orders of the other firm, the man in charge worked the crane negligently and injured the plaintiff.

Held, that, although the man was the defendant's servant, yet as he was not then under their control, they were not responsible for his negligence. *Donovan* v. *Laing, Wharton and Down Construction Syndicate*, C. A. [1893], 1 Q. B., 629.

4. RIGHT TO WORK DONE BY SERVANTS.

Canvassers were employed to obtain advertisements in a trade directory.

Held, that after their employment ceased, they had no right to use, for another publication, material which they had obtained for the purpose of the plaintiff's directory. *Lamb* v. *Evans*, [1892], 3 Ch. 462; affim. by C.A. [1893] 1 Ch. 218.

MUNICIPAL CORPORATIONS.

1. CONTRACT.

A resolution adopted by the council of a municipal corporation, authorizing and directing its mayor to enter into a contract with a third person, when not acted on by the mayor, and when no contract is made, does not of itself create a contract.—*City of Baltimore* v. *City of New-Orleans*, La., 12 South. Rep. 878.

2. CONTRACT—ULTRA VIRES.

An action will not lie against a city for breach of contract, by the terms of which it agrees to keep in repair a ditch constructed by it through plain-

tiff's land lying outside of the corporate limits, for the purpose of drainage of certain lands within such city, since such contract is *ultra vires.—Hamilton* v. *City of Shelbyville*, Ind., 33 N. E. Rep. 107.

3. PAVING STREET—STREET RAILROAD.

Contractors, under a contract with a city to pave a certain street, have no power to obstruct the passage of street cars over such street during the paving of the same, where the contract gives no such power, and it is shown that such work has been, and can be, done without such interference.—*Milwaukee St. Ry. Co.* v. *Adlan, Wis.*, 55 N. W. Rep. 181.

4. LOCAL IMPROVEMENT—NOTICE TO RATE-PAYERS — BY-LAW — VARIANCE FROM NOTICE—ONTARIO.

The corporation of Toronto, wishing to construct, as a local improvement, a stone roadway on one of the streets of the city, gave notice to the owners of the properties thereby affected as required by s. 622 (2) of the Municipal Act, of such intended improvement, in which notice the proposed work was the construction of a "macadam roadway" on Bloor street. etc., and the payment of the cost was to be made by special assessment on the properties benefited, payable "in five and twenty" equal payments. By the by-law passed for its construction the work was described as "a macadam and granite set roadway and stone curbing," and the cost was to be paid in five years. On an application to quash the by-law it was not shown that the work as described in the by law was identical with that mentioned in the notice.

Held affirming the decision of the Court of Appeal (19 Ont. App. 713) that the by-law was invalid on account of the said variances from the notice and it was properly quashed. *Gillespie* v. *City of Toronto*, Supreme Ct. Canada, May 1893.

5. ELECTRIC LIGHT COMPANY—USE OF POLES — COMPENSATION — CONTRACTS OF CITY.

How. Stat. Mich. ch. 127, § 10, provides that companies incorporated to furnish electricity and electric lights may lay, construct, and maintain conductors for conducting electricity through the streets "with the consent of the municipal authorities thereof, under such reasonable regulations as they may prescribe." A Manistee city ordinance provides that all poles erected in such city for electric lighting shall be under control of the council so far as to permit their use by other persons for electric lighting on payment of the reasonable portion of their cost. It was held, that a resolution passed by the council of such city, empowering an electric light company to use the poles of another company without fixing the limits of such use, or regulating the manner in which each is to string its wires, is unreasonable and void. Under How. St. ch. 127, § 10, as above set forth, and Manistee City Charter, ch. 20, § 3, giving the council authority to light the public grounds within the city, and chapter 22, § 15, giving the council control over the placing of poles in or over the streets, such city may make contracts for electric lighting with individuals as well as with corporations organized for such purposes. *Citizens' Electric Light & Power Co.* v. *Sands*, 55 N. W. Rep. 452, Supreme Court of Michigan, (*Central L. Journal*).

6. PUBLIC OFFICERS—MANDAMUS TO COMPEL ACCEPTANCE OF OFFICE.

Mandamus will lie to compel acceptance of municipal office by one who, possessing the requisite qualifications, has been duly appointed to the same. *People* v. *Williams*, Supreme Court of Illinois, 1893 33 N. E. Rep. 849.

[This question has not been previously decided in this country (United States.) See Merrill on Mandamus, § 145; Dillon on Municipal Corporations, 4th Ed., § 223, (*American Law Rev.*, July 1893].

7. MARKETS—INTEREST OF LESSEE OF STALL — EJECTMENT BY EMINENT DOMAIN.

The lessee of a stand or stall in a market has no such exclusive right to the possession of his stall as he might have to a store or dwelling house rented by him. He has no right to the

ground covered by his stall, as ground, and he has no estate in the building, or definite legal standing that will enable him to recover his stall by an action of ejectment if he should be wrongfully put out of possession; and therefore is not entitled to damages from a railroad company which condemns the market house under its right of eminent domain. He must look elsewhere for his damage. *Strickland* v. *Pennsylvania Railroad Company*, Supreme Court of Pennsylvania, 154 Pa., 348; 32 W. N. C., 211.

NEGLIGENCE—See also Master and Servant—Ships and Shipping 1. (Careless Seizure)—Street Ry. Co. 2.

1. Loading of Steamer — Accident—Neglect of Usual Precaution — Liability of Employer to Stranger for Neglect of Employee —Quebec.

Where two stevedores are independently engaged in loading the same steamer, and owing to the negligence of the employees of the one, an employee of the other is injured, the former stevedore is liable in damages for such injury. The failure to observe a precaution usually taken in and about such work is evidence of negligence; Gwynne, J. dissenting. Judgment of the Court below affirmed. *Brown* v. *Leclerc*, Supreme Ct. of Canada, May 1893.

2 Personal Injury —Elevator Shaft—Licensee.

The occupant of premises is under no legal duty to keep them safe from the danger of obstructions for persons who go there for their own pleasure or convenience, and not at his invitation, express or implied. *Faris* vs *Hoberg*, Supreme Ct., Indiana 1893, Cent. L. J.

The appellees were retail merchants in the city of Terre Haute, their storehouse fronting on Wabash avenue, and extending north 141 feet and 10 inches, with an alley on the west 16 feet in width. In the northwest corner of the building on the first floor, was a freight room extending north and south 18 feet and 11 inches, and being 7 feet and 11 inches in width. To this room double doors opened from said alley, and immediately south of this room was the shaft of the freight elevator (where the injury was sustained), occupying the full width of said freight room. Immediately south of the elevator is a vestibule entrance to the storeroom. To the elevator shaft was an entrance on the south of 4 feet in width by 7 feet in height, and a like entrance from the freight room 4 feet and 9 inches wide, and directly opposite the entrance from the salesroom. The vestibule entrance to the salesroom opened immediately south of the west side of the salesroom entrance to the freight elevator, and from this entrance one could pass behind a dry goods counter on the right into the elevator shaft at the left, or around a large table laden with goods, and through a narrow opening between said table and said counter, to that part of the salesroom devoted to the walks for customers between the counters. On the alley, and next to the storehouse, is a walk of stone flagging 30 inches wide, 68 feet and 10 inches long, and extending north from Wabash avenue. From the north end of this walk to the vestibule entrance it was 40 feet and two inches, without paving. On the occasion of appellant's visit to appellees' storeroom he was seeking a drayman to haul some of his goods, not connected with appellees' business, and learning that John Burns, the owner of a transfer wagon, was in the rear of appellees' store, went to the alley, and saw the wagon at the entrance to the freight room. Going up the alley he could not see Burns, and presuming that he was in the building, he stepped in at the vestibule entrance, He immediately turned, facing the two openings to the elevator shaft, and, seeing some person in the freight room, asked for the drayman, and received an answer from the freight room that he was in there. At once appellant started into the freight room through said openings, and fell through the shaft, neither of the openings to which was guarded or protected by barriers. All of the foregoing facts are undisputed. There are some controverted facts as to the character of lights near the shaft, and as to the extent of the darkness within the shaft; facts, from the appellant's theory of the case, essential to the charge of negligence against the appellees. There were also controverted facts as to appellant's vision having been so obscured by the sudden change from the bright sunlight without, and the softer lights and shadows within, the building, and probably as to other matters, but all having reference to the question of contributory negligence on the part of the appellant.

Taking the undisputed facts as we have stated them, and according to them all reasonable inferences in appellant's favor, the first inquiry naturally suggesting itself is, did the appellees owe to the appellant a duty to protect him from the dangers of the open elevator shaft? In Railroad Co. v. Griffin, 100 Ind. 221, it was held that "the owner of premises is under no legal duty to keep them free from pitfalls or obstructions for the accommodation of persons who go upon or over them merely for their own convenience or pleasure, even where this is

done with his permission. In such case the licensee goes there at his own risk, and, as has often before been said, enjoys the license with its concomitant perils." Again, in Thiele v. McManus, 3 Ind. App. 132, 28 N. E. Rep. 327, it is said: "A complaint for personal injury through negligence must show a legal duty or obligation toward the person injured, existing at the time and place of the injury, which the defendant failed to perform or fulfill, and that the injury was occasioned by such failure. Sweeny v. Railroad Co., 10 Allen, 368; Railroad Co. v. Griffin, 100 Ind. 221; City of Indianapolis v. Emmelman, 108 Ind. 530, 9 N. E. Rep. 155. Such a duty arises out of some relation existing at the time between the person injured and the defendant, which the complaint, by the averment of fact, should show. The owner or occupant of premises is not under any legal duty to keep them free or safe from the danger of obstructions, pitfalls, excavations, trap-doors or openings in floors, for persons who go upon, into, or through the premises, not by his invitation, express or implied, but for their own pleasure or convenience, though by his own acquiescence or permission, and who therefore are mere licensees. Such a visitor enjoys the license subject to the attendant risks. Railroad Co. v. Griffin, *supra*; City of Indianapolis v. Emmelman, *supra*; Sisk v. Crump, 112 Ind. 504, 14 N. E. Rep. 381; Penso v. McCormick, 125 Ind. 116, 25 N. E. Rep. 156; Schmidt v. Bauer (Cal.) 22 Pac. Rep. 256; Holmes v. Railroad Co., L. R. 4 Exch. 255; Matthews v. Bensel, 51 N. J. Law, 30, 16 Atl. Rep. Rep. Rep. 195." The case before the appellate court was a stronger case for the injured plaintiff than in the case now before this court. It was shown that the plaintiff fell through a hatchway located in that part of the storeroom used as a walkway, and where the customers of the defendant would and did naturally go in trading and inspecting their goods. It is not shown that the plaintiff was one of the class of persons invited to visit the premises, though it is alleged in the complaint that she was "properly and necessarily in said building without fault on her part." Of this the court said: "If this be considered sufficient to show that the appellee was not a trespasser, it cannot be regarded as showing that she was in the place of danger by the invitation of the appellants, or as showing more than that she was a mere licensee." We regard the case just quoted as stronger than the case before us, for the reason that the hatchway through which the injury was sustained was located in the walkways provided for customers, and not, as in this case, behind a counter, and as a connection between the room to which customers were invited and a freight room, to which there is no evidence, and no reasonable inference, that the appellant was invited. It is not a natural inference that an invitation, express or implied, to visit the store as a customer, carried with it the privilege of entering the store from an alley, and of going into a freight room, separated by walls and cut off from the sales room by the freight elevator. There is no claim that there was an express invitation to appellant to visit the store, to enter through the alley, or go into the freight room. There is no reason to infer, from any evidence in the cause, or from any claim of counsel for appellant, that he could any more presume upon the right of a customer in going into the freight room than into the private office or behind the sales counter of the appellees. An injury sustained from defective machinery by one visiting a coal shaft to secure employment was held to create no liability, the visitor being only a licensee. Larmore v. Iron Co., 101 N. Y. 391, 4 N. E. Rep. 752. In converse v. Walker, 30 Hun, 596, it was held that one who took refuge in an hotel to escape a thunder storm, and was injured by a defective balcony, was but a licensee, and could not recover. Bedell v. Berkey, 76 Mich. 435, 43 N. W. Rep. 308, was an action for an injury sustained in falling into an elevator shaft upon the defendant's premises—a storeroom; and it was held that, although the plaintiff visited the store on business, if he strayed about over the premises at his own will, peering into dark recesses, he was bound to look out for his own safety. The case of Trask v. Shotwell, 41 Minn. 66, 42 N. W. Rep. 699, is one in most respects like the case under consideration, but, in the one respect of the injured person having business upon the premises in connection with the proprietors, much stronger than this case. The plaintiff bought goods of a wholesale firm, and sent his nephew after them. When the messenger arrived, he was directed to the alley door of the shipping room, and, arriving there, knocked, and the door was opened. He then gave directions to the teamster, closed the door, and walked into the building, and passing about, fell into the elevator shaft, and sustained injuries from which he died. It was held that the defendant owed no duty to the deceased to keep the freight elevator guarded and, that the court did not err in directing a verdict for the defendants. In Railway Co. v. Barnhart, 115 Ind. 390, 16 N. E. Rep. 121, it is said by this court: "Where a person has a license to go upon the grounds or inclosures of another, he takes the premises as he finds them, and accepts whatever perils he incurs in the use of such license; but when the owner or occupant, by enticement, allurement, or inducement, whether express or implied, causes another to come upon his lands, he then assumes the obligation of providing for the safety and protection of the person so coming, and for any breach of duty in hat respect such owner or occupant becomes liable for any injury which may result to the person so caused to come onto his lands. The enticement, allurement, or inducement, as the case may be, must be the equivalent of an express or implied invitation. Mere acquiescence in the use of one's lands by another is not sufficient." Many authorities will be found cited by the courts in support of the propositions we have quoted. In the case in review there is no claim of an express invitation and we cannot imply an invitation to the appellant to there search for a drayman from the mere fact that appellees were engaged as merchants, with

their doors thrown open to purchasers, or possibly to those who go.

"From shop to shop,
Wondering, and littering with unfolded silks
The polished counters."

Judge Charles A. Ray, formerly of this court, in his excellent work on the Negligence of Imposed Duties (pages 18, 19), says; "The keeper of a public place of business is bound to keep his premises, and the passageway to and from them, in a safe condition, and use ordinary care to avoid accidents or injury to those properly entering upon his premises on business. But this rule only applies to such parts of the building as are a part of, or used to gain access to, or constitute a passageway to and from, the business portion of the building, and not to such parts of the building as are used for the private purposes of the owner, unless the party injured has been induced by invitation or allurement of the owner, express or implied, to enter therein." In Bennett vs. Railroad Co., 102 U. S. 577, it is said (on page 584): "It is sometimes difficult to determine whether the circumstances make a case of 'invitation,' in the technical sense of that word, as used in a large number of adjudged cases, or only a case of mere license. 'The principle,' says Mr. Campbell in his treatise on Negligence, 'appears to be that invitation is inferred where there is a common interest or mutual advantage, while a license is inferred where the object is the mere pleasure or benefit of the person using it.'" While this case is cited with approval in Railway Co. v. Barnhart, *supra*, we need not fully approve this distinction, for here the appellant went upon the premises on business wholly his own; his entrance was through an unusual passage; the injury was sustained while entering a part of appellees' premises not shown to have been frequented by customers or visitors; and his presence is not shown to have been known to or observed by appellees. Nor is it necessary for us to hold, as appellees insist, that appellant was a trespasser. If only a licensee, the rule, properly applied precludes recovery. We find no error in the direction of a verdict for the appellees, and the judgment of the lower court is affirmed.

3. CONTRIBUTORY — SLIPPING ON SIDEWALK.

Where the snow on a building melts in a sudden thaw, drips upon the sidewalk and freezes, and there is nothing unusual in the construction of the building or sidewalk, the city is not liable for injuries received by slipping on the walk; and where it appeared that plaintiff has previously seen ice form there in the same way; that there was nothing to prevent his seeing the ice if he had looked; and that there was room to pass without stepping on the ice, he was guilty of contributory negligence. *Haussman* v. *City of Madison*, Supreme Court of Wisconsin, May 2, 1893.

4. NEGLIGENCE—ACCIDENT CAUSED BY AN ANIMAL TO HIS KEEPER—PRESUMPTION OF FAULT UPON THE PROPRIETOR—PROOF NECESSARY TO DESTROY THAT PRESUMPTION.

The provisions of article 1385 of the Civil Code (1) relating to injuries caused by animals, raise against the proprietor of an animal a presumption of fault which can only be rebutted by proof of "cas fortuit" or contributory negligence on the part of the individual sustaining the injury.

Held thus, even where the victim of the accident was groom to the horse occasioning the accident. *Hillion* v. *Société Coopérative de Vaugirard*, Paris, Court of Appeal 1892, (*Journal des Tribunaux*, 1892) 780.

(1) Article 1385 reads as follows. (Translation): The proprietor of an animal or the person employing it, is liable, while it is in his service, for all damages caused by it, whether straying or under control.

There has been much conflicting jurisprudence in France on this particular point, but it is now considered settled as above.

Cass, 27 Oct. 1885, 9 March, 1886. Riom. 15 Feb., 1886. Bordeaux, 3 June, 1887. Paris, 9 & 26 July, 1887. Douai, 5 March, 1890. Rouen, 16 May, 1890. Cass, 1st Feb., 1892.

For a case arising under the corresponding article of the Quebec Civil Code (1055). See Beliveau v. Martineau, M. L. R., 2 Q. B. 133.

NEGOTIABLE INSTUMENTS—See Bills and Notes—Bonds.

NOTES—See Bills and Notes.

NUISANCE.

1. STATUTORY POWERS—TRAMWAY COMPANY STABLES.

Held, that although the company's Act, by allowing the tramway to be worked by horses, assumed that stables would be required, yet the Act did not expressly authorise the company to build stables, and still less allow them by implication to concentrate their stabling so as to become a nuisance to their neighbours. *Rapier* v. *London Tramways Co.*, [1892] W. N. 165; affirm. by C. A. [1893] W. N. 95.

NOTE—See in this connection London and Brighton Ry Co., v. Truman 11 App Cas. 45, where express statutory authority was given the Co. to erect cattle yards.

Held They could place them at any place on the line they chose (in this case at a station the adjoining residents of which objected to the nuisance.)

2. STATUTE—"NOXIOUS BUSINESS"—SMALL-POX HOSPITAL.

A temporary public hospital for small-pox patients is not a "noxious business," withing a statute prohibiting the establishment of "any offensive trade—that is to say, the trade of blood boiler or bone boiler, etc., or any other noxious or offensive trade or business." *Withington Board of Health* v. *Corp, of Manchester*, 68 L. T. Rep. (N.S.) 337, Court of Appeals, England.

First of all let us consider who the plaintiffs are, and what they must prove in order to entitle them to any relief in this action. They are the urban sanitary authority of the district, which has been called the Withington district, which is near Manchester. They have certain statutory rights and statutory duties, and unless their statutory rights are infringed, or they are prevented from performing their statutory duties, they have no right to complain at all. That is their position. The position of the defendants is, that they are a municipal corporation having some land (about one hundred acres) in the district of which the plaintiffs are the urban sanitary authority. And what the defendants are proposing to do is to build a hospital on their own land. Now, let us consider upon what ground the plaintiffs can interfere with them or prevent them from doing that. I put out of sight the broad ground that the hospital will be a public nuisance, because that question does not arise in this action. That will arise in the other action which we are told is pending, which is in the form, I understand, of an action by the attorney-general. Therefore I leave that out of the question, and say nothing at all about it, as to whether it will or will not be a public nuisance. Apart from that, the plaintiffs are driven to rely upon certain sections of the Public Health Act of 1875, and they rely, first of all, on section 112, which is the "noxious trade" section. Now, before I make any observations upon that particular section, and upon the decisions which have already been given upon it, explaining the meaning of it, I must point out that the word "hospital" does not occur in the section at all, and that "hospitals and noxious diseases" are specially mentioned, and specially provided for, in another group of sections beginning with section 120—the very next group but one. It would therefore be rather strange if one were to find language in section 112—general language—of such a kind as to relate to hospitals which are specifically mentioned and dealt with in another part of the act; and to my mind that observation is extremely cogent. By Lindley, L.J. If it were carried on for the purpose of profit by an individual, as it might be, like the numerous private surgical hospitals in London, it certainly would be a business then. A thing or an operation is not made into a business because it is carried on for the purposes of a profit; otherwise you might say, if it does not produce profit it is not a business, which would be ridiculous. Therefore *prima facie* it seems to me it is made out to be a business. Then upon the other question—is it noxious or not noxious?—I confess I think a great deal may be said in favor of the view that it is noxious *per se;* that the establishment of a small-pox hospital which is one of the most infectious diseases known, and which generally does produce an increase of small-pox cases in the neighborhood of the hospital by some means or other (the means not being quite thoroughly recognized even by medical authority), is establishing a busines. which, in one meaning of the word, is of a noxious kind. But then, is it a noxious business within the meaning of this section? The section is one of a group which is headed with the words "Offensive Trades." Then it goes on to particularize certain trades which certainly are as unlike the carrying on of a hospital as could possibly be imagined, and it contains. no doubt, the words, at the end of the enumeration of the particular trades, "any other noxious or offensive trade, business, or manufacture." You have got the word "business" there put in between the words "trade" and "manufacture," undoubtedly meaning that that section is to apply to what are ordinarily called trades, businesses or manufactures. And it gives the local authority a power of veto over the establishment or commencement of a trade, business or manufacture which is noxious or offensive. I agree that it would be possible to construe that section as including within the word "business," and possibly—I do not say more—within the word "noxious" also, the establishment of a small-pox hospital, if you do not look to the rest of the act of Parliament. But the very next group of sections, the one beginning with section 120, is headed "Infectious Diseases and Hospitals." Then you have a number of sections applying to hospitals distinctly. To my mind it is impossible to read this actof Parliament so as to include, within the group of sections headed "Offensive Trades" the establishment of a hospital, when you find another and separate group of sections actually addressed to hospitals and to infectious diseases – "Infectious Diseases and Hospitals"—which give the urban authority such powers as the act intended they should have with reference to institutions of that kind. For that reason, which was not so much, I think, insisted upon by Chitty, J., it seems to my mind a conclusive reason for coming to this result—that the proper construction of this act of Parliament is that a hospital, though it may be a business, and though it may be a noxious business, is not within the provisions of section 112, which require the consent of the district within which the hospital is being erected before it can be so erected.

PARTNERSHIP.

LAW PARTNERSHIP—ACCOUNTING—ACTING AS EXECUTOR.

Complainant and defendant formed a partnership "for the purpose of practising the law," and agreed to give their "time and talents and strength to the prosecution of the interest of the firm." During the partnership the defendant acted as executor of several estates, with the consent of complainant, and it did not appear that he neglected in any way his duties to the firm,

Held, that the commissions received by him as executor did not belong to the firm, since acting as executor does not pertain to the practice of law. *Metcalfe* v. *Bradshaw*, Supreme Court of Illinois, April 4, 1893. (*Central Law Journal*).

It appears that on the 25th day of May, 1878, the defendant was appointed one of two joint executors of the last will and testament of Charles R. Bennett, deceased, and served in that capacity until September 17, 1881, when the estate was settled. The evidence tends to show that the commissions to which he became entitled as executor, and which he received, amounted to $781.42. During the progress of the administration the complainant was employed by the executors to render certain legal services, for which, according to the testimony of the defendant, he was paid for his individual use, and not as a part of the earnings of the partnership, the sum of $600. The complainant on the other hand, testifies that he in fact received nothing for his legal services, and that whatever he did was a part of the law business of the firm. It seems, however, that he made no charges for his services on the firm books, and gave no credit on the books for the money received by him, if he in fact received any. So far as the testimony of these witnesses is at variance, all we need say is that the court saw them, and heard them testify, and from all evidence found the equities of the case to be with the defendant That finding, so far as we can see, is entitled to the credit which is ordinarily given to the finding of a Court of Chancery, where the evidence is given orally in open Court, and on appeal it must be accepted as conclusive unless it clearly appears to be against the weight of the evidence. There is nothing in the record from which we can say that such is the case here, and we must therefore assume, not only that the issues of fact thus raised by the witnesses in their testimony, so far as they have any bearing upon the correctness of the decree, were found by the Court in favor of the defendant, but also that such finding, for all the purposes of this appeal, must be accepted as the true one. On the 5th day of June, 1882, the defendant was appointed administrator of the estate of William T. Emmett, deceased, and continued to act as such administrator until June 4, 1887, when the estate was settled, and he was discharged. The complainant was also employed by him to render legal services for that estate, and both agree that for such services the complainant received the sum of $125. There is the same disagreement between them, however, as to whether this sum was paid him for his individual use, or as a part of the earnings of the firm. The commissions to which the defendant became entitled as administrator of that estate seem to have been something over $500, but he testifies—and in this he does not seem to be contradicted — that having paid a portion of the claim against the estate in full, in ignorance of the existence of a claim that was afterwards presented, and which more than exhausted the remaining assets in his hands, he was compelled to use the money due him for commissions, and more, to make good to the new claimant what he had paid to other creditors, and that he therefore, in fact, retained nothing on account of commissions. On the 12th day of September, 1883, the defendant was appointed executor of the last will and testament of John Neudecker, deceased. The Neudecker estate which was large, consisted principally of personal property. The administration involved no controversies, and was conducted without litigation; the bulk of the assets, consisting of moneys and securities, being distributed within two months of the date of the appointment of the executor. This estate was finally settled December 21, 1885, — six days after the dissolution of the partnership between the complainant and defendant. The commissions received by the defendant, according to his own testimony, were a little less than $6,000.

Whether the administration of these estates is to be regarded as firm business, and the commissions received by the defendant therefor as a part of the proceeds or earnings of the business, must depend chiefly, if not wholly, upon the construction to be placed upon the partnership articles. By those articles the complainants and defendant associated themselves together "for the purpose of practicing law," and they mutually promised to give their time, talents, and strength "to the prosecution of the interests of the "firm." Each pledged himself not to become a candidate for any political office, so as to become involved in politics, during the continuance of the firm, except by mutual consent; and it was agreed that any omission to keep and observe these promises and agreements by either party should justify the other in dissolving the partnership. We think it too plain for argument that accepting an appointment as executor or administrator of a deceased person, and acting as such, does not, as the term is ordinarily understood, pertain to the practice of the law. Persons accepting and performing the duties of trusts of that character need not be lawyers, and, as is well known, those who are appointed

as executors or administrators are, in the great majority of cases, men who do not belong to the profession. Their duties are usually of a business, rather than of a professional, character. True, the administration of estates frequently requires legal advice, and often involves more or less of litigation, but substantially the same may be said of all other business pursuits, and especially of all positions involving the execution of trusts. But men are ordinarily appointed to execute trusts because of the confidence the donor of the trust has in the honor, integrity, and business capacity of the appointee, rather than because of his knowledge of legal principles, or his ability to carry on litigation with success. At all events, the execution of trusts is not, and never has been, regarded as a part of the duties peculiarly pertaining to the legal profession, or as constituting a part of what is ordinarily understood as "the practice of the law." It cannot, therefore, with any propriety, be claimed that the business transacted by the defendant in his trust capacity, as executor or administrator of the estate in question, was a part of the firm business, within the contemplation of the copartnership articles, or that the commissions realized by him from the execution of such trust constituted a part of the earnings or profits of the firm.

It seems to be admitted that, although the copartnership was continued for several years after the expiration of the term fixed by the articles, no new articles were adopted, and no new arrangement was made; and it therefore follows, as a legal conclusion, that it was continued as a partnership at will, but subject in all respects, except as to the right of either partner to terminate it at pleasure, to the terms of the copartnership articles. If there had been an agreement, either express, or to be implied from the circumstances, that the commissions, to be received by the defendant for his services as executor or administrator should be regarded and treated as partnership earnings, a different result would probably follow. But, upon a careful examination of the record, we are unable to find that such agreement is established by either direct or circumstantial evidence. The fair conclusion from all the evidence is that the defendant accepted and executed these trusts without objection, and even with the express approval of the complainant, but without any agreement or understanding, express or implied, that the compensation to be received by him should be turned over to the firm, as firm profits.

We are not unmindful of the well-settled rule, that a partner will not ordinarily be permitted, for his own profit, to enter into business in competition with his firm. Thus, he cannot, without the consent of his copartner, embark in a business that will manifestly conflict with the interests of his firm. Nor can he clandestinely use the partnership property or funds in speculations for his own private advantage, without being required to account to his copartners for the property and funds thus used and for the profits. The general rule being that each partner shall devote his time, labor, and skill for the benefit of the firm, he cannot purchase for his own use, and for the purpose of private speculation and profit, articles in which the firm deals, and, if he does so, the profits arising therefrom may be claimed by the copartners as belonging to the firm. 5 Wait, Act. & Def. 125 Thus, as said in 1 Bates, Partn. § 306: "If a partner speculate with the firm fund or credit he must account to his copartners for the profits, and bear the whole losses of such unauthorized adventures himself; and if he go into competing business, depriving the firm of the skill, time, and diligence or fidelity he owes to it, so he must account to the firm for the profits made in it. And a managing partner will be enjoined from carrying on the same business for his own benefit." But the same author says, a little further on, that a partner may traffic outside of the scope of the business for his own benefit. So, also, in Lindl. Partn. 312, the rule is laid down as follows: "Where a partner carries on a business not connecting with or competing with that of the firm, his partners have no right to the profits he thereby makes, even if he has agreed not to carry on any separate business."

Applying these principles to the case before us, we see no ground for sustaining the complainant's bill. The defendant, by becoming executor or administrator, engaged in no business or enterprise which can be regarded as in any sense in competition with his firm, or which involved the use, for his own advantage, of anything belonging to the firm. True, by the copartnership articles, he agreed to give his time, talents, and strength to the prosecution of the firm business; but it does not appear that he failed, by reason of the acceptance of those trusts, in the performance of his agreement in that respect. It is not shown that any firm business suffered for lack of attention on his part by reason of his performance of the duties of executor or administrator. Nor did he accept either of these trusts clandestinely, or without the consent or approval of his copartner. As to the Neudecker executorship, the complainant takes pains to prove that the will of Neudecker was drafted by himself, and that the defendant was named therein as executor at his suggestion, and as the result of some importunity on his part, and that he subsequently became the defendant's surety on the bond given by him as executor. The complainant's consent to the defendant's acceptance of the trust could not be more clearly shown. It cannot be seen how the acceptance of these trusts, under the circumstances thus appearing, was in any sense a fraud on the partnership, or in contravention of the defendant's duties as partner, so as to call for an application of the rules arising in such cases, as stated above. In view of all the evidence, we are disposed to hold that the only proper result is the one reached by the circuit court in its decree, and the judgment of the appellate court affirming the decree, will be affirmed.

2. Dissolution.

In the important case of *Campbell v. Campbell*, decided in July last by the Court of Appeal in this country (Ireland) (which

somehow has not been reported in any shape or form), an interesting question was raised as to the interpretation of partnership articles. The action was brought by the widow of one of the two partners—George Campbell—claiming an account and a sale, and the question as to the exact date of the dissolution of the partnership was of vital importance. The facts were simple. John and George Campbell had entered into partnership under a deed of the year 1848. That deed, by its 46th clause, provided—"That in case either party shall, at any time during the continuance of this co-partnership, assign, mortgage, or dispose of his share of and in said joint stock and trade, or any part thereof, to any person or persons whomesoever, or otherwise charge or incumber the same without the previous consent in writing of the other of them, then the said co-partnership shall, from the time of his so assigning, charging, mortgaging, or incumbrancing the same, stand dissolved, and be at an end, in like manner and with the same provisions and arrangements consequent on such dissolution as if the same had ceased by effluxion of time." As Lord Ashbourne, C., remarked in his judgment in the case—"The object of this clause was to ensure that the partnership property should not be interfered with by one of the partners without the consent and sanction of the other, and that if there was anything done by one of the partners which could be regarded as an infringment of the prohibition contained in this clause the person who thought himself aggrieved thereby could claim the rights reserved to him by the deed in the event of the partnership having determined by effluxion of time." By a subsequent deed of the year 1883, duly registered, after reciting that the business of the partnership was carried on in certain freehold and leasehold premises held by John and George, John purported to assign all his interest in these premises to a trustee to hold upon trust for John until his death, and after his death upon trust for his eldest son, the defendant Edward Campbell, his heirs, executors, administrators, or assigns. This deed also assigned to the trustee all John's share in the goodwill of the business, to hold upon trust for John during his life, and on his death—subject to an annuity of £300 for the life or lives of such of his children as he or his wife might appoint—upon trust for the said Edward Campbell. The deed of trust concluded with a declaration that nothing therein contained was to affect the right of John Campbell to dispose, in such way as to him should seem meet, of the share of the capital, or of the mercantile stock-in-trade of the partnership to which he was entitled, save the share of the freehold and leasehold hereditaments and premises, and that it should be lawful for him, by deed, will, or otherwise, to dispose of the moneys belonging to him then or thereafter to be invested in the said partnership, or of the share of the stock-in-trade to which he was then or to which he or his personal representative in his right might be or become entitled. This deed was not communicated to George.

The plaintiff contented that this was a violation of clause 46, and that, therefore, the partnership was determined, not by the death of George Campbell in 1884, but by the execution of this deed in 1883. The Vice-Chancellor decided against this contention, holding that the partnership continued down to George's death, and the Court of Appeal affirmed his decision. In the course of his judgment Lord Ashbourne, C., said:—"This deed was an open, honest, *bona fide* arrangement, intended for the benefit of John's eldest son. It indicates a desire only to deal with the leaseholds (which were 'partnership property') after John's death. George Campbell continued until his death attending to the business, just as before its execution. If I am right in thinking that John had no intention or desire to do anything affecting the partnership until after his death, and if George showed no desire to treat the subsisting partnership relations as altered, I thing it would be putting a forced and strong construction on the deed of 1883 to say that it determined the partnership under the 46th clause of the partnership deed of 1848." Fitz-Gibbon, L. J., in his judgment said:—"The relation of partnership rests on contract, and I think that the mere execution of this deed, not intended by John to affect the partnership, and not communicated to George, did not work a dissolution nor put an end to the contract of partnership which both parties continued to regard as subsisting. The most that can be said is that John's act dissolved the partnership unconsciously. But what of George? He was equally unconscious of the act and of its effect. How then was the contract of partnership put an end to? No *ex post facto* dissolution was carried out, though, perhaps, if George had discovered the deed, and had so wished, he might have treated it as an act entitling him to dissolve." 27 Ir. Law Times 355.

PATENT.

CO OWNERS RIGHT'S.

The fact that a co-owner of one moiety of a patent happens to be mortgagee of the other moiety, does not alter the general rule that a co-owner of a patent is entitled to work it for his own benefit;

Held, therefore, in an action to redeem the mortgaged moiety, that the mortgagee not having received royalties was not obliged to account for the profits made while he was the holder of the mortgage. *Steers* v. *Rogers*. C. A. [1892) 2 Ch. 13; affirmed by H. L. [1893] W. N. 76.

PAYMENT, WHAT CONSTITUTES—See Banks and Banking 1.

PENAL ACTION—See International Law.

PHARMACY.

SALE OF POISONS — PROPRIETARY MEDICINE—CHLORODYNE.

Held, that chlorodyne was a poison as it contained scheduled poisons, notably chloroform and preparations of opium; that it was not a patent medicine, although so called, and consequently it dit not come in the exception in s. 16 in favour of patent medicines, *i.e.*, medicines which were the subject of letters patent; that its sale must be conducted in accordance with the regulations to be observed on sale of poisons (s. 17.) Pharmacy Act, 1868, ss. 16, 17. *Pharmaceutical Society* v. *Piper*. [Div. Ct. [1893] W. N. 28; [1893] 1 Q. B, 686.

POISONS SALE OF—See Pharmacy.

POLICE MAGISTRATE—See Judge.

PRESCRIPTION—INTERRUPTION OF—See Bills and Notes 6.

PUBLIC OFFICERS—See Mun. Corp.

PRINCIPAL AND AGENT.

1. EFFECT OF POWER OF ATTORNEY —POWER TO BORROW MUST BE EXPRESS — INDORSEMENT OF BILLS "PER PRO."

Held, than an agent who is authorized by his power to make contracts of sale and purchase, charter vessels, and employ servants, and as incidental thereto to do certain specified acts, including indorsement of bills and other acts for the purposes therein aforesaid but not including the borrowing of money, cannot borrow on behalf of his principal or bind him by contract of loan, such acts not being necessary for the declared purposes of the power.

Where an agent accepts or indorses "per pro" the taker of a bill or note so accepted or indorsed is bound to inquire as to the extent of the agent's authority; where an agent has such authority, his abuse of it does not affect a *bona fide* holder for value. *Bryant, Powis & Bryant* v. *La Banque du Peuple. Bryant, Powis & Bryant* v. *Quebec Bank*, 1893, App. Cas. 170.

Lord MACNAGHTEN: —

The appellant in these appeals is a company incorporated with limited liability under the statute of the United Kingdom known as the Companies Act, 1862. It was formed in 1865 for the purpose of taking over the business of the firm of Messrs. Bryant, Powis & Bryant, of London, Quebec and Montreal, lumber merchants.

On the 1st of January, 1888, the company discontinued the business of buying and shipping timber, which up to that time it had carried on in Quebec in succession to the firm of Bryant, Powis & Bryant, and thenceforth the company restricted its business in Quebec to making advances on the security of lumber and timber, principally if not solely in connection with the operations of a firm of lumber merchants trading as Smith, Wade & Co.

On the formation of the company one Charles Griffiths Davies, of Quebec, who had been agent and attorney for the firm of Bryant, Powis & Bryant was appointed the agent and attorney of the company in Canada. The appointment was contained in a power of attorney, bearing date the 25th of November, 1885. Davies remained in the regular employment of the company at a fixed salary up to the 1st of January, 1888. He then went into business on his own account, and carried on business as broker and general commission and shipping agent, under the style of "C. G. Davies & Co." But he still acted for the company when occasion required, receiving commission for his services. His power of attorney was not revoked or withdrawn, and the company continued to hold him out as their agent.

In February, 1890, Davies left Quebec under the pressure of pecuniary difficulties. It was then discovered that he had taken advantage of his position as agent and attorney for the company to procure money on the credit of the company for his own private purposes. The company in consequence found itself exposed to heavy and unexpected demands, and there was a good deal of litigation, in the course of which various points were raised, depending on special circumstances of the particular case. That litigation has given rise to these two appeals, which their Lordships will now proceed to consider separately.

BRYANT, POWIS & BRYANT, LIMITED v. LA BANQUE DU PEUPLE.

In the appeal of Bryant, Powis & Bryant, Limited v. La Banque du Peuple the question is whether the company is to be charged with moneys obtained by Davies for his own purposes, but borowed by him in the name of the company and professedly on their behalf.

The facts are not in dispute. On the 1st of October, 1889, Davies went to the bank, who had been at one time, but who were not then, the bankers of the company, and asked the manager, M. Dumoulin, for a loan of $25,000 on account of the company, saying that it was required for the purpose of a remittance to be made by him on that day to the head office in London. The manager consented to make the advance on what is termed a "short loan." Davies drew a cheque on the bank in the name of the company, "per pro C. G. Davies," for $25,000. The

cheque was paid as an overdraft, and as collateral security for its repayment Davies deposited with the bank three promissory notes, amounting together to $40,000, drawn by Smith, Wade & Co., in favour of Bryant, Powis & Bryant, Limited, and indorsed in their name, "per pro C. G. Davies."

On the 5th of the same month Davies went to the bank again, and told the manager that he found that the sum of $25,000 more was required, and thereupon he obtained a further loan to that amount. The transaction was carried out in precisely the same manner as the former loan, and by way of collateral security Davies indorsed and deposited three further promissory notes of Smith, Wade & Co., amounting together to $35,000.

Before the 4th of December, 1889, Davies paid the bank out of his own moneys $10,000 in reduction of the loan. On that day the six promissory notes, which then had become due, but had not been presented for payment, were returned to Davies, who gave in exchange two other promissory notes for $25,0000 each, dated the 28th of September, 1889, and made by Smith, Wade & Co., to the order of the company, and indorsed in the name of the company, "per pro C. G. Davies."

For these notes Davies took the following receipt: —

"Quebec,
"4th December, 1889.

"Received of Messrs. Bryant, Powis & Bryant (Limited) through their agent here the following bills payable as collateral security for the payment of loan of ($37,000) thirty-seven thousand dollars with interest at 7 per cent., viz.: —

	$
"S. W. & Co. p. note due 31st March.	25,000
"S. W. & Co. p. note due 31st March.	25,000
	"50,000

"p. Auguste Labardie,
"pro Manager Banque du Peuple,
"Quebec."

Before the two notes became due the company forbade Smith, Wade & Co. to pay the bank, and they also gave notice to the bank disclaiming liability, and calling upon the bank to hand over the notes to them.

When the notes fell due the bank brought this action upon them against Smith, Wade & Co. and the company. Smith, Wade & Co. submitted themselves to the judgment of the Court. The company disputed their liability on various grounds, and they also filed an incidental demand, claiming the promissory notes in question as their property.

The case came on to be heard before Andrews, J. The learned judge in an able and elaborate judgment decided in favour of the company, on the ground that the bank had notice that Davies was acting under a limited authority, and that the power of attorney of the 25th of November, 1885, from which alone Davies derived his authority, did not authorize him to borrow money in the name of the company.

The other grounds upon which the company resisted the claim of the bank were rejected by the learned Judge. As the argument before their Lordships was substantially confined to the question of authority, it is not necessary to allude to them, beyond saying that in the course of the discussion the learned counsel for the appellant very properly disclaimed in express and unqualified terms any imputation of want of good faith on the part of the bank or on the part of M. Dumoulin.

On appeal, the Court of Queen's Bench for Lower Canada, by a majority of three to two, reversed the decision of Andrews, J., and condemned the company to pay to the bank the sum of $37,000 with interest from the 31st of March, 1890, and costs of suit.

The learned judges who formed the minority in the Court of Appeal adopted and relied upon the judgment of Andrews, J. The views of the majority are expressed in the formal judgment pronounced by Cross, J. That judgment proceeds upon the ground that "the specific powers" granted to Davies by the power of attorney "did not necessarily imply the negation of the powers of general agency granted to and exercised by the said Charles G. Davies under the said power of attorney," and that the words used in the concluding part of the power of attorney, which are quoted in the judgment, and which will be considered presently, "refer not specially to said special powers, but to the business generally of the respondents" (i. e., Bryant, Powis & Bryant, Limited), "and by their terms give the said Charles G. Davies a discretion to do, execute and perform any matter or thing which in the opinion of the said Charles G. Davies ought to have been done or performed in or about business of the respondents, therefore outside and beyond what had been otherwise provided for by the said power of attorney," and consequently that Davies had power to bind the company "and did so bind them by his endorsation in their name of said promissory notes and drawing the money advanced thereon."

On the appeal before this Board the learned counsel for the appellant did not seriously dispute the proposition that the words "per pro," in the acceptance or indorsement of a bill of exchange or promissory note amount to an express statement that the party so accepting or indorsing the bill or note has only a special and limited authority, and therefore, that a person who takes a bill or note so accepted or indorsed is bound at his peril to enquire into the extent of the agent's authority: Stagg v. Elliot (12 C. B. [N.S.] 373-81, per Byles, J.) Nor was it disputed that powers of attorney are to be construed strictly—that is to say, that where an act purporting to be done under a power of attorney is challenged as being in excess of the authority conferred by the power, it is necessary to shew that on a fair construction of the whole instrument the authority in question is to be found within the four corners of the instrument, either in express terms or by necessary implication. It was pointed out, indeed, that the decisions on which the learned counsel for the appellant mainly relied in support of these propositions

were decisions of English judges, but it was not shewn that there is any difference in this respect between the law of Canada and the law of England. The provisions of the Civil Code of Lower Canada, and the authorities which were cited to their Lordships, appear to be in harmony with English law and English authorities.

In the result the argument was reduced to a consideration of the true construction and effect of the power of attorney of the 25th of November, 1885. It will therefore be necessary to state its provisions somewhat in detail.

That instrument begins by reciting the formation of the company, "to undertake and carry on as a successors to Messrs. W. Bryant, F. C. Bryant and H.W. Powis, who were the founders of the company, the trade and business of wood and timber importers, brokers, merchants and dealers, then carried on by them in partnership together at London, Quebec, Montreal, and elsewhere, under the name or style of Bryant, Powis & Bryant, and for other purposes more particularly mentioned in the memorandum of association of the company." It then recites the provisions of the articles of association authorizing the appointment of an attorney, and proceeds as follows: "And whereas the directors deem it desirable in the interest of the company to appoint an agent and attorney to represent the company in Canada aforesaid now know ye that the company doth hereby appoint Charles Griffiths Davies, of Desprairie Street, in the city of Quebec, Canada, aforesaid to be the true and lawful attorney of the company, for and in the name on behalf of the company to enter into any contract or engagement for the purchase or sale of goods and merchandise of whatever nature or kind, and for the charter and recharter of any ships or vessels, and for the engagement of all such agents, clerks and servants as may be necessary for carrying on and conducting the business of the said company, and to draw and sign cheques on the bankers for the time being of the said company, and to draw, accept and indorse bills of exchange, promissory notes, bills of lading, delivery orders, dock warrants, coupons, bought and sold notes, contract notes, charter parties, accounts, current accounts, sales and other documents which shall in the opinion of the said attorney require the signature or indorsement of the company and also" to sue for and recover debts, to demand and obtain delivery of goods belonging to the company, and generally to act for the company in and about the recovery of debts and the delivery of goods in all respects as fully and effectually as the company could itself do, to give receipts, to bring and defend and compromise actions; "also to enter into, make, sign, seal, execute, deliver, acknowledge and perform any contract, agreement, deed, writing, or thing that may in the opinion of the said agent or attorney be necessary or proper to be entered into, made, signed, sealed, executed, delivered, acknowledged, or performed for effectuating the purposes aforesaid or any of them and for all or any of the purposes aforesaid to use the name of the company" — then follow the words quoted in the judgment of the Court of Appeal: "*and to do execute and perform any other act matter or thing whatsoever which ought to be done executed or performed or which in the opinion of the said agent or attorney ought to have been done executed or performed in or about the business affairs of the company.*"

To put it shortly, the power of attorney authorized Davies to enter into contracts or engagements for three specified purposes: (1) the purchase or sale of goods; (2) the chartering of vessels, and, (3) the employment of agents and servants; and as incidental thereto, or consequential thereon, to do certain specified acts and other acts of the same kind as those specified. If the instrument be read fairly, it does not, in their Lordships' opinion, authorize the attorney to borrow money on behalf of the company, or to bind the company by a contract of loan. It appears to their Lordships that the words quoted in the judgment of the Court of Queen's Bench are to be read in connection with the introductory words of the sentence to which they belong, "for all or any of the purposes aforesaid." So read, the words in question do not confer upon the agent powers at large, but only such powers as may be necessary, in addition to those previously specified, to carry into effect the declared purposes of the power of attorney.

Their Lordships will therefore humbly advise Her Majesty that the appeal ought to be allowed, and the judgment of Mr. Justice Andrews restored. The respondents will pay the costs of the appeal to the Court of Queen's Bench and the costs of this appeal.

BRYANT, POWIS & BRYANT, LIMITED v. QUEBEC BANK.

The question raised in the appeal of Bryant, Powis & Bryant, Limited v. Quebec Bank may be disposed of very shortly.

The appeal is from a decision of the Court of Queen's Bench for Lower Canada affirming the decision of Mr. Justice Andrews, who held the company liable to the bank in respect of two bills of exchange indorsed in the name of the company, "per pro C. G. Davies," and discounted by the bank in the ordinary course of business.

In the discussion at the bar it was conceded by the learned counsel for the appellant that the bank were bonâ fide holders for value; and the argument, as in the previous case, was substantially confined to the question of Davies' authority.

The authority of Davies as the agent and attorney of the company was derived from the power of attorney of the 25th of November, 1885, which has been fully stated already. That instrument in terms authorizes the attorney to indorse bills of exchange. Their Lordships agree with Andrews, J., that the fact that Davies abused his authority and betrayed his trust cannot affect bonâ fide holders for value of negotiable instruments indorsed by him apparently in accordance with his authority.

The law appears to their Lordships to be very well stated in the Court of Appeal of

the State of New York, in President, &c., of the Westfield Bank v. Cornen (37 N. Y. R. [10 Tiff.] 322), cited by Andrews, J., in his judgment in another case brought by the Quebec Bank against the company. The passage referred to is as follows: --

"Whenever the very act of the agent is authorized by the terms of the power, that is, whenever by comparing the act done by the agent with the words of the power, the act is in itself warranted by the terms used, such act is binding on the constituent as to all persons dealing in good faith with the agent; such persons are not bound to inquire into facts aliunde. The apparent authority is the real authority."

Their Lordships will therefore humbly advise Her Majesty that the appeal ought to be dismissed with costs.

Solicitors for Bryant, Powis & Bryant, Limited: Wilson, Bristows & Carpmael.

Solicitors for La Banque du Peuple: Bompas, Bischoff & Co.

Solicitors for Quebec Bank: Ashurst, Morris & Co.

2. UNDISCLOSED PRINCIPAL, LIABILITY OF.

Where a principal allows an agent to act as if he were principal, the real principal will be liable for the acts of the agent if done within the reasonable scope of an agent's authority in the particular business, notwithstanding any limitations which the real principal may have put on his agent's authority. *Watteau* v. *Fenwick*, Div. Ct. [1893] 1 Q. B. 346.

RAILWAY COMPANIES—SEE ALSO CARRIERS.

1. BONDS AND MORTGAGES.

Where a railroad company is sued by a few minority stockholders, and a receiver is asked, which suit is opposed by a great majority of stockholders, it is perfectly proper for the mortgage bondholders, upon default in the payment of their bonds, to institute a foreclosure suit, and have a receiver appointed, and thus to control any litigation which might withdraw from the corporation the mortgaged property: and it is not fraudulent or collusive for the officers of the corporation to admit the truth of the allegations of the bondholders' bill—*Pennsylvania Co., etc.* v. *Jacksonville, T. & K. W. Ry. Co., U. S.* C. C. of App., 55 Fed. Rep. 131.

2. CARRIERS—LIABILITY AS.

The plaintiff delivered a quantity of apples to the defendants at their warehouse for the purpose of shipment by the defendants' railway, and, on sufficient being delivered to fill a car, applied for a car, and was promised one at a named date. The defendants failed to furnish the car at the date specified, and, a fire occurring, the apples were destroyed.

Held, Rose, J., dissenting, that the responsibility of the defendant was that of carriers and not of warehousemen, and therefore they were liable for the loss sustained by the plaintiff. *Milloy* v. *Grand Trunk Ry. Co.*, Ontario. Divisional Court, March 4, 1893.

RESPONSIBILITY OF OWNER OF ANIMAL UNDER ART. 1385 CODE NAPOLEON—See Negligence 4.

RESTRAINT OF TRADE.

1. TRANSFER OF BUSINESS—COVENANT.

A covenant on transfer of a business restraining the transferor from carrying on the same trade elsewhere, *held* valid, the covenant being necessary for the protection of the purchaser and not being injurious to the public. Covenants in general and partial restraint of trade discussed. *Maxim Nordenfelt Guns and Ammunition Co.* v. *Nordenfelt*, (No. 1), C. A. [1893] W. N. 2; [1893] 1 Ch. 630.

2. COVENANT NOT TO KEEP A COFFEE-HOUSE.

A grocer covenanted in his lease not to keep a coffee-house.

Held, that by selling tea, coffee, and other light refreshments to his customers, he committed a breach of the covenant. Injunction accordingly. *Fitz* v. *Iles*, C. A. [1893], 1 Ch. 77.

SALE OF GOODS.

1. MEMORANDUM IN WRITING—SEVERAL DOCUMENTS — ACCEPTANCE — STATUTE OF FRAUDS (29 CAR., 2, C. 3), S. 17.

The defendant, who carried on business at Manchester, orally agreed to purchase from the plaintiffs, timber merchants at Liverpool, a quantity of spruce deals, to be forwarded to Man-

chester by a carrier nominated by the defendant. An invoice of the goods was sent by the plaintiffs to the defendant, and the carrier also sent an advice note to inform him of the arrival of the goods at Manchester. This note specified the number of the deals and stated them to be consigned by the plaintiffs, but did not state their price, nor refer to the invoice or any other document. On October 28, the day of the arrival of the goods, and on the following day, the defendant inspected them, and subsequently wrote and signed the following memorandum on the advice note: "Rejected. Not according to representation." On November 8, he wrote to the plaintiffs, rejecting the goods as not being according to contract.

Held, first, that there was not a sufficient note of the bargain within the 17th section of the Statute of Frauds; secondly, that the proper conclusion from the facts was that there had been no such dealing with the goods by the defendant as to constitute an acceptance of them by him within the same section. Morton v. Tibbett (15 Q. B. 428), Kibble v. Gough (38 L. T. [N.S.] 204), and Page v. Morgan (15 Q. B. D. 228) considered. *Taylor* v. *Smith* C. A. [1893] 2 Q. B. 65.

2. SHERIFF — ACTION AGAINST — TRESPASS — SALE OF GOODS BY INSOLVENT — INTENT — BONA FIDES — JUDGMENT ON INTERPLEADER ISSUE — ESTOPPEL—BRITISH COLUMBIA.

K., a trader in insolvent circumstances, sold all his stock-in-trade to D., who knew that two of K.'s creditors had recovered judgment against him. The goods so sold were afterwards seized by the sheriff under executions issued on judgments recovered after the sale. On the trial of an interpleader issue in the County Court the jury found that K. had sold the goods with intent to prefer the creditors who then had judgments, but that D. did not know of any such intent. The County Court Judge gave judgment against D., holding that the goods seized were now his goods, and that judgment was affirmed by the Court in banc. D. afterwards brought an action against the sheriff for trespass in seizing the goods, and obtained a verdict, which was set aside by the Court in banc, the majority of the Judges holding that the County Court judgment was a complete bar to the action.

On appeal to the Supreme Court of Canada:

Held, reversing the decision of the Supreme Court of British Columbia, that the evidence showed that D. purchased the goods from K. in good faith for his own benefit, and the statute against fraudulent preferences did not make the sale void.

Held, also, that the County Court judgment, being a decision of an inferior Court of limited jurisdiction, could not operate as a bar in respect of a cause of action in the Supreme Court and beyond the jurisdiction of the County Court to entertain.

Held, further, that if such judgment could be set up as a bar, it should have been specially pleaded by way of estoppel, in which plea all the facts necessary to constitute the estoppel must have been set out in detail, and from the evidence in the case no such estoppel could have been established. *Davies* v. *McMillan*, Supreme Court of Canada, May 1893.

3. SALE BY SAMPLE—INSPECTION AT PLACE OF DELIVERY.

A dealer bought grain which he inspected at the place named for delivery and sent on to a sub-purchaser, who rejected it as not being up to sample.

Held, that the dealer had accepted the grain and could not afterwards reject it. *Perkins* v. *Bell*, C. A. [1893] 1 Q. B. 193.

SALVAGE—See Ships and Shipping 2.

SHERIFF, ACTION AGAINST — See Sale of Goods 2.

SHIPS AND SHIPPING.

1. WRONGFUL ARREST—CRASSA NEGLIGENTIA—MALA FIDES—DAMAGES.

Proof of actual damage is not necessary to sustain an action in a court of Admiralty for wrongful arrest, if the seizure of the vessel was the result of mala fides, or crassa negligentia imply-

ing malice. *Semble,* an action lies at common law for malicious arrest of a ship by Admiralty process. The Walter D. Wallet, 1893 P. 202.

2. SALVAGE — ACTION BY OWNER ALONE—DILATORY EXCEPTION.

Held, The action accruing to the owner, master, and crew of a salving vessel is indivisible, and a suit brought by the owner alone will be stayed on dilatory exception until the master and crew have been made parties to the suit. *Chabot* v. *Quebec Steamship Co.,* S. C., Quebec, 1893, (*Leg. News*).

3. CHARTERPARTY — EFFECT OF — OWNER'S SUBSEQUENT LIABILITY.

The intention and effect of a charterparty is that the owner parts with the possession and control of the vessel to the charterer, and provisions which are not consistent with this intention should be disregarded. Consequently neither the captain nor shipping agent is servant or agent of the owner so as to render him liable either under bills of lading or for negligence, or by reason of his being registered as managing owner. Baumvoll Manufactur von Scheibler v. Gilchrist & Co. Charles, J. [1891] 2 Q. B. 310; [reversed by C. A. [1892] 1 Q. B. 253; [C. A. affirm, by H. L. (E.) *sub-nom. Baumvoll Manufactur von Scheibler* v. *Furness,* [1893] A. C. 8.

4. DEMURRAGE—STRIKE—CONSIGNEE'S LIABILITY.

Where no time for unloading is fixed by the contract, the merchant's obligation is to use all reasonable diligence under the circumstances which exist at the time of unloading, unless indeed those circumstances are attributable to his own conduct.

Held, that as the strike, which caused the delay, was beyond the control of the consignees, they were not liable to the shipowner for delay, C. A. *Hick* v. *Rodocanachi,* [1891] 2 Q. B. 626; affirm. by H. L. (E.)

SLANDER—See Libel and Slander.

SMALL POX HOSPITAL—See Nuisance 2.

STABLES—See Nuisance 1.

STATUTE OF FRAUDS—See Sale of Goods 1.

STORAGE OF WHEAT- -See Bailment.

STREET RAILWAYS—SEE ALSO MUN. CORP. 3 (PAVING) — NUISANCE 1 (STABLES).

1. ELECTRICITY — STATUTORY AUTHORITY.

A tramway company acting under a provisional order and using the best known system of electrical traction.

Held, not to be liable for electrical disturbances in the wires of a telephone company under license from the Postmaster-General. Liability of person using electricity for nuisance caused by it, considered. *National Telephone Co.* v. *Baker,* Kekewich, J. [1893] 2 ch. 186.

2. TRANSFERS.

Where a passenger of a street car company is entitled to a transfer from one line to another, he is entitled to the same degree of care on the part of the company while making the transfer as is required of carriers of passengers, in guarding against injuries. *Citizens St. R. Co. of Indianapolis* v. *Merl,* Ind., 33 N. E. Rep. 1015.

SURETYSHIP—See Banks and Banking 1.

THEFT—AT CARDS—See Crim. Law 1.

THEFT—See Libel and Slander 4.

TIMBER.

REMOVAL OF — "NECESSARY" — AGREEMENT, CONSTRUCEION OF—ONTARIO.

The plaintiff was the owner of a farm of about a mile in breadth and five-sixths of a mile in length. About two-thirds of the farm was heavily wooded, and the rest of it was cleared and cultivated. The defendant became the purchaser of the trees and timber upon the land under an agreement which provided, among other things, that the purchaser should have "full liberty to enter into and upon the said lands for the purpose of removing the trees and timber at such times and in

such manner as he may think proper," but reserved to the plaintiff the full enjoyment of the land "save and in so far as may be necessary for the cutting and removing of the trees and timber." To have removed the timber through the wooded land at the time it was removed would have involved an expenditure which would have probably amounted to a sacrifice of the greater portion of the timber.

Held, affirming the judgment of the court below. 19 A. R. 176; that the defendant had a right to remove the timber by the most direct and available route, provided they acted in good faith and not unreasonably, and the reservation in favour of the plaintiff did not minimize or modify the defendant's right under the general grant of the trees, to remove the trees across the cleared land; Gwynne, J., dissenting. *Stephens* v. *Gordon*, Supreme Ct. of Canada, May 1893.

TRADE MARKS.

1. OLD MARK — "PERSONS AGGRIEVED."

The use of the words "Yorkshire Relish" on bottles in conjunction with another trade-mark, and on the packing cases without the other mark:

Held, not to be sufficient use as a trade-mark to authorize registration as an "old mark."

Held, also, that rival traders were in this case "persons aggrieved." *In re Powell's Trade Mark*, Chitty, J. [1893], W. N. 24; affirmed by C. A. [1893] W. N. 78.

2. SIMILARITY.

Right of one firm to exclusive use of a common emblem like a star considered. Trade-mark partly expunged by reason of position of the words "trade mark." *In re Dexter's Application. In re Wills' Trade Mark*, Wright, J. [1893] 2 Ch. 262.

3. TRADE-MARK — INFRINGEMENT — RECTIFICATION OF REGISTER — CONCURRENT USER.

This was an appeal from a decision of Kekewich, J., (1 M. L. D. & R. 416). The plaintiffs were brewers at St. Neots; they had a large export trade in bottled beer and a small trade in this country. The defendants were brewers at Colchester, and they sold bottled beer in the Eastern Counties, but they had no export trade. Both parties sold beer in the North of London. The plaintiffs were the proprietors of two marks, Nos. 20,352 and 53,522, for fermented liquors, registered respectively in 1879 and 1886 as new marks. Both of these marks contained a picture of a fat man in top boots and the words "John Bull Brand," and the plaintiffs' beer had become known to the public as "John Bull" beer. In 1884 the defendants or their predecessors, knowing nothing of the plaintiffs' marks, began to use for their bottled beer a label containing a somewhat similar picture of a fat man, coupled with the words "John Bull Registered," and they continued to use this label after they knew of the existence of the plaintiffs' marks. The defendants' label was never registered as a trade-mark, though it had been registered at Stationers' Hall. The plaintiffs brought this action to restrain the defendants from infringing their trade-marks, also from passing off their beer as the plaintiffs'. The defendants then moved to expunge the words "John Bull" from the plaintiffs' trade-marks. The motions came on together. After the evidence was completed, but before judgment, Kekewich, J., received information that the words "John Bull" had been used in connection with beer by a Sheffield firm of brewers, and from the evidence which was then adduced it appeared that the firm had from 1875 to 1890 used these words to describe a particularly strong beer which they sold in Sheffield and its vicinity, but that such user had been finally abandoned in 1890 before the date of these proceedings.

Kekewich, J., held that the action failed on the ground that the plaintiffs had not the exclusive right to the words "John Bull," and he directed those words to be expunged from their marks. The plaintiffs appealed.

Their Lordships allowed the appeal. Assuming that the Sheffield firm would have had a right to have the words

"John Bull Brand" expunged from the register if they had applied in proper time, still it was clear that, apart from such objection, those words were, under the Act of 1875, capable of being added to the mark of 1879, and as they had not been complained of by the only persons who had a right to complain, they ought to be allowed to stand unaltered. And with regard to the mark of 1886, that mark was only objectionable inasmuch as it embodied the mark of 1879, and it would be idle to strike out the words in question from the later mark without striking them out from the first mark, in view of the very wide discretion conferred upon the court by section 90 of the Trade-marks, &c., Act 1883. The plaintiffs' marks ought, therefore, to be treated as duly registered trade-marks, with the lawful addition of the words "John Bull Brand." That being so, the conduct of the defendants was such as to entitle the plaintiffs to the relief they claimed in the action. *In re* Payne & Co.'s Trade-marks. *Paine & Co.* v. *Daniell & Sons' Breweries (Lim.) Law Journal* 1893. Supreme Ct. of Judicature Ct. of Appeals.

TRADE UNIONS.

1. CONSPIRACY—MALICIOUSLY PROCURING BREACH OF CONTRACT.

Collins, J., directed the jury that if the defendants, members of a trade union had induced persons to break contracts made with the plaintiff and not to enter into further contracts with him, although only with the object of compelling the plaintiff to adhere to the rules of the trade union, there would be malice in point of law, and the defendants would be liable in damages.

Held, that the direction was right. The right of action for maliciously procuring a breach of contract is not confined to contracts of personal service. *Temperton* v. *Russell* (No. 2) C. A. [1893] W. N. 76; [1893] 1 Q. B. 715.

2. PROCURING DISCHARGE OF NON-UNION LABORER—BOYCOTT.

Held that a labor organization which refuses to admit a non-union man to membership and informs his employers that in case he is any longer retained it will be compelled to notify all labor organizations of the city that their house is a non union one, and thereby compels his discharge, is guilty of a wrongful act; that an action will lie against it by the non-union man for the damages he has suffered in consequence of such discharge; that such conduct is not warranted by a statute which authorizes the formation of trades' unions to promote the well-being of the every-day life of members, and for mutual assistance in securing the most favorable conditions for such members, and that where the work of the non-union man was entirely satisfactory to his employers, who intended to retain him permanently, and he was discharged solely because of the notice received from the labor organization, the fact that his emyloyer reserved the right to discharge him at the end of any week would not prevent him from recovering damages from the organization for maliciously and wantonly procuring his discharge. *Lucke* v. *Clothing Cutters' & Trimmers' Assembly*, 26 Atl. Rep. 505, Maryland Court of Appeals, (Central L. Journal).

The court in rendering judgment said: "When the State granted its generous sanction to the formation of corporations of the character of the appellee it certainly did not mean that such promotion was to be secured by making war upon the non-union laboring man, or by any illegal interference with his rights and privileges. The powers with which this class of corporations are clothed are of a peculiar character, and should be used with prudence, moderation and wisdom, so that labor in its organized form shall not become an instrument of wrong and injustice to those who, in the same avenue of life and sometimes under less favored circumstances, are striving to provide the means by which they can maintain themselves and their families. It is essential to good government and the peace of society that correct legal principles be applied in the consideration of all questions, for it is undeniably true that wrong principles cannot and never do produce salutary remedies."

UNDUE INFLUENCE—See Donation.

WAGER—See Contracts—Lottery.

WATER COMPANY.

PRIVITY OF CONTRACT—RIGHTS OF THIRD PARTIES.

Held that a contract between a city

and a water company, whereby the latter agrees to furnish water for the extinguishment of fires, does not give a private person, whose property is burned up through failure to furnish water, any right of action therefor against the company, since he is no party to the contract. *House* v. *Houston Waterwork Co.*, Court of Civil Appeals of Texas, (Cent. L. J.)

WORKMANSHIP.

CLAIM FOR VALUE OF — DESTRUCTION OF OBJECT BEFORE ACCEPTANCE OF WORK.

The plaintiff undertook to paint statues, for the defendant at a fixed price for each statue the defendant furnishing the unpainted statues. A number of the statues, after they had been painted, were destroyed by a fire which occurred in defendant's premises, before the statues had been accepted by him and before he had been put in default to receive them.

Held:—That the plaintiff was not entitled to recover from the defendant the price stipulated for the painting. *Rozetsky* v. *Beullac*, S. C., Montreal, Leg. N., 1892.

WILLS.

1. MISTAKE—ERRONEOUS RECITAL.

The testatrix in her will reciting erroneously that she had settled half of a special fund on A., gave the remainder of the special fund to B:—*Held*, that the erroneous recital did not act as a gift to A., but it shewed an intention that B. should have only half the fund, the balance therefore went to the residuary legatee of her will. *In re Bagot. Paton* v. *Ormerod* [1893] W. N. 78.

2. CLASS, ASCERTAINMENT OF — GIFT TO CHILDREN—MISTAKE IN NUMBER.

Gift to five unmarried daughters of A. At the date of the will A. had three sons and three daughters, two daughters being unmarried:—*Held*, that the words "unmarried daughters" were the material words, and the gift went to the two unmarried daughters. *In re Dutton. Plunkett* v. *Simeon*, [1893] W. N. 65.

3. LOST WILL.

Grant of letters of administration to the only son with consent of next of kin until lost will should be found.—Conditions. *In the Goods of Wright* [1893] P. 31.

4. TWO WILLS—ENGLISH AND FOREIGN—INCORPORATION.

An Italian lady, widow of an Englishman and domiciled in England, made a will for her English property, and afterwards, in Italy, made another will, confined to her Italian property, except that it expressly confirmed her English will: *Held*, that, as the Italian will confirmed the English will, it must be incorporated in the probate. *In the Goods of Lockhart* [1893] W. N. 80.

5. DUE EXECUTION OF WILL—SIGNATURE OF WITNESS.

A testator acknowledged his will in the presence of two witnesses, but only one witness was present when the will was signed:—*Held*, that the will was not duly executed. *Wyatt* v. *Berry*, Barnes, J. [1893] P. 5.

6. CODICILS—PRACTICE—WRITING ON BACK OF CODICIL — BLANK PIECE OF PAPER PASTED OVER CODICIL — ORDER FOR REMOVAL.

A testatrix left a will and two codils duly executed. She had made various alterations in the codicils, and among others she had written some words at the back of the first codicil, and had subsequently pasted a piece of blank paper over them. The Court made an order that the paper should be removed, in order to ascertain what the words were. *In the Goods of Gilbert*, 1893, P. 184.

7. ADMINISTRATION WITH WILL ANNEXED—TWO WILLS—NO EXECUTOR NAMED IN SECOND—WIFE SOLE BENEFICIARRY—GRANT TO WIFE—SECURITIES DISPENSED WITH — PERSONAL BOND ONLY REQUIRED.

A testator having duly executed a will placed it among his papers, and being unable to find it subsequently

executed a second will. By both wills he made his wife his universal legatee, and in his first will he appointed her his sole executrix; but in the second will he made no appointment of executrix.

Held, on a motion for probate of both wills, that administration ought to be granted to the widow, with the last will annexed, but that she might give her personal bond without being required to find securities. *In the Goods of Allen*, 1893, P. 184.

8. DESCRIPTION OF PROPERTY — MISTAKE—EXTRINSIC EVIDENCE.

Where a testator devised property as "the tract of land on which I now live," and the particular description of the same land in the will by courses and distances shows a palpable omission, the general description will prevail over the particular description, and a prior unattested will, proved to be genuine, is admissible, as extrinsic evidence, to remove the ambiguity in the later will, and to identify the subject of the devise, since such former will is in effect a written declaration by the testator as to the subject-matter of his bounty. *Thompson* v. *Thompson*, Supreme Court of Missouri, 1893, 21 S.W. Rep., 1085.

9. UNDUE INFLUENCE — RATIFICATION.

Where a will has been obtained by fraud and undue influence no subsequent ratification would validate it without a formal re-execution or republication. *Haines* v. *Hayden*, Sup. Ct. of Mich., 1893, 54 N.W. Rep., 911.

INSURING AGAINST ACCIDENTS.

The practice of insuring against accidents is so firmly established and apparently so prosperous, that there is every prospect of much future litigation turning on the words and phrases which such policies contain. Few persons would undertake to define or characterise an accident by any test in the nature of a general rule; but this only adds to the glorious uncertainty that surrounds the business, and makes all the work thereby caused good for trade. It is even rumoured that enterprising people, who find bodily accidents so fruitful a subject-matter for insurances, contemplate extending their policies so as to protect one against loss of property also through some of the common contingencies of life such as burglary and housebreaking. They tell us there has been a calculation made, and that the result shows that there are 70,000 housebreakers who make it their chief end in life to get at the portable property of the careless and wealthy people who live in houses. To maintain those 70,000 official persons in comfort and splendour much burgling is required, and nobody can foresee whose turn it will be next to be the victim, and to be informed by a telegram addressed to him at the seaside, that "your house has been plundered or wrecked, and that you are wanted immediately." It must soothe the feeling of all those who dislike sudden spoliation to be informed that for a few half-crowns they may feel quite easy that no thieves will break through and steal their little all while they are attending garden parties or boat races —at least, without compensation being found for them.

The present form of policy of insurance against accidents often sets forth

a great number of exceptions, and the language is so vague that much difficulty is experienced by Courts in applying it to the facts of the particular case, and it is only by consulting several varieties of examples that one can be, in the least degree, confident as to how the litigation will end. The complication of diseases superinduced or developed by a primary and a secondary cause makes the cases bewildering as it is so seldom that the same group of symptoms recurs. But the subject concerns everybody and necessarily attracts much interest. The litigations now occur plentifully, and serve to give an exercise for skill in the interpretation of popular words and phrases. One of the standard difficulties is to ascertain whether the injury or death was caused by a particular accident; and another is to ascertain whether the injury was caused by accidental, external, and visible means.

The earlier cases brought out the former of these questions. Thus in Fitton v. Accidental Death Company, 17 C. B. N. S. 122, the deceased person had a violent fall causing rupture and hernia, and requiring a surgical operation. The court held that the company were only exempted from liability where the hernia arose within the system, and that death from hernia caused solely by external violence fol lowed by a surgical operation was not within the exception of the policy, and that the company were liable. In another case of Smith v. Accidental Insurance Company, L. R. 5, Ex. 305, the policy had a condition to the effect that the accidental injury shall be the direct and sole cause of death. One day the deceased, a healthy man, while bathing his foot wounded it, owing to a piece of the pan breaking off, and hæmorrhage ensued and erysipelas. The court held that the company were not liable because the policy expressly stipulated that when erysipelas supervened and death ensued, whether due entirely or not to the desease, they should not he liable. They said this was a case where death did not occur directly from the accidental injury, because it occurred at all events partly in consequence of a specific disease supervening.

The meaning and application of the words "accidental, external, and visible means" often require much argument and discussion. The word "accidental" as used in these policies is always difficult to be defined, as was observed by Cockburn, C. J., in Sinclair v. Maritime Passengers Company, 3 E. & E. 478. He said that, in the term "accident," as used in these policies it may safely be assumed that some violence, casualty or vis major is necessarily involved. Disease produced by the action of a known natural cause cannot be considered accidental. Thus disease or death engendered by exposure to heat, cold, damp, the vicissitudes of climate or atmospheric influence, cannot properly be said to be accidental—at all events, unless the exposure is itself brought about by circumstances which may give it the character of accident. Thus by way of illustration, if, from the effects of ordinary exposure to the elements, such as is common in the course of navigation, a mariner should catch cold and die, such death would not be accidental, although if, being, obliged by shipwreck or other disaster to quit the ship and take to sea in an open boat he remained exposed to wet and cold for some time and death ensued therefrom, the death might properly be held to be the result of accident. Hence, in that case, the court held sunstroke a natural cause of death, and not an accident

Another American case brought out the difficulty about accident as distinguished from voluntary acts in a striking way. In Southard v. Railway Passengers Company, 34 Connecticut R. 574, a policy insured the holder against death or injury "by violent and accidental means within the meaning of the contract and conditions annexed." The conditions specified sundry modes of violent injury and death which were excluded from the scope of the policy. One day the plaintiff, after having insured with the defendants, made an appointment to meet a man at a railway station, and, on arriving, found the man was not there. On inquiry at the spot, he discovered that there was another station of the same name three-quarters of a mile distant, and at the last moment he jumped off the train and hurried to the next station. He made several searches and sudden movements in search of his man, and later in the day he felt a pain in one knee. He consulted a physician, and while being examined, a rupture was discovered, which was attributed to the exertion of jumping off the car and running. The rupture increased and disabled him from business, and he claimed compensation by reason of the violent and accidental means. On action being brought, the judge held that the injury suffered must be shown to be caused by means that were accidental as well as violent. The jumping from the train and the running were not necessary to the plaintiff's safety, but were voluntarily undertaken to effect an important object which required haste; but the judge held that the injury was not caused by accidental means within the meaning of the policy. If he had slipped or stumbled in course of jumping and running, the judge said it would have been an accident, but as he ran voluntarily it was not an accident, and so the plaintiff could not recover.

In Winspear v. The accident Insurance Company, 6 Q. B. D. 42, the policy provided that if the insured shall sustain any personal injury caused by accidental, external, and visible means within the intention of the policy, and the provisions and conditions thereof, and the direct effect of such injury shall occasion the death of the insured within three calendar months from the happening of the injury, then the company would be liable. The insured was one day crossing a brook, when he was seized with an epileptic fit, and while in such fit he fell down in the brook and was drowned. The deceased dit not sustain any personal injury to occasion death other than drowning. An action being brought by the executor, the plaintiff contended that the death was caused by accidental, external, and visible means. The defendants contended that death was not the direct effect of an external injury, but arose from an epileptic fit, which was a natural disease or exhaustion consequent on disease, and so not convered by the policy. The Court of Exchequer held that the death was the result of accident, even if it had originated in disease, and though that disease had been preceded by another disease. There might be several causes, but here the fit of epilepsy had nothing to do with the death from drowning. The death was from immersion in the water, and hence the case came within the words of liability.

In a recent Scotch case (1892), of Clidero v. Scottish Accident Company, 19 Court of Sessions Cases, 4th series, 355, the policy insured the deceased against death or bodily injury caused by violent, accidental, external, and

visible means. One day the plaintiff complained of feeling a pain as of something having "given way inside," when he was in the act of pulling on his stockings. He died thirty-six hours afterwards. The medical man after examining his body pronounced that the proximate cause of death was failure of the heart's action through pressure on the heart caused by distension of the colon, one of the bowels, which had become obstructed. There was no evidence of disease in any of the organs, and the medical men who examined could give no reason why the colon had become obstructed on the morning in question, except that the deceased who was a stout man must have used some extra force, when in the act of stooping down to draw on the stockings, and so twisted the colon out of position. The court held that the death had not been caused by violent, accidental, external, and visible means. The court held that the deceased voluntarily put his body in a certain position when pulling on his stocking. If, in consequence of the strained position which he voluntarily assumed, there occurred internal displacement from some disturbance of the equilibrium of the internal organs, that would not come within the scope of the policy. There was nothing violent, and so the company were not liable.

The very recent case of Hamlyn v. Crown Accidental Insurance Company (1893), 1 Q. B. 750, deals with a very nice and difficult point as to the meaning of external means. The policy insured the plaintiff against "any bodily injury caused by violent accidental, external and visible means," but there were many exceptions such as intoxication, fits, steeplechasing, or otherwise wantonly or negligently exposing himself to any unnecessary danger or arising from natural disease or weakness or exhaustion consequent upon disease. One day the plaintiff was standing in his shop when a lady customer and child entered. The child dropped a marble, and the plaintiff stooped to pick it up, when he wrenched his knee, and could not get it straight again. He was disabled for nine weeks, though he had never previously suffered from weak knee. The injury was described by the doctors as a dislocation of the internal cartilage of the knee joint. The plaintiff claimed compensation, and the question thereupon came to be whether the injury had been caused by external means. All the learning on the subject was brought to bear. The result was, that the Court of Appeal held that the injury did not come within the words of the policy. The Court said that the injury was accidental because the plaintiff did not mean to wrench his knee. Then it was fairly described as something violent. So far, there was not much difficulty, but the difficulty was to say that it was by external means. If the injury had been caused by reason of something internal it would not be within the policy. The Court held that as it was clearly not internal it must be external and, hence, would suit the words. Lindley, L. J., said that the act of reaching after the marble, and the wrench which accompanied the act were fairly classed as external means. So the company were held to be liable.

These cases abound in niceties, but by some exercise of reflection, the variety of circumstances will help one to form a guess as to what will be the end of the litigation in a given case (Justice of the Peace). 27 Irish Law Times, 441.

DETECTION OF CRIME BY PHOTOGRAPHY.

The detection of crime is a matter of fascinating interest to all but those who, unhappily for themselves, have to pay the penalty of wrong-doing. The novelist, as well as the dramatist, knows well that a crime round which a mystery hangs, or which involves the detection or pursuit of a suspected individual, is a theme which will at once secure the attention of those for whom he caters. In one respect it is a misfortune that this should be so; for there has arisen a copious supply of gutter literature, which, by its stories of wonderful escapes and lawless doings of notorious thieves and other vagabonds, arouses the emulation of youthful readers, and often, as the records of our police courts too frequently prove, tempts them to go and do likewise. On the other hand, we cannot look without admiration at such a wonderful word-picture as that given us in "Oliver Twist" where the wretched Sykes wanders with the brand of Cain upon him, haunted by the visionary form of his victim.

Both novelists and playwright haves many clever ways of tracking their puppets and hounding them to death. Some of these are hackneyed enough such as the footmark in the soil, the dirty thumb-mark on the paper, &c; and he who can conceive a new way of bringing about the inevitable detection is surely half-way toward success.

Once again has romance been beaten by reality. In this matter of the detection of criminals, the photographic camera has lately performed such novel feats that quite a fresh set of ideas is placed at the disposal of fiction-mongers. The subject recently came before the Photographic Society of Great Britain, in the form of a paper by Dr. Paul Jeserich of Berlin, a chemist, who has devoted his attention for many years to the detection of crime by scientific means, and more especially by the means of photography. This paper was illustrated by a remarkable collection of photographs, which were projected by means of an optical lantern. Some of the wonderful results obtained by this indefatigable worker we will now briefly place before our readers.

Most persons are aware that for many years it was been the practice in this and many countries to take the portraits of criminals when they become the unwilling tenants of the State, and such portraits have proved most useful in subsequent identification. There is little doubt, thinks Dr. Jeserich, that this system might with advantage be extended to the photographing of the scene of the crime; for the camera will faithfully record little details, at the time considered to be unimportant, but which may supply a valuable link in the chain of evidence later on. Thus, he refers to a case of murder, when, in the course of a terrible struggle, the contents of a room were upturned—a clock, among other things, being hurled from its place and stopped. A photograph would have shown the hour at which the deed was done—a fact of first importance, as every prisoner who has endeavoured to establish an *alibi* knows well enough. But it is in microscopical examination, and in the subsequent photographing of the object examined in much magnified form, that Dr. Jeserich has done his most noteworthy work. Such a photograph will often afford evidence of the most positive kind, which can be readily comprehended and duly appraised by judge and jury alike. Let us now see, by a few examples, how the method works out.

The first criminal case brought forward by Dr. Jeserich was one in which the liberty of a suspected man literally "hung upon a hair;" for by a single hair was he tracked. The case was one of assault, and two men were suspected of the deed. A single hair was found upon the clothing of the victim, and this hair was duly pictured in the form of a photo-micrograph. (It may be as well, perhaps, to point out here that by this term is meant the enlarged image of a microscopic object, the term "micro-photograph" being applied to those tiny specks of pictures which can only be seen when magnified in a microscope). A., one of the suspected men, had a gray beard; and a hair from his chin was photographed and compared with the first picture taken. The difference in structure, tint, and general appearance was so marked that the man was at once liberated. The hair of the other man, B., was also examined, and bore little resemblance to that found on the victim. The latter was now more carefully scrutinized, and compared with other specimens. The photograph clearly showed, for one thing, that the hair was pointed—it had never been cut. Gradually the conclusion was arrived at that it belonged to a *dog*—"an old yellow, smooth-haired, and comparatively short-haired dog." Further inquiry revealed the fact that B., owned such a dog, a fresh hair from which agreed in every detail with the original photograph, and the man was convicted. He subsequently confessed that he alone committed the crime.

In the identification of blood-stains, several difficulties crop up. As every one knows, blood when magnified is found to contain myriads of little globules, or corpuscles, as they are commonly called. Some of these are colourless; but the others are red, and give to blood its well-known colour. The microscopist can tell whether the blood he submits to examination is that of a mammal, of a bird, or of a fish; for the corpuscles of each have distinct characteristics. But when we ask him to differentiate between the blood-corpuscles of different kinds of mammals, he is somewhat at a loss, because his only guide is that of size. Thus, the blood-corpuscles of the elephant are, as might be expected, larger than those of any of the other mammalia; but they are in other respects like those of his brother mammal, man—round in outline, and looking like so many coins carelessly thrown together. A dog or a pig possesses corpuscles of smaller size, while those of a goat are very much smaller still. Here is a case in which these differences witnessed with terrible effect against a man suspected of a serious crime. A murder had been committed, and D. was the man suspected; suspicion being strengthened by the circumstance that an axe belonging to him was found smeared with blood, which had been partly wiped off. The man denied his guilt, and accounted for the blood-stained weapon, which he declared he had not taken the trouble to wipe, by saying that he had that day killed a goat with it. The blood was examined microscopically, and the size of the corpuscles proved his statement to be false. A photo-micrograph of it, as well as one of goat's blood, was prepared for comparison by the judge and jury. An other photo-micrograph was also made from part of the blade of the axe which showed very clearly, by unmistakable streaks, that the murderer had done his best to remove the traces of his crime. It is certain that the photographs must be far more useful for purposes of detection than the original microscopic preparations from

which they are taken; for it requires a certain education of the eye to see through a microscope properly, and still more to estimate the value of the evidence it offers. It is certain, too, that counsel on either side would see through the microscope with very different eyes.

We now come to a very important section of Dr. Jeserich's work — the detection of falsification of hand-writing and figures by means of photography. Crimes of this nature are far more common than deeds of violence; and judging by the heavy punishment meted out to the offenders, in comparison to the mild sentences often passed upon men whom to call brutes would be base flattery, the law would seem to consider such sins worse than those committed against the person. However this may be, it is a most important thing that this very dangerous class of crime should be subject to ready detection. The microscope alone will not aid us much, although we can detect by its aid places in paper where erasures have been made. If any one will take the trouble to examine microscopically the paper on which these words are printed, using quite a low-power object-glass, he will note that its smooth surface altogether disappears, and that it seems to be as coarse as a blanket. This being the case, it will be readily understood that an erasure with a knife, which would be imperceptible to the unaided eye, becomes so exaggerated when viewed with the microscope that there can be no mistake about it. In examining writing by this searching aid to vision, the finest lines appear thick and coarse. It is also possible to ascertain whether an alteration has been made in a work before the ink first applied has become dry, or whether the amendment has been an afterthought. In the former case, the previously applied ink will more or less amalgamate with and run into the other, as will be clearly seen under the microscope; while in the latter case, each ink-mark will preserve its own unbroken outline. The use of this observation in cases of suspected wrong-doing is obvious. Dr. Jeserich shows two photographs which illustrate these differences. In the first, a document dated early in January is marked 1884—the 4 having been altered into a 5 as soon as written, so as to correct a mistake which most of us make a dozen times or more at the beginning of each new year. In the other picture, the date had been altered fraudulently, and long after the original words had been traced, in order to gain some unworthy advantage.

The photographic plates by which these records have been accomplished are the ordinary gelatine plates which are being used in the present day by thousands of amateur workers. By special preparation, these plates can be made to afford evidence of a far more wonderful kind, and can in certain cases be made to yield a clear image of writing which has been completely covered with fresh characters by the hand of the forger. In this way the true and the false are distinctly revealed, together with the peculiarites belonging to each, clearly defined.

The word "ordinary" has a special significance to photographers, and is used by them in contradistinction to a color-sensitive (orthochromatic) plate. This second kind of sensitive surface is of comparatively recent date, and the great advantage in its use is, that it renders colors more according to their relative brightness—just, in fact, as an engraver would express them by different depths of "tint." These plates are especially useful in photographing colored objects, such as paintings in

oil or water color. Dr. Jeserich has, however, pointed out an entirely new use for them, and has shown that they will differentiate between black inks of different composition.

The oft-quoted line, "Things are not always as they seem," is very true of what we call black ink. It is generally not black, although it assumes that appearance on paper. Taking, for experiment, the black inks made by three different manufacturers, and dropping a little of each into a test-tube half-full of water, the writer found that one was distinctly blue, another red, and the third brown. Each was an excellent writing-fluid, and looked as black as night when applied to paper. Now, Dr. Jeserich prepares his color-sensitive plates in such a way that they will reveal a difference in tone between inks of this description, while an ordinary plate is powerless to do anything of the kind. Among other examples, he shows the photograph of a certain bill of exchange, whereon the date of payment is written April. The drawer of this bill had declared that it was not payable until May; whereupon Dr. Jesserich photographed it a second time with a color sensitive plate. The new photograph gives a revelation of the true state of affairs. The word "Mai" had been altered to "April" by a little clever manipulation of the pen, and the fraud was not evident to the eye, to the microscope, or to the ordinary photographic process. But the color-sensitive film tells us that the ink with which the original word "Mai" was written was of a different black hue from that employed by the forger when he wrote over it, and partly formed out of it the word "April." The consequence is that one word is much fainter than the other, each stroke of alteration being plainly discernible, and detecting the forgery. Another case is presented where a bill already paid, let us say, in favour of one Schmidt, is again presented with the signature Fabian. Here, again, the photographic evidence shows in the most conclusive manner that the first word is still readable under the altered conditions. In this case, when the accused was told that by scientific treatment the first name had been thus revealed, he confessed to the fraud and was duly punished.

Alterations in figures have naturally come under Jeserich's observation figures being, as a rule, far more easy to tamper with than words—especially where careless writers of checks leave blank spaces in front of numerals, to tempt the skill of those whose ways are crooked. Dr. Jeserich shows a document which is drawn apparently for a sum of money represented by the figures 20,200. The amount was disputed by the payer, and hence the document was submitted to the photographic test. As a result, it was found that the original figures had been 1,200, and that the payee had altered the first figure to 0, and had placed a 2 in front of it. The result to him was four years' penal servitude and it is satisfactory to note that after sentence had been passed upon him he confessed that the photograph had revealed the truth.

Two cases in which fabrication of documents was rendered evident by the camera are of a somewhat amusing nature, although one might think it difficult to find matter for mirth in any of these mendacious doings. The citizens of Berlin had been summoned for non-payment of taxes, and had quite forgotten the day upon which the summonses were returnable—thus rendering themselves liable to increased expenses. It was a comparative

easy matter, and one which did not lie very heavily on their consciences, to alter the 24 which denoted the day of the month into 26. But that terrible photographic plate found them out; and the small fine which they hoped to evade was superseded in favor of imprisonment for the grave offence of falsifying an official document. In another case, a receipt for debts contracted up to 1881 was altered to 1884, by the simple addition of two strokes in an ink which was of a different photographic value from the ink which had been used by the author of the document.

Many cases like these, relating to falsifications of wills, postal orders, permits, and other documents, have come under the official notice of Dr. Jeserich. One of these is especially noteworthy, because the accused was made to give evidence against himself in a novel manner. He was a cattle-dealer, and had altered a permit for passing animals across the Austrian frontier at a time when the prevalence of disease necessitated a certain period of quarantine.

The photographic evidence showed that a 3 had been added to the original figures, and it was necessary to ascertain whether the prisoner had inserted this numeral. To do this, he was made to write several 3's, and these were photographed on a film of celatine. This transparent film was now placed over the impounded document, and it was found that any of the images of the newly written figures could very nicely fit over the disputed ion the paper. Such a test as this, it is obvious, is far more conclusive and satisfactory in every way than the somewhat doubtful testimony of experts in handwriting — the actual value of whose evidence was so clearly set forth during the celebrated Parnell inquiry.

It is refreshing to turn to an instance in which the photographic evidence had the effect, not of convicting a person, but of clearing him from suspicion. The dead body of a man was found near the outskirts of a wood, and appearances indicated that he had been the victim of foul play. An acquaintance of his had been arrested on suspicion, and a vulcanite match box believed to belong to the accused—an assertion which, however, he denied—seemed to strenghthen the case against him. The box was then subjected to careful examination. It was certainly the worse for wear, for its lid was covered with innumerable scratches. Amid these markings it was thought that there were traces of a name; but what the name was it was quite impossible to guess. Dr. Jeserich now took the matter in hand, and rubbed the box with a fine, impalpable powder, which insinuated itself into every crevice. He next photographed the box, while a strong side-light was thrown upon its surface, so as to show up every depression—when the name of the owner stood plainly revealed. This was not that of the prisoner, but belonged to a man who had dropped the box near the spot where it was found many weeks before the suspected crime had been committed. The accused was at once released.

In conclusion, we may quote one more case of identification, which, although it does not depend upon the camera, is full of interest, and is associated with that other wonderful instrument known as the spectroscope. Solutions of logwood, carmine, and blood have to the eye exactly the same appearance; but when the liquids are examined by the spectroscope, absorption bands are shown, which have for each liquid a characteristic form. In the case of blood, the character of the

absorption bands alters if the liquid be associated with certain gases, such as those which are given off during the combustion of carbonaceous material. Now, let us see how this knowledge was applied in a case which came under Dr. Jeserich's official scrutiny. A cottage was burned down, and the body of its owner was found in the ruins in such a charred condition that he was hardly recognizable. A relative was, in consequence of certain incriminating circumstances, suspected of having murdered the man, and then set fire to the building in order to hide every trace of his crime—thinking, no doubt, that the conflagration would be ascribed to accident. The dead body was removed, and a drop or two of blood was taken from the lungs and examined spectroscopically, with a view to finding out whether death had been caused by suffocation, or had taken place, as was believed before the house was set on fire.

The absorption spectrum was found to be that of normal blood, and the suspicion against the accused was thus strengthened. He ultimately confessed to having first committed the murder, and then set fire to the building, according to the theory adopted by the prosecution. The proverb tells us that "the way of transgressors is hard." The thanks of the law-abiding are due to Dr. Jeserich for making it harder still. (Chambers' Journal). 27 Ir. Law L. T. 305.