The Legal News.

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## LETTERS OF MARQUE.

The apprehension of a war between England and Russia has attracted some attention to the present state of the law relating to letters of marque and privateering. The question has been asked with considerable anxiety, whether, in the event of a war between these powers, the United States might not be made the base for a naval war upon English commerce, as destructive as the war made by the Alabama upon American commerce. In a letter addressed to the *Times*, "Senex" endeavours to allay any apprehension of this kind, and remarks: "In fact, no such letters of marque have been issued or accepted by neutrals in the present century. The Government of the United States was the first to condemn and repudiate the practice. In 1854 the British Government intimated to Mr. Marcy, then American Secretary of State, that it entertained the confident hope that no privateer, under Russian colours, should be equipped, or victualled, or admitted with its prizes in the ports of the United States; and also that the citizens of the United States should rigorously abstain from taking part in armaments of this nature."

Sir Samuel Baker, in a later communication, referring to the statement of "Senex," suggests that should England become involved in war with Russia, it would be desirable that a special understanding on the subject of letters of marque should be renewed with the United States.

But "Amicus," a third correspondent, points out that Sir Samuel Baker has overlooked the existence of the Washington Treaty, made between England and the United States in 1871, which covers the very point under discussion. "Before that treaty," he observes, "it would have been possible for Americans to sail with impunity from American ports and destroy English merchant ships, and the English fleet would have had the difficult task of watching the long lines of the Atlantic and Pacific coasts to prevent it. If the proceeding had excited remonstrance from England, the Washington Cabinet could only have found it necessary to cite the letters of Lord Russell to Mr. Adams, in which his lordship showed how difficult it was, under the municipal laws of a free country, to prevent Mr. Davis building privateers in the docks at Birkenhead, and how impossible it was for a free country to amend its municipal laws at the bidding of a foreign Power. It was to put an end to this that the Washington Treaty was made. That treaty was assailed by a powerful opposition in the United States. Nothing but the resolute nature of General Grant, his fixed purpose to do away with the last vestige of misunderstanding with Great Britain, and his exceptional strength at the time, new to the Presidency, and with a large majority of his party in Congress, secured the American acceptance of the treaty. The most attractive argument against the acceptance was that in the event of just such a case as is now threatened, America would lose her 'revenge.' By that treaty the two countries made themselves responsible for the escape of any unfriendly armed vessel, and for all the consequences of the escape. As it now stands, no American can sail from an American port as a Russian privateer without being regarded as a pirate. If your correspondents will study the terms of the Washington Treaty, they will find that the contingency they fear—the contingency of American-built Alabamas destroying English ships—has been provided against by rules as stringent as it is possible for diplomacy to make them. The value of that much-censured treaty will be seen, should there unhappily be war between Great Britain and Russia. All Englishmen and all Americans who value the development of Anglo-Saxon civilisation, will regard the Washington Treaty, denounced in the United States with so much vehemence by the opponents of General Grant and in Great Britain with no less vehemence by the opponents of Mr. Gladstone, as among the noblest contributions of far-seeing statesmanship towards the peace, the honour, and the security of the Anglo-Saxon world."

This is a pleasant prediction, and everybody will sincerely hope that it may be verified should England unfortunately be forced to

declare war against Russia. But certain expressions which have recently appeared in journals of both Russia and the United States show that a different anticipation is entertained in some quarters, and it is well known that in the midst of war, points of international compact are easily strained by those who are eager to escape from all restraint. A learned correspondent of the LEGAL NEWS, directing our attention to the above correspondence, remarks: "For myself, I believe that (treaties to contrary, alleged, notwithstanding) Russia might in time of war not unlawfully issue letters of marque to subjects of her own, and so set afloat from the shores of any country, *if they got chance*, ships to cruise against Russia's enemies, and that the marines and officers on board such cruisers could not be treated as pirates. But I agree that Russia could not issue such letters to all the world;" and he refers to Wheaton and the notes by Lawrence.

### *SALE OF MORTGAGED SHIP.*

The decision in the case of *Kelly & Hamilton*, 16 L. C. Jurist 320, seems to have created an impression that a mortgaged vessel could not be sold under execution. In a recent case of *D'Aoust* v. *McDonald*, and *Norris*, opposant, the Superior Court, at Montreal, maintained an opposition by a mortgagee on this ground. The opposant went to Review, and there the judgment has been reversed by a majority of the Court. The reasons of judgment, which will be found in the present issue, hold that the decision in *Kelly & Hamilton* merely went to this extent: That a Sheriff's sale does not purge a mortgage, but conveys only the defendant's rights. The Court decided, therefore, that the mortgagee had no right to stop the sale.

### *AUTHORITY OF SHIPPING AGENTS.*

A case of considerable interest to the shipping trade, *Leaf et al.* v. *The Canada Shipping Company*, was decided by the Superior Court, at Montreal, Johnson, J, on the 30th ultimo. The question was as to the liability of goods to the carriers, not for the freight thereon, but for a previous debt of the intermediate shipping agents. The carriers in this instance, the Canada Shipping Company, claimed a lien on certain goods for a debt due to them by Wingate & Johnstone, the agents through whom the goods were shipped. The bill of lading under which this extraordinary pretension was urged, stipulated that "the owners or agent of the line have a lien on these goods, not only for freight and charges herein, but for all previously unsatisfied freights and charges due to them by the shippers or consignees." The freight claimed from Leaf & Co., and paid by them under protest, was not due for goods owned or shipped by them at all, but which had been shipped by the same agents for other parties. The Court held that in the absence of specific proof of a particular mode of dealing between Leaf & Co. and the carriers, the former could not be held liable for the debt of other people under the stipulation of the bill of lading. And reference was made to Story, who, speaking of a lien for a general balance of accounts, says, "it is so little favored, as a matter of public policy, that if disputed, it must be shown to exist in the particular case, either by a general usage, or by a special agreement, or by a particular mode of dealing between the parties."

## REPORTS AND NOTES OF CASES.

### COURT OF REVIEW.

Montreal, April 5, 1878.

*Present:* TORRANCE, DORION, RAINVILLE, JJ.

D'AOUST v. MCDONALD, and NORRIS, opposant.

[From S. C. Montreal.

*Sale of Mortgaged Vessel—Rights of Mortgagee—Creditor—Privilege for Wages under C. C. 2383—"Last Voyage."*

*Held*, 1. That although C. S. C. cap. 41 was repealed by 37-38 Vict. c. 128, s. 3, (1874), a bill of sale by way of mortgage of a vessel registered under the former statute, made after the passing of the repealing Act in the form usual under the former statute, created a valid mortgage.

2. That it was not necessary to the validity of a mortgage on such vessel that she should first be re-enregistered under the Imperial Merchants' Shipping Act of 1854.

3. That the form I, given in the Merchants' Shipping Act, need not be strictly adhered to, in the case of a vessel registered under c. 41, C. S. C.

4. That the privilege accorded by C.C. 2383 for the wages of master and crew of a ship for the "last voyage," does not apply to a balance of wages for a season's continuous navigation on the St. Lawrence and Lakes, though the master and crew signed articles for the season, and were paid by the month and not by the trip.

5. That a mortgagee of a vessel cannot prevent the seizure and sale thereof by a judgment creditor, but such sale will not purge his mortgage, and will only convey to the purchaser the rights of the judgment debtor in the vessel, the mortgagee retaining his rights under his mortgage against the vessel in the hands of the purchaser.

The judgment of the majority of the Court of Review, which reversed that rendered by the Superior Court, Mackay, J., was pronounced by Dorion, J., as follows:

In August, 1874, Norris and others sold to McDonald an inland registered vessel called the "*America*" for a price said to have been paid cash, and this sale was duly registered. This vessel had been registered previous to the repeal of the chap. 41 of the Consolidated Statutes of Canada.

In September, 1874, McDonald mortgaged the "*America*" to Norris for $6,000 payable in three yearly instalments of $2,000 each. The mortgage is in the form prescribed by the Statute above referred to.

The plaintiff, who is a judgment creditor of McDonald, has caused the "*America*" to be seized in satisfaction of his judgment, and Norris has filed an opposition *afin de distraire* claiming the vessel as his own under his mortgage.

The plaintiff has contested this opposition under three grounds:—

1st. That the mortgage is worthless, not being in the form given by the Merchants' Shipping Act of 1854, which was the only law in force in the time of the making of said mortgage, the ch. 41 of the Consolidated Statutes having been repealed. (37-38 Vict. c. 128, s. 3.)

2nd. That plaintiff's claim was a privileged one which had precedence over that of the opposant.

3rd. That the opposant could not prevent the sale of the vessel, and could only come in either by opposition *afin de charge* or *afin de conserver*.

First, upon the first two grounds I am against the plaintiff. The sec. 14 of the above Act repealing ch. 41 of Consolidated Statutes expressly declares that vessels already registered need not be registered except in one particular case. And the sec. 66 of the Act of 1854 says that the mortgages shall be made in form given, or as near to it as circumstances will permit. The vessel having been registered under ch. 41 of the Consolidated Statutes, the mortgage could only be made according to the description contained in the original registration; and as to the rest of the document the forms in both Statutes are materially similar, so that the mortgage is perfectly good in my opinion.

As to the question of privilege, it is impossible to apply Art. 2383 C. C. to this case. This article applies only to the last voyage. That does not mean a master of a vessel hired by the season to navigate within the limits of our rivers or lakes, and who makes trips, *not voyages*, every day or two days, and sometimes many trips in one day. This has been decided in many cases.

But I do not consider that the question of privilege or no privilege can affect this case.

The question is whether the defendant has any interest in this vessel, and, if he has, can that interest be seized and sold by sheriff, notwithstanding the mortgages that may affect her? The only case in point decided in Lower Canada is that of *Kelly* v. *Hamilton*, 16 L. C. J., p. 320. In that case the vessel had been sold by sheriff's sale without opposition from the mortgagee. The mortgagee took a *saisie-revendication*, alleging that his mortgage was then due and payable, and claiming that the vessel be delivered to him in order that it might be sold for the payment of his mortgage, and demanding an order of the Court that such sale should take place. This *saisie-revendication* was dismissed by the Superior Court, which maintained that the sheriff's sale had purged the mortgage. The Court of Review reversed this judgment, and gave for reasons not that the sheriff's sale was invalid, but that it could not have transferred to the purchaser more rights than the mortgagor himself had in the vessel, and that the sale did not interfere with the mortgage. The Court of Appeals, three Judges against two, maintained this view of the case. But nowhere in that case is it contended that the sheriff's sale was a nullity.

Here we are asked to say that a registered vessel can never be sold by sheriff or otherwise because there is a mortgage upon her! The first question that suggests itself to one's mind is who is the proprietor? Is it the mortgagor or mortgagee? This is answered by Art. 2371 of our Code: "And the person to whom such transfer is made (mortgagee) is not deemed to be the owner of such vessel or share, except in

so far only as may be necessary for rendering the same available by sale or otherwise for the payment of the money so secured."

This article shows that the real ownership remains in the mortgagor with all its accessories, as right of possession, &c. The ownership of the mortgagee is limited to his right of having the vessel sold for the payment of the mortgage when exigible. Then if the defendant is still owner, the opposant has no right to oppose the sale. Of course that sale will not affect his mortgage, which will follow the vessel into whatever hands it may go. The purchaser will buy her subject to the mortgage, and will take the place of the mortgagor, as was done in *Kelly & Hamilton.*

I am, therefore, of opinion that the opposition was unfounded, and that the judgment should be reversed. *Kitchen & Irving*, 1 Jurist (new series), Vol. 5, p. 1, p. 119.

TORRANCE, J., dissented.

Judgment of S. C. reversed.

*R. A. Ramsay* for plaintiff.

*Trenholme & Maclaren* for opposant.

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Montreal, Dec. 1, 1877.

JOHNSON, DORION, BELANGER, JJ.

[From S. C. Montreal.

DALTON v. DORAN, and DORAN, Opposant.

*Opposition — Marginal Notes and Erasures.*

An opposition *a fin de distraire* contained a number of erasures and marginal notes which were not referred to or approved. The plaintiff moved for its rejection, citing C. C. P. 295 ; 5 L. C. R. 36. *Held*, confirming the decision of Taschereau, J., that the opposition was null by reason of the irregularities referred to.

Judgment confirmed.

*Archibald & McCormick*, for opposant.

*F. L. Sarrasin*, for plaintiff.

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## SUPERIOR COURT.

Montreal, February 12, 1878.

MACKAY, J.

DALTON v. DORAN, and DORAN, Opposant.

*Costs—Opposition.*

*Held*, that where an opposition to the sale of moveables, seized under a *fieri facias*, has been dismissed with costs, the opposant will not be permitted to make a new opposition with the same object until he has paid the costs incurred by the adverse party on the first opposition.

*Archibald & McCormick*, for opposant.

*F. L. Sarrasin*, for plaintiff.

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Montreal, April 8, 1878.

DORION, J.

FARMER v. O'NEIL.

*Award of Arbitrator—Parties not Heard.*

The defendant moved to reject the award of the Rev. Mr. Dowd, who had been appointed sole arbitrator and *amiable compositeur*, on the ground that it did not state that the parties had been heard before him, or had an opportunity allowed them to urge their respective pretensions. *Held*, that the defect was fatal, and the motion to reject the award was granted.

*Doutre & Co.*, for the plaintiff.

*Bethune & Co.*, for the defendant.

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Montreal, April 30, 1878.

JOHNSON, J.

LEAF et al. v. THE CANADA SHIPPING COMPANY.

*Bill of Lading—Lien of Carrier for previous debt of Shipping Agents.*

The carriers claimed a lien on goods for a previous debt due for freight, not by the owners of the goods shipped, but by the intermediate shipping agents for goods shipped for other parties. The bill of lading stipulated that the carriers should have a lien on the goods "for all previously unsatisfied freights and charges due to them by the shippers or consignees." *Held*, that the owners of the goods could not be held liable in the absence of specific proof of a particular mode of dealing between them and the carriers to meet the case.

JOHNSON, J., who rendered the judgment, said: This is a point of some interest to the shipping business of the port. The plaintiffs are London merchants, and in July last sold to Robert Dunn & Co., of Montreal, goods to the value of about £2,900 sterling, which were shipped in part on board the steamship Lake Megantic in the beginning of July, and the rest later in the month on board the steamship Lake Nipigon—both ships owned by defendants. Before the arrival of the goods at Montreal, R. Dunn & Co. failed, and the plaintiffs, as unpaid vendors, stopped the goods *in transitu* in the hands of the carriers. In September, after the arrival of the goods here, they paid the freight and charges to the defendants, who

however, refused to deliver the property to them without a further payment of $228.96 due for freight upon a previous shipment of goods made to the same parties, but not by the plaintiffs, who paid the sum demanded under protest, and have brought the present action to get it back. There is no question as to the right of stoppage *in transitu* under the circumstances; indeed, it is admitted, as are all the other material facts; the two most material being, first, that the goods for which previous freight was still due were not purchased from the plaintiffs, and secondly that the defendants were not aware of the fact. All the shipments were made by the agency of the same party—a firm of shipping agents at Liverpool of the name of Wingate & Johnstone. This statement of the case sufficiently discloses everything in issue, and the sole contention of the defendants is that the plaintiffs' goods, on which a lien is claimed, were subject to it in virtue of the stipulations of the bill of lading, one of which is that "the owners or agent of the line have a lien on these goods, not only for freight and charges herein, but for all previously unsatisfied freights and charges due to them by the shippers or consignees." Wingate & Johnstone are proved to be very extensive shipping agents to this country, and the bills of lading in use by the defendants are all in the same form. The object of the stipulation appears reasonable and necessary as far as the shipowners are concerned. They are, it is said, often exposed to lose their freight in these days of expeditious unloading by machinery unless they retain such a power; but the question is not as to their power to make such a stipulation with those who chose to assent to it, but whether the plaintiffs here (Leaf & Co.) are bound by a stipulation made by the intermediate agents (Messrs. Wingate & Johnstone), not coming within the immediate scope of the purpose for which they were employed. No case in point has been found, and I must decide the point upon principle. These bills of lading seem to be getting more and more stringent, and as far as people choose to submit to them the Courts have nothing to say. Story, No. 382, treating of the right of lien, says: "In regard to common carriers, they have a lien not only for the freight and charges of carrying the particular goods, but sometimes also for the general balance of accounts due to them. This general lien seems to have originated in special agreements and notices, but it has now become common. Still, however, it is so little favored, as a matter of public policy, that if disputed, it must be shown to exist in the particular case, either by a general usage, or by a special agreement, or by a particular mode of dealing between the parties." And the general principle laid down in Kay on Shipping, vol. 1, p. 326, is that "the amount of freight for which the shipowners and master may enforce their lien on goods is, generally speaking, the freight which is mentioned in the bill of lading." The stipulation here is one between the carriers and the shipper or the consignee as to previous freight that may be due by the one or the other. There is no previous freight due by Leaf, Sons & Co., who are the shippers in reality; and in the absence of specific proof of a particular mode of dealing between them and the owners of the ship, the Court cannot extend the powers of the intermediary so as to bind all the merchants of England to pay the debts of other people. The action, therefore, is maintained, and the plaintiff has judgment.

*Abbott, Tait, Wotherspoon & Abbott* for the plaintiffs.

*Lunn & Davidson* for the defendants.

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## *THE TOOLS OF THE LEGAL TRADE, AND HOW TO CHOOSE THEM.*

[Concluded from page 214.]

According to fundamental doctrine as adjudged by the courts, the reader will remember, if a contract made in a particular country, by whatever parties, is there void, it will not be deemed valid in any other country. And the reason is that, for persons to form a contract, their minds must come into accord; and it cannot be said that they do, when, by the law of the place where they are, and to which in every movement they are subject, it is declared that they do not, and that the act of apparent accord is void. This is the doctrine even as to ordinary contracts; it applies to marriage, because, though in another sense marriage is a *status*, yet the assumption of the *status* can only be by contract. In marriage, however, there are still other reasons for the doctrine. If parties,

being in state A, do what in some other states would amount to a marriage, or what would be declared such in most states, yet in state A they are deemed not married, the other states of Christendom cannot treat them as married, for reasons too obvious to need mention. Nor, though their domicile happens to be in state B, can the latter hold them to be married, notwithstanding they submitted to ceremonies adequate, had they transpired in state B, to constitute a marriage there; because, among other reasons, marriage is a thing of public and international law, and one state should not accept as a marriage what is pronounced not to be such by the rest of Christendom. If, by the law of the place where parties are, there is no way reasonably possible in which they can be married, then the supreme law of necessity, to which all other laws do always yield, steps in and permits them to marry according to the forms of their domicile; or, if, having a domicile abroad, the law of the place where they are permits them to marry in a form different from that prescribed for citizens, accepting the marriage in such form as valid—why, of course, it is valid, not only at the place of its celebration, but elsewhere. In the former instance —that is, the marriage of necessity—there is, perhaps, an exception to the general rule; in the latter, the exception is apparent, not real. Such is the doctrine of the courts, sustained by abundant adjudications.

But our author sets it down as undoubted law, though he does not claim it to have been directly adjudged, that, if the assumed marriage is not contrary to the general law of Christendom, and it accords with the law of the domicile of the parties, it is, though celebrated in a state which pronounces it void, good in the state of the domicile. Nor does he stop here; but, still unconscious of uttering anything contrary to judicial decision, he maintains that even a domicile need not be a factor in the proposition. I quote a few words: "Marriages which by our law are incestuous are not validated by being performed in another land where they would be lawful; and so the converse is true, that the marriage, in England, of a man with his deceased wife's sister [it being, by act of Parliament, absolutely void] would be recognized as valid in such of our American states as hold such a marriage to be legal." "A polygamous or incestuous marriage is internationally void, though contracted in a country where it is valid; a marriage, by consent, of two competent persons, to the exclusion of all others, is internationally valid, though void in the country where it was contracted." "Nor, although the question has never judicially arisen, is it believed that a prior marriage, by consent, of emigrants to this country, will ever be nullified by our courts if such marriage, though invalid by the *lex loci contractus*, had the constituents of a common-law marriage as hereinbefore stated. The question is, What was the law of marriage the settlers of this country brought with them?" And thus onward the jumble goes, all askew, about questions as firmly settled by decision as it is possible anything in the law can be. Among other curiosities, the cases which establish and define the real exception and the apparent one to the rule of the *lex loci contractus*, as already stated, are pressed into the service of showing that the rule itself, upon which they thus engraft the real and the apparent exception, does not exist! How can there be an exception to a rule if there is no rule? And, if the defining and limiting of an exception to a rule does not admit the existence of the rule, what does?

Still, on an examination like this, we do not proceed at once to condemn a book. We look further. But, as it is not the object of this article to conduct the reader to an opinion concerning any particular book, and as the one of which we are now speaking is, as to this article, merely imaginary, and is nameless, being introduced only as a help in explaining methods, we here leave this branch of our topic.

As partly shown already, one test, which any lawyer can apply to a book, is to take from his shelves volume after volume of the reports of his own State, turn to the cases on the subject of the book, see whether or not the author has them, and how he has treated those which he cites. Again, let it be noted whether or not the author, mistaking the points decided, has referred to cases having no relevancy to the subject of his text. This cannot be ascertained by looking from cases to the book; but, reversing the process, the person making the examination must look from the book to the cases.

Though an author is found to be incompetent

in one style of book-making, he may not be in another. There is many a man who can write an excellent digest, with no ability to produce a treatise. In like manner, one may be able to follow another author, to copy from him, to change words and the forms of citation so as seemingly to cover up a piracy, to transfer to his page the words of judges, and even to do considerable execution with the head-notes in the reports, with no capacity to lead the way through a difficult subject, or even to ascertain what is decided in a case divested of the syllabus.

Much more might be said; but these hints, as to the methods of testing a book which we are to use a tool, must suffice except as to a single enquiry. In another connection (*) I expressed some views on the question of American authors mingling English productions with their own, and publishing the whole as original. But is this a matter to be regarded in examining a book which we are to use as a tool? In theory it is plain, in advance, that an author who does not personally examine the English cases, but appropriates English works with their citations instead, can become only a sort of editor, not having acquired that knowledge of his subject which is essential to the production of a work of high value. Still, if, in fact, a work is found to be of high value it is of but little consequence to the user how it became so.

If we knew the true scientific reasons—I do not speak of laziness, or the want of time or of ability, or the thirst for pillage, but the true scientific reasons—why the making of a book by piracy is deemed, by the advocates of it, the best method, we might the better discover how it should affect the practical question now under consideration. But to whom, or to what book, shall we apply for those reasons? My own mind has been directed to this subject for nearly thirty years, while I have been reading the books of the law, and in but one place, in any book, have I seen a reason stated. It was that the English text-books contain "the settled views of the English profession;" hence, of course, they should be incorporated into the American book. It was not shown by what process it is that an English author, writing while the courts are in session, and the mass of English lawyers are engaged in their varying avocations, and there is no congress of lawyers, is able to set down in his book, not the deductions of his own individual mind, but "the settled views of the English profession." Still, as I have before shown, the author making the assertion knows better than we; therefore it is true.

Hence, in examining a book, it is of the highest importance to ascertain whether or not, or to what extent, it is pirated—the pirated parts being of more than the average value. They are the ripe conclusions, not of a single mind, but of an entire profession. Therefore, of course, those parts will be found, in a book we are examining, carefully distinguished from what is less valuable by quotation-marks, and the notes will contain exact references to the English or other sources. But, no; observation shows that those American books which are made, in part, by pirating the English do not do this. As said by the present writer, in the article already alluded to, "It is done in different ways. Sometimes the author makes a series of rather indistinct acknowledgments in his notes, carefully excluding from his text marks of quotation or other intimation that the matter is not original; sometimes he covers the thing by an indistinct expression of thankfulness in his preface; sometimes the coveted morsel is simply taken and swallowed and nothing is said; at other times one can discover elaborate efforts at concealment, as if from consciousness of theft." Now, I submit that here is a great defect, not in one book, but in all of this class. Matter of high authority is mingled with what is common, leaving it doubtful what weight is to be given to anything. The tool becomes of uneven temper, and uncertain in the work it performs. Even, I submit, if the book pirated from is American, the like criticism also applies.

Why, then, should not marks of quotation be used, and exact references given in the notes? A printer buys his type by the pound, and a font with an extra proportion of these marks costs no more per pound than one with a less proportion. The workmen set the type by measure, and by measure the publisher pays for the work. Quotation-marks, therefore, do not increase the cost of a book. It is vain to say

(*) 63 Law Times (London), 106; reprinted 5 C. L. J. 191.

that there are old standard law-books in which they are not employed. King James' translation of the Bible is standard, and in it there are no marks of quotation. So was the English language properly written then; but, at the present day, the method is different. Now (I quote from approved authority), "a word, phrase, or passage, belonging to another, and introduced into one's own composition, is distinguished by marks of quotation." * When, therefore, a writer in these days employs language in what purports to be his own composition, with no distinguishing sign, he affirms it to be his own. The instances in which the sign may be other than the marks of quotation are carefully set down in the authority just cited; namely, when words from a dead or foreign language are put in italics, and sometimes when poetry, or even prose, is quoted in distinct and separate lines, and in smaller type. Would it not be interesting if, reading on, we should find that, where matter of higher authority is introduced by an author into his own, and a special value is attached to it, he should print it precisely as if it were his own, carefully avoiding all distinguishing signs?

But the distinction between open quotation and piracy is very hard to understand; so, let me endeavor to explain it further. An excellent writer, in a recent number of this Review, says: "Bishop seems to think a law-writer should be original." And for this he refers to passages in which Mr. Bishop speaks of the importance, among other things, of quotation-marks.† "The writer of this article, however, being ignorant of any real originality in the modern world of thought, and having no respect for that puerile originality which consists in new expressions of old truths, insists upon the authority of Coke, and begs leave to give notice that (fearless of actions of trover and conversion) he means to appropriate the truth of the law whenever and wherever so fortunate as to find it." I can speak for Mr. Bishop so far as to say that he does not deem the action "of trover and conversion" the appropriate one for a literary piracy, or regard the seeking of truth wherever one can find it a just foundation for any action. But, if an author professes to write in the English language of the present age, and he publishes another's thoughts and words as his own, in a form which is the exact equivalent of saying in terms, "They are mine"—is this a method of seeking truth? No considerate person ever maintained that one should write a law book for the sake of displaying originality. If an author proceeds exactly on the plan stated in the passage I have just quoted, but minds his foot-references and quotation-marks, no one will be so slow to throw a stone at him as the writer of the present article. Should the whole book turn out to be quoted, all the honester. Let an author avoid "puerile originality;" that is right. If he is "ignorant of any real originality," he may not be ignorant of other important things, and his book may be a good one.

Thus I have written, avoiding all mention of particular books or individual instances, but endeavoring to impress the reader with what I deem to be truth of the very highest importance. That the subject is of the first consequence to practising lawyers, no one will deny. Even the travelling tinker aims to select and take with him suitable tools. And, keeping scientific considerations all out of view, if there is any art or trade which more than any other requires good tools, it is legal practice.

In our agricultural journals, in our journals devoted to every other calling but the legal, there are frequent and earnest discussions regarding tools. With how much more appropriateness, therefore, should there be such discussions in our legal journals!

Let us hope that this article will not be the last on the subject; and that other writers, especially those who dissent from what is here set down, will take up the subject and illumine it more effectually than I have done. It is a subject pertaining to the every-day labors of every lawyer in the land. And, to repeat, no artisan is so absolutely powerless without his tools as the practising lawyer. With no other artisan does the subject of tools go so effectually both to the pocket and the fame.—*Southern Law Review.*

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* Wilson on Punctuation, 228.

† Referring to Bishop, First Book, secs. 263-267, 307.

### *THE SUPREME COURT.*

The following is a report, from the *Hansard*, of the debate in Committee of Supply of the House of Commons, on the appointments of Registrar, précis writer, &c., of the Supreme Court:—

25. Précis Writer of the Supreme Court of Canada and the Exchequer Court.$1,900

Mr. Mitchell said the Government had taken credit for having passed the Supreme Court Bill, and, to his mind, it was a very expensive morsel. And next summer they would have an immense number of election cases coming up to be tried, the result of the corruption on the other side; and, when they knew that some of these law suits cost $10,000, he trembled at the expenses to that Department.

Mr. Mackenzie: The Court will make a great many of you tremble.

Mr. Mitchell said it would make a great many tremble, and it would prevent many gentlemen from coming forward to contest the constituencies, because they knew the dreadful cost of such suits.

Vote *agreed to.*

26. Clerk of the Supreme Court of Canada and the Exchequer Court.....$475

27. Senior Messenger of the Supreme Court of Canada and the Exchequer Court .....$500

Mr. Mitchell said he thought there was some inconsistency in the senior messenger being paid a higher salary than was paid to the clerk. He did think that the clerk of the highest Court in the land ought not to receive $25 a year less than the messenger in the same Court.

Mr. Laflamme said the clerk was a junior clerk, and entered this office at the salary fixed by the Statute, and had received the statutory increase. The messenger was a senior officer who had been transferred from the Department of Justice. There were three messengers in this Department during the reign of his right hon. friend (Sir John A. Macdonald). It was also necessary to have a crier or tipstaff to the Court, and the senior messenger had been appointed to this office, so that he filled both offices without receiving any additional salary beyond the statutory increase.

Mr. Mitchell: Still the clerk of this Court, a high functionary, gets $25 less than the tipstaff who stands at the door.

Mr. Laflamme: That is not the only clerk; the clerk has $2,600 per annum.

Mr. Mitchell: I thought he was the only clerk. I take back what I said; I had no idea there was such an extravagant salary as $2,600 paid; I do not see it in this estimate.

Sir John A. Macdonald said he considered the expenditure of the Court was very large. The salary of $2,600 for the Registrar was very large, considering that the Court did not sit often or long.

Mr. Mitchell: And does not decide very quickly.

Sir John A. Macdonald: The Registrar, I fancy, is reporter as well.

Mr. Laflamme said the précis writer was the official reporter, but the Registrar was responsible for the publication of the reports.

Sir John A. Macdonald: Then the précis writer gets $1,900 as reporter to the Court?

Mr. Laflamme said the précis writer also acted as registrar in the absence of the present registrar. The précis writer was a most important appointment, and he was sure that the salary was not more than he was entitled to.

Sir John A. Macdonald said it appeared to him that the clerk was rather a supernumerary.

Mr. Blake said he was responsible for proposing this officer. The two high officials, the registrar and précis writer, were appointed by the Statute, which also provided for "the appointment of such other officers as may be required." For some time they proceeded with those two officers, but it was afterwards found necessary to appoint one clerk, and this clerk was appointed in the lowest grade in the public service. The hon. gentleman (Sir John A. Macdonald) had the opportunity of objecting at the time the appointment was made, when the nature of it was fully explained to Parliament. He admitted there was one objection taken when this vote was proposed, by his friend the hon. member for Frontenac, who exclaimed loudly against the smallness of the sum paid, because he said it was impossible to secure an efficient man at a small price.

Sir John A. Macdonald: Provided he was wanted.

Mr. Blake said this officer had not been

appointed until it was found absolutely necessary to have him. There were filings going on constantly in that Court, which the registrar could not be expected to attend to, consistent with his other duties. Causes involving no less than four million dollars had been instituted in this Court, which had been given the petitionary right of jurisdiction, during the past twelve months. There was no Court with which he was acquainted, whose staff, considering the number of duties it was called on to perform, was so small in numbers and low in rates. The Court, in its functions and by its constitution, had to deal with causes coming from the Province of Quebec, as well as the other Provinces, and it was necessary to provide an officer who should be a French advocate as well as one who should be an English barrister. In the registrar they had been fortunate enough to secure a gentleman who was a French advocate as well as an English barrister, Mr. Cassels. The time to object to these officers and the salary was when the Act was passed and the salary proposed.

SIR JOHN A. MACDONALD: Is there not a charge for reports? Are these charges refunded?

MR. BLAKE said there was nothing to refund out of the cost of production. Nothing went to the officers.

MR. KIRKPATRICK said there was great delay in getting out the reports; a year elapsed after the decision was given before it was published, and the profession had to wait for these reports to find out the decision of the Supreme Court. There was also another important grievance: there was no translation given in these reports. Some of the decisions in the Province of Ontario were published in French, and some in the Province of Quebec, in English.

MR. BLAKE said he quite concurred in the opinion of the hon. member that there was delay in bringing out the reports, but it was a new enterprise; the Queen's printer was not accustomed to law reports, and there were many obstacles in the commencement which would not continue subsequently. The last number was now in press, which would complete the first volume of five hundred pages.

MR. LAFLAMME said it was impossible the reports could be translated. The language of the Court was English, the judgments English, and the reports were English, particularly the cases in Ontario, which were altogether English. In Lower Canada there was no difficulty on this score, as every barrister there knew both languages. It was only the judgments of some of the judges who gave their judgments in French, which were published in that language.

MR. MITCHELL said the statement of the hon. member for South Bruce, that objection should have been taken when the officers were appointed, was not a correct one. The Government had come down, backed by a majority of seventy to eighty, with a scheme for the Supreme Court and with a staff of officers to carry out the details, and the Opposition had to look on and submit. It was not necessary, because they had voted last year in ignorance of the necessities of this Court and upon the responsibilities of hon. gentlemen opposite, that the same vote should be repeated this year, when it was found the staff was larger than was required. The Supreme Court was a very expensive luxury, but if it did its work effectually it would be borne with. He would cite the case of his hon. friend from Charlevoix which was expedited very quickly and at an enormous expense; while in the case of the hon. the Minister of Justice, which had been before that Court nearly a year, no decision had been given. If his election should be annulled, the decision would have no effect, as there would be a dissolution of Parliament at the end of this Session, and the hon. gentleman would have, in the meantime, unjustly retained his seat.

MR. BLAKE said the case was only argued in the end of January last, so that it could hardly be fairly said to have been twelve months before the Court.

MR. MITCHELL said when the argument took place was not the first time the case came before the Court. It had been generally given out that the judgment would have been pronounced in the month of January, and it had not yet been pronounced.

MR. BLAKE said that surely the hon. gentleman, as an independent member, did not desire the Government to approach the Supreme Court and invite them to expedite their decisions or the reverse. The common sense of the House would condemn the proposal of the hon. member.

MR. MITCHELL said that was not the point he

had made. He held that it was the duty of the Government, under the exceptional circumstances, to have called the attention of Parliament, the masters of the Supreme Court, to the fact of the delay.

Mr. Plumb said that the election law was claimed by the Government as one of its great reforms, entirely forgetting the fact that there was an Election Bill passed in 1873. By a clause inserted in the law, a member having taken his seat during the sitting of Parliament, could not be unseated until the close of the Session, whatever were the circumstances under which he had obtained it.

Vote agreed to.

28. Second Messenger of the Supreme Court of Canada and the Exchequer Court ..... $360

29. Contingencies and Disbursements, including printing, binding and distributing Reports, Judges' travelling expenses; also salaries of officers (Sheriff, Usher, &c.,) in the Supreme and Exchequer Courts of Canada, and $150 for books for Judges ..... $7,000

In reply to Mr. Mitchell,

Mr. Laflamme said the total expense of the Supreme Court last year was under $52,000.

Vote agreed to.

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## *NEW PUBLICATIONS.*

Morgan's Legal Maxims: Robert Clark & Co., Publishers, Cincinnati, O.

In this work Mr. Morgan, author of "The Law of Literature," has brought together in a volume of convenient size 2,882 maxims, culled from a great variety of legal works. The maxims are given in English, with the original text below, and the whole compilation is indexed so as to facilitate reference. The work is very neatly printed and bound, and will no doubt prove acceptable to the practitioner as well as to the student.

The Scholastic News: Montreal, printed by T. & R. White.

This is a monthly journal, devoted, as the title indicates, chiefly to educational subjects. The contents are useful and interesting, and a journal of this character should find a wide constituency. The type and paper are alike excellent, and place the new journal in these respects on a par with more pretentious productions.

## *DIGEST OF ENGLISH DECISIONS.*

The following is a digest of the decisions which are of interest to the majority of our readers, reported in the English Law Reports for November and December, 1877, and January, 1878:—

*Adjacent Support.*—Between the coal mines of the plaintiff and those of the defendant there was an intermediate piece of surface land, from under which the coal had long before been extracted by a third party. In the ordinary working of his mine, defendant had dug near the intermediate piece of land, and the latter had given way, thus causing a portion of the surface over plaintiff's mine to subside. *Held*, that the plaintiff was entitled to no relief.—*Corporation of Birmingham* v. *Allen*, 6 Ch. D. 284.

See *Injunction*.

*Administrator*—See *Executor and Administrator*.

*Agreement*—See *Lease*.

*Ancient Lights.*—Where an old building having ancient lights was demolished and a new one put in its place, and a skylight put into the new one, substantially where a dormer window in the old one was situated, *held*, under the circumstances, that by 2 & 3 Will. IV. c. 71, § 3, the right to the light was not lost. But where the new building on the servient estate which obstructed the skylight was nearly completed, damages were allowed and an injunction refused.—*National Provincial Plate Glass Ins. Co.* v. *Prudential Ins. Co.*, 6 Ch. D. 757.

*Attorney and Client.*—1. The rule that a solicitor cannot take a gift from a client while the professional relation exists, applied with rigor.—*Morgan* v. *Minett*, 6 Ch. D. 638.

2. A solicitor who acts for both mortgagor and mortgagee cannot claim a lien upon the title deeds for costs due him from the mortgagor, so as to entitle him to withhold the deeds from the mortgagee until those costs are paid, although the mortgagee knew that he had such lien as against the mortgagor.—*In re Snell (a solicitor)*, 6 Ch. D. 105.

3. A client paid her solicitor his bill, and gave her business to other solicitors, who also received the deeds and other documents relating thereto. *Held*, that the first solicitor could retain the client's letters to him relating to the business, and also the press copies of his to her.—*In re Wheatcroft*, 6 Ch. D. 97.

See *Company*, 6.

*Bankruptcy.*—1. A gas-light company does not come within the words "landlord or other person to whom any rent is due from the bankrupt," in § 34 of the Bankruptcy Act, 1869, although the sum due the company for gas is, in one section of the Gas Works Clauses Act, spoken of as rent, and the special act under which the gas company was organized gives it power to levy by distress for such sums.—*Ex parte Hill. In re Roberts*, 6 Ch. D. 63.

2. Certain traders being in contemplation of bankruptcy, and wishing to raise money, arranged with one S. to draw bills on them, which they accepted. S. then sold the bills, amounting to £1,717, to Jones, the appellant, for £200. Jones was a discounter of bills, but never had bought any before this transaction. He had refused to discount these bills. He supposed the acceptors could not pay in full, and might, by inquiry, have found out their true condition. He knew that they had assets; and on their going, three days afterwards, into bankruptcy, he claimed to prove for the full face of the bills. The County Court in bankruptcy restricted the proof to the £200 paid for the bills; the Chief Judge reversed this, and allowed proof on the face of them; the Court of Appeal reversed the Chief Judge's order; and, on appeal to the House of Lords, *held*, that proof for £200 only could be allowed, as Jones must be held to have had knowledge of the fraud on the part of the maker and acceptors of the bills.—*Jones* v. *Gordon*, 2 App. Cas. 616; s. c. 1 Ch. D. 137.

3. In a marriage settlement, M., the intending husband, assigned a policy on his life, for the benefit of his wife, to the trustees, and covenanted to pay the premiums. At the same time, a fund was set apart, out of which the premiums were to be paid, in case M. failed to pay them. May 8, 1871, M. went into bankruptcy, and from that time the premiums were paid out of the fund. May 15, 1874, the trustees of the settlement had the value of M.'s covenant to pay the premiums estimated, and proved the amount, £2,052 8*s*., as a claim against his estate. April 13, 1876, a dividend of 10*s*. was declared on M.'s estate; but before the receipt for this percentage on the above £2,052 8*s*. was signed by the trustees of the settlement, M. died. The amount paid for premiums out of the wife's fund had been £766 5*s*. *Held*, that the trustees of the settlement should receive only £766 5*s*. actually paid out in lieu of the dividend on £2,052 8*s*. already declared.—*In re Miller. Ex parte Wardley*, 6 Ch. D. 790.

*Bequest.*—A testatrix gave to a charity all her household furniture, pictures, goods, chattels, trinkets, jewelry, and effects which might be in her dwelling-house, and also all her ready money, money at the bankers, and money in the public funds of Great Britain, and also all other of her personal estate and effects which she could by law bequeath to such an institution. Her personal property amounted to about £100,000, and her real to about £50,000. The will contained nothing but this bequest, and the appointment of executors. *Held*, that the bequest to the charity was specific, and that the debts, expenses, and costs must be paid first out of the personal estate undisposed of, then out of the real estate; but that the heirs having no interest in the probate of the will, the real estate was not in any event liable for the probate duty which must come out of the charitable bequest. The unpaid premium on a long lease, which the testatrix had sold some time before her death, was declared realty.—*Shepheard* v. *Beetham*, 6 Ch. D. 597.

*Bill of Lading.*—See *Mortgage*.

*Bills and Notes.*—See *Bankruptcy*, 2; *Husband and Wife*, 1.

*Burden of Proof.*—See *Presumption*.

*Charity.*—See *Bequest*.

*Charter-Party.*—By charter-party, the vessel V. was let by the defendant to the plaintiffs for six months, to "be placed under the direction of the charterers," "for the sole use of the charterers," "commencing from the vessel's being ready . . . to be at the disposal of the charterers." "The charterers to have the whole reach of the vessel's holds . . . including passengers' accommodation, if any, sufficient room being reserved to the owners for the crew," &c.; the crew to "render all customary assistance in loading and discharging." "The captain to sign all bills of lading . . . to follow the instructions of the charterers . . . as regards loading," &c. The owners hired the master and men, and paid their wages. "The captain to furnish the charterers . . . when required, a true daily copy of the log," &c. While at sea, under this charter-party, the V. went to pieces, and the cargo was lost, through the negligence of the master and crew; and the question was, whether the master and crew were the servants of the owners or of the charterers. *Held*, that they were the servants of the owners, and the latter must pay for damage resulting from their negligence.—*The Omoa & Cleland Coal & Iron Co.* v. *Huntley*, 2 C. P. D. 464.

[To be continued.]