THE

LEGAL NEWS.

VOL. XIX. APRIL 1, 1896. No. 7.

CURRENT TOPICS AND CASES.

The latest decision on the subject of contracts by way of gaming or wagering is that given by the House of Lords in *Universal Stock Exchange* v. *Strachan*, on March 20. It was there held that securities deposited by way of "cover" with stock dealers in gaming transactions for "differences" in stocks and shares, are not "deposited to abide the event on which any wager shall have been made" within the meaning of the Imperial Gaming Act, 1845, s. 18, and may be recovered by the depositor. After hearing the appellants' counsel, their lordships affirmed the decision of the Court of Appeal, without calling upon counsel for the respondent

---

While the blind and crippled appeal to the sympathies of all, and are entitled to the utmost indulgence compatible with public decency, toleration may be carried too far. The Hon. Mr. Justice Baby, in his charge to the Grand Jury at the opening of the Criminal Term in Montreal, on March 1st, very properly directed attention to the excessive growth of mendicancy on the public streets, and the monstrous exposure of cripples and deformed persons at all the corners of our public squares

and busiest thoroughfares. This is an evil which seems to have suddenly sprung into existence, and the competition for alms is growing in intensity. Not content with a silent appeal to the charitably disposed, each of these beggars is provided with a metal pot, in which pennies are rattled continuously with a vigour and persistence which indicate that physical energy is certainly not deficient in the suppliant. The noise is audible at a distance of several hundred yards, and in many offices three of these "beggars aggressive" may be heard resolutely at work throughout the entire day. It would be interesting to know who is responsible for the existence of this nuisance. It is not only a serious interruption to business, but it is utterly repulsive to visitors and to all who must use the streets, and, as we conceive, a serious breach of law and good order and government. We trust that the remarks of Mr. Justice Baby will not pass unheeded by those who are responsible for the present state of things.

In view of the fact that in Montreal we frequently have four or five courts (including those which sit at the same time in more than one division), in session at once, and that ten to twelve superior judges are pretty constantly engaged in the work of the Superior Court, it presents a striking contrast to learn that in Liverpool and Manchester there are not even now continuous law sittings, in spite of great persistence in urging the demand for a resident judge of the High Court. Numerous cases have to be tried in London, and at great expense, where the witnesses are numerous, and other business has to await the convenience of judges travelling on circuit. The request for a resident judge would seem to be reasonable, even if the change be attended by some disadvantages.

Lord Russell, the Lord Chief Justice of England, has

contributed to a magazine an article on "The Bar as a Profession." Although the subject is somewhat trite, people naturally look with interest to see what an ex-member as eminent and eloquent as Lord Russell, has to say on it. The Chief Justice holds that there are four great qualities essential to success at the bar. The first is love of the profession for its own sake; secondly, physical health to endure its trials; thirdly, clear-headed common sense; and lastly, the ability to wait. The first three qualities are equally essential in almost every avocation, and even the last is one much to be desired, and one which should not be conspicuously absent, in any toiler for success. The Chief Justice, as an incentive to patience, mentions that when he was a struggling junior of four years' standing on the Northern Circuit, he used to dine after a frugal fashion with two young members of the circuit who were beginning to despair of attaining success in England. One of these young men is now Speaker of the House of Commons, the other is Lord Herschell, while the narrator is the Lord Chief Justice of England.

SUPREME COURT OF CANADA.

OTTAWA, 18 Feb., 1896.

DRYSDALE v. DUGAS.

Quebec]

Nuisance—Livery stable—Offensive odors from—Noise of horses—Damages.

An action for damages was brought by a householder against the proprietor of a livery stable adjoining his premises, which, it was claimed, constituted a nuisance from the offensive odors proceeding from it, and from the noise made by the horses at night. The pleas to the action were that the stable was a necessity to the residents of the place, and that it was built according to the most improved modern methods of drainage and ventilation. The trial judge found that the odors and noise were a source of injury, and gave judgment for the householder with damages for past damage, and a separate amount for

damages in the future, unless the cause of offence were removed at a certain time. The Court of Queen's Bench affirmed the first holding, but reversed that as to future damages.

Held, Gwynne, J., dissenting, that if the stable was offensive to the plaintiff he could recover damages for the inconvenience caused thereby, and the two courts having found that the cause of offence existed their judgment should be affirmed.

Appeal dismissed with costs.

Greenshields, *Q.C.*, for the appellant.

Robidoux, *Q.C.*, for the respondent.

---

22 Feb., 1896.

Exchequer Court.]

COOMBS v. THE QUEEN.

Railway company—Purchase of ticket—Rights of purchaser—Continuous journey—Right to stop over—Conditions on ticket.

C. saw an advertisement by the Intercolonial Railway Company that on March 30, 31, and April 1, excursion tickets would be issued at one fare, not good if used after April 1st. He purchased a ticket on March 31, his attention not being drawn to conditions on the face of it, "good on date of issue only," and "no stop-over allowed," and he did not read them. He started on his journey on March 31st, and stopped over night at a place short of his destination, and took a train for the rest of the trip the next morning, when the conductor refused to accept the ticket he had and ejected him from the car as he refused to pay the fare again. He filed a petition of right to recover damages from the Crown for being so ejected.

Held, affirming the decision of the Exchequer Court (4 Ex. C. R. 321), that if the ticket had contained no conditions it would only have entitled C. to a continuous journey, and not have given him the right to stop over at any intermediate station, and he had still less right to do so when he had express notice that he could only use the ticket on the day it was issued and would not be allowed to stop over.

Appeal dismissed with costs.

Orde, for the appellant.

Newcombe, *Q.C.*, Deputy Minister of Justice, for the respondent.

18 Feb., 1896.

New Brunswick.]

CITY OF ST. JOHN V. CAMPBELL.

Municipal corporation—Repair of streets—Non-feasance—Elevation of sidewalk.

In the city of St. John, N.B., a sidewalk on one of the streets adjoining private property had been covered with asphalt, whereby it was raised considerably above the level of the private way. After a time water dropping from a house on the adjoining property wore away a portion of the sidewalk, and C. in stepping on it from the private property fell and was injured, and brought an action against the city for damages. At the trial of the action she was nonsuited, but the nonsuit was set aside by the full court and a new trial ordered.

Held, reversing the judgment of the Supreme Court of New Brunswick (33 N. B. Rep. 131), that if the accident occurred from the level of the sidewalk being raised above that of the private way it was not misfeasance; and if from the street being out of repair it was mere negligence of non-feasance; and in neither case was the city liable. *Municipality of Pictou* v. *Geldert*, (1893) (A. C. 524) and *Municipal Council of Sydney* v. *Bourke* (1893, A. C. 433) followed.

Appeal allowed with costs.

Pugsley, *Q.C.*, *& Baxter*, for the appellants.

Currey, *Q.C.*, for the respondent.

---

18 Feb., 1896.

New Brunswick.]

ST. PAUL FIRE & MARINE INSURANCE CO. V. TROOP.

Marine insurance—Voyage policy—"At and from" a port—Construction of policy—Usage.

A ship was insured for a voyage "at and from Sydney to St. John, N.B., there and thence" etc. She went to Sydney for orders, and without entering within the limits of the port as defined by statute for fiscal purposes, brought up at or near the mouth of the harbour, and having received her orders by signal attempted to put about for St. John, but missed stays and was wrecked. In an action on the policy evidence was given establishing that Sydney was well known as a port of call, that ships

going there for orders never entered the harbour, and that the insured vessel was within the port according to a Royal Surveyor's chart furnished to navigators.

Held, affirming the decision of the Supreme Court of New Brunswick (33 N. B. Rep. 105), that the words "at and from Sydney" meant at and from the first arrival of the ship; that she was at Sydney within the terms of the policy; and that the policy had attached when she attempted to put about for St. John.

Appeal dismissed with costs.

Currey, Q.C., for the appellant.

Pugsley, Q.C., for the respondents.

New Brunswick.] 18 Feb., 1896.

MOWAT V. THE BOSTON MARINE INSURANCE CO.

Marine insurance—Goods shipped and insured in bulk—Loss of portion—Total or partial loss—Contract of insurance—Construction.

M. shipped on a schooner a cargo of railway ties for a voyage from Gaspé to Boston, and a policy of insurance on the cargo provided that "the insurers shall not be liable for any claim for damage on......lumber......but liable for a total loss of a part if amounting to five per cent on the whole aggregate value of such articles." A certificate given by the agents of the insurers when the insurance was effected had on the margin the following memorandum in red ink: "Free from partial loss unless caused by stranding, sinking, burning, or collision with another vessel and amounting to ten per cent." On the voyage a part of the cargo was swept off the vessel during a storm, the value of which M. claimed under the policy.

Held, reversing the decision of the Supreme Court of New Brunswick (33 N. B. Rep. 109), Taschereau, J., dissenting, that M. was entitled to recover; that though by the law of insurance the loss would only have been partial, the insurers, by the policy, had agreed to treat it as a total loss; and that the memorandum on the certificate did not alter the terms of the policy, the words "free from partial loss" referring not to a partial loss in the abstract, applicable to a policy in the ordinary form, but to such a loss according to the contract embodied in the policy.

Held, further, that the policy, certificates and memorandum together constituted the contract and must be so construed as to avoid any repugnancy between their provisions, and any ambiguity construed against the insurers from whom all these instruments emanated.

Appeal allowed with costs.

Palmer, Q.C., for the appellant.
Weldon, Q.C., for the respondent.

---

18 Feb., 1896.

NEELON v. CITY OF TORONTO AND LENNOX.

Ontario.]

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

A contract for the construction of a public work contained the following clause: "In case the works are not carried on with such expedition and with such materials and workmanship as the architect or clerk of the works may deem proper, the architect shall be at liberty to give the contractors ten days' notice in writing to supply such additional force or material as in the opinion of the said architect is necessary, and if the contractors fail to supply the same, it shall then be lawful for the said architect to dismiss the said contractors, and to employ other persons to finish the work." The contract also provided that "the general conditions are made part of this contract (except so far as inconsistent herewith), in which case the terms of this contract shall govern." The first clause in the "general conditions" was as follows: "In case the works from the want of sufficient or proper workmen or materials are not proceeding with all the necessary despatch, then the architect may give ten days' notice to do what is necessary, and upon the contractor's failure to do so, the architect shall have the power at his discretion (with the consent in writing of the Court House Committee, or Commission as the case may be), without process or suit at law, to take the work or any part thereof mentioned in such notice, out of the hands of the contractor."

Held (Sedgewick and Girouard, JJ., dissenting), that this last clause was inconsistent with the above clause of the contract, and

that the latter must govern. The architect therefore had power to dismiss the contractor without the consent in writing of the Committee.

At the trial, the plaintiff tendered evidence to show that the architect had acted maliciously in the rejection of materials, but the trial judge required proof to be first adduced tending to show that the materials had been wrongfully rejected, reserving until that fact should be established the consideration of the question whether there was malice on the part of the architect. Upon this ruling plaintiff declined to offer any further evidence, and thereupon judgment was entered for defendants.

Held, that this ruling did not constitute a rejection of evidence, but was merely a direction as to the marshalling of evidence, and within the discretion of the judge.

Appeal dismissed with costs.

S. H. Blake, Q. C., & *W. Cassels, Q. C.*, for appellant.

McCarthy, Q. C., & *Fullerton, Q. C.*, for respondent, City of Toronto.

Nesbitt and *Grier* for respondent Lennox.

Ontario.] 18 Feb., 1896.

ISBESTER v. RAY.

Partnership—Note made by firm—Representation as to members—Judgment against firm—Action on against reputed partner—Agreement as to liability.

An action was brought against the firm of M. I. & Co., as makers, and against J. I., as indorser, of a promissory note. Judgment went by default against the firm, but the action failed as to J. I., it being held that an agreement established on the trial by which the holders of the note admitted that it was indorsed for their accommodation and agreed that the indorsee was not to be liable, was a conclusive answer. An action was afterwards brought on the judgment against the firm to recover from J. I. as a member thereof, and also on several promissory notes made by the said M. I. & Co.

Held, affirming the decision of the Court of Appeal (22 Ont. App. R. 12) which reversed the judgment of the Divisional Court (24 O. R. 497) as to the action on the judgment, but affirmed it on the other claim, that J. I. having succeeded in the

former action on the ground that it had been agreed that he was not to be liable in any way on the note, there in suit, the judgment on such former action was a conclusive answer to the present.

Held, further, that as to the other notes sued on, J. I. having, when the notes were made, held himself out to the payees as a member of the firm of M. I. & Co., (the makers), he was liable as a maker though he might not, as a matter of fact, have been a partner at the time.

Appeal dismissed with costs.

McCarthy, *Q.C.*, *& Code*, for the appellant.

Aylesworth, *Q.C.*, *& Cameron*, for the respondents.

Ontario.]

CANADIAN PACIFIC RY. CO. v. TOWNSHIP OF CHATHAM.

Municipal by-law—Special assessments—Drainage powers of council as to additional necessary works—Ultra vires resolutions—Executed contract.

After the construction of certain drainage works under the provisions of the Municipal Act R. S. O. ch. 184, ss. 569, 576, which benefited lands in an adjoining township, it was found necessary to construct a culvert under the line of the Canadian Pacific Railway in order to carry off the water brought down by the drain and prevent damages by the flooding of adjacent lands. By contract under seal entered into by plaintiffs and defendants, the plaintiff agreed to construct and did construct the needful culvert at a cost of over $200. On its completion the works were accepted and used by the municipal corporation, certain officials of the corporation having assured the plaintiffs that should the funds provided under the original by-law for the construction of the drainage works prove insufficient, the necessary amendments would be made under sec. 573 of the Municipal Act, and the additional sum so required obtained. The municipal council passed resolutions approving of the work and paid sums on account, but did not pass a new by-law or make any report or fresh assessment respecting the contract with the plaintiffs or the works executed thereunder.

Held, reversing the decision of the Court of Appeal (22 Ont. App. R. 330) and of the Divisional Court (25 O. R. 465) Taschereau, J., dissenting, that as the works done by the plain-

tiffs under the agreement were absolutely necessary to the efficient completion of the drainage works contemplated by the original by-law, the case came within the provisions of the 573rd section of the Municipal Act, R. S. O. ch. 184, and the contract under which it had been executed was binding upon the defendants.

Held, by Taschereau, J., dissenting, that the plaintiffs were guilty of laches in neglecting to ascertain whether the corporation was acting *intra vires* before entering upon their contract, and that it would be contrary to the policy of the statute to grant them a recovery which would be so largely in excess of the expenditure contemplated by the original by-law.

Appeal dismissed with costs.

Moss, Q.C., & MacMurchie, for appellants.
Wilson, Q.C., & Pegley, Q.C., for respondents.

---

18 Feb., 1896.

Nova Scotia.]

CLARK v. PHINNEY.

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

Judgment creditors of devisees under a will, presented a petition to the Probate Court to revoke a license granted to the executor to sell the real estate of the testator for payment of his debts. The petition was refused by the Probate Court, and the judgment refusing it was affirmed by the Supreme Court of Nova Scotia. The executor sold the land under the license and a part of the purchase money was paid to the judgment creditors who, still claiming the license to be null, issued execution against the lands so sold, and the purchaser from the executor brought an action to establish the title thereto.

Held, affirming the decision of the Supreme Court of Nova Scotia (27 N. S. Rep. 384), that in this action the judgment creditors could not attack the license on grounds which were, or might have been taken on the petition to revoke, and the judgment on said petition was *res judicata* against them.

Held, further, that the creditors by accepting a portion of the purchase money on the sale, knowing the source from which it

came, had elected to treat the license as valid, and were estopped from attacking it in this proceeding.

Appeal dismissed with costs.

Roscoe for the appellants.

J. J. Ritchie, Q.C., for the respondent.

COUR DE CASSATION, (CH. CIV.).

Présidence de M. le premier président MAZEAU.

Audience du 3 février 1896.

Chemins de fer—Bagages—Perte ou avaries—Compagnie des Wagons-Lits—Responsabilité.

On ne saurait assimiler à une hôtellerie, en ce qui touche la responsabilité de la perte des objets qui y sont déposés, les voitures spéciales que la Compagnie internationale des wagons lits met à la disposition du public, soit en les intercalant dans les trains ordinaires des Compagnies de chemins de fer, soit en formant avec ces seules voitures des trains directs, dits internationaux, organisés sous sa direction exclusive, notamment quant à la délivrance des billets et à l'enregistrement des bagages.

Dès lors, et spécialement dans cette dernière hypothèse—conformément aux règles ordinaires du contrat de transport par voie ferrée, seules applicables en pareille matière—la dite compagnie (abstraction faite d'une faute de ses agents), ne peut, en cas de perte ou d'avaries, être déclarée responsable envers les voyageurs que des bagages qu'ils lui avaient confiés, en les faisant enregistrer, et non pas des objets qu'ils auraient gardés avec eux dans les compartiments où ils ont pris place.

Voici les circonstances de fait dans lesquelles est intervenue la décision ci-dessus analysée :

M. Barthélemy avait pris à Lisbonne, à destination de Paris, une cabine dans le train connu sous le nom de "Sud-Express," organisé par la Compagnie internationale des Wagons-Lits et des grands express européens. Il avait déposé dans ce compartiment ses bagages à la main parmi lesquels se trouvait un sac renfermant des bijoux. Pendant le voyage, le sac disparut, et les investigations faites depuis pour établir la cause de cet événement étant restées vaines, la Compagnie des Wagons-Lits refusa de réparer le préjudice que cette perte avait causé à M. Barthélemy.

Ce dernier l'assigna alors en dommage-intérêts devant le juge de paix du huitième arrondissement de Paris, en invoquant les dispositions de l'article 1952 du code civil qui déclare les aubergistes et les hôteliers responsables, comme dépositaires des effets apportés par les voyageurs logeant chez eux, et qui assimile le dépôt de ces sortes d'objets au dépôt nécessaire.

Par une décision, en date du 8 novembre 1891, le juge de paix fit droit à cette action.

Mais, sur appel, le Tribunal civil de la Seine prononça, le 14 mai 1892, un jugement infirmatif exonérant la compagnie de toute responsabilité.

C'est sur le pourvoi formé contre ce jugement que la chambre civile a rendu l'arrêt dont nous avons donné l'analyse dans la *Gazette* du 6 février.

A raison de l'intérêt pratique de la solution qu'il consacre, nous croyons devoir, aujourd'hui publier le texte de cet arrêt, dans sa partie relative au fond même du litige:

" La cour;

" Ouï en l'audience publique de ce jour, M. le conseiller Falcimaigne en son rapport, Me de Ramel, avocat de la compagnie défenderesse, en ses observations, ainsi que M. Desjardins, avocat général en ses conclusions, et après en avoir immédiatement délibéré conformément à la loi;

" Attendu qu'il est constaté par le jugement attaqué que la compagnie internationale des Wagons-Lits fait circuler sur diverses voies ferrées en France et à l'étranger, des voitures spéciales, dans lesquelles elle met à la disposition du public des compartiments munis de lits, des cabinets de toilette, un restaurant, et lui procure un service de domesticité; que, pour prendre place dans ses voitures, le voyageur doit payer à la compagnie de chemin de fer le coût d'un billet de première classe, et à la Compagnie des Wagons-Lits un supplément représentant la moitié du prix de la place; que même pour l'organisation de certains trains internationaux directs, et notamment du "Sud-Express" dont il s'agit en l'espèce, la Compagnie des Wagons-Lits se charge seule d'assurer à Paris et dans les gares étrangères au réseau, le service de la délivrance des billets, de l'enregistrement et de la remise des bagages, se substituant ainsi à la compagnie de chemin de fer dont elle emprunte seulement les

voies et la traction, et à laquelle elle garantit une recette moyenne ;

" Attendu que le contrat qui intervient alors et dont le but essentielle est de prendre le voyageur à son point de départ pour le conduire à sa destination, moyennant un prix dont les divers éléments sont calculés d'après la distance à parcourir, est un contrat de transport dont l'exécution est assurée par le concours simultané de la compagnie de chemin de fer et de la Compagnie des Wagons-Lits ;

" Que si, en échange d'une majoration de prix, le voyageur peut effectuer son trajet dans de meilleures conditions de luxe et de confort, cette circonstance ne modifie pas la nature juridique du contrat ;

" Attendu dès lors qu'abstraction faite des fautes personnelles à ses agents, la Compagnie des Wagons-Lits n'est responsable, en vertu des articles 1782 et 1784 du code civil, des cas de perte ou d'avaries que pour les choses qui lui ont été confiées ;

" Et attendu que le jugement attaqué constate d'une part que le sac perdu n'avait pas été confié à la Compagnie des Wagons-Lits par les époux Barthélemy qui ne l'avaient pas fait enregistrer et qui l'avaient conservé avec eux ; d'autre part qu'aucune faute n'a été établie à la charge des employés ;

" Attendu que vainement le pourvoi soutient que si le voyageur conclut avec la compagnie du chemin de fer un contrat ordinaire de transport, il forme en même temps avec la Compagnie des Wagons-Lits une convention distincte qui constitue un dépôt d'hôtellerie ;

" Attendu que les caractères du contrat prévu par les articles 1952 et 1953 ne se rencontrent pas dans l'espèce, et qu'on ne saurait considérer comme un déposant le voyageur qui ne se dessaisit pas de ses bagages à la main et qui peut exercer personnellement sur eux, pendant toute la durée du parcours, une surveillance incessante ;

" D'où il suit, qu'en repoussant, dans ces circonstances l'action en responsabilité dirigée par Barthélemy contre la Compagnie des Wagons-Lits, le jugement attaqué n'a ni violé, ni faussement appliqué les dispositions de loi visées par le pourvoi ;

" Pour ces motifs, rejette ce pourvoi, etc."

Gazette des Tribunaux, 9 fév. 1896.

QUEEN'S BENCH DIVISION.

LONDON, 12 Feb. 1896.

STRICKLAND, appellant, & HAYES, respondent (31 L. J.)

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

This was a case stated by justices before whom the appellant had been convicted of an offence against a by-law made by the Worcestershire County Council 'for the good rule and government' of the county under section 16 of the Local Government Act, 1888. The by-law in question was as follows, and had, with others, been allowed by the Secretary of State: 'No person shall in any street or public place or on land adjacent thereto sing or recite any profane or obscene song or ballad or use any profane or obscene language.' It was proved that the obscene language complained of was used by the appellant on a footpath in a field, and that a large number of persons were present. The question for the opinion of the Court was whether this by-law was *ultra vires*, unreasonable and repugnant to the general law of the land, as the appellant contended it was.

The Court (Lindley, L.J., and Kay, L.J.) held that in the absence of any restriction of the offence to cases where annoyance was caused the by-law was too wide. The expression 'land adjacent' (to any street or public place) went too far. The conviction could not be sustained.

Appeal allowed.

MR. JUSTICE BABY'S CHARGE.

In charging the grand jury at the opening of the March term of the Court of Queen's Bench, Mr. Justice Baby referred to some topics of general interest. The following are extracts from the charge:—

"The Legislature has thought fit, gentlemen, whilst raising your qualification, to reduce the number requisite for the constitution of your important body to twelve members, instead of twenty-four, as it stood hitherto. The number of twelve has been considered sufficient to perform the serious work devolving on you by law, and I trust that, by an increase of devotedness and attention to your duties, you will respond to the hopes entertained by the proper authorities on the subject. This reduction has necessitated an amendment to the law regarding your pro-

ceedings, by which seven jurors only are required to bring in a bill. Likewise, for the first time, in this district, has the law respecting the higher qualification of petty jurors been called into operation, and I am most hopeful that the effect of this new legislation, as already expressed by this Court, will tend, in no small degree, to the better administration of justice within this district.

"I cannot refrain, gentlemen, from putting before you a subject connected with the highest grade of criminality, and which has given rise to very grave apprehensions in the community for some time past.

"I wish to direct your attention to the crime of arson, or incendiarism, which, on account of, and from certain well-known reasons—very easily pointed out—has been on the increase, and that to a most alarming extent.

"The great facilities afforded by insurance companies to individuals for insuring arises, no doubt, from the great rivalry and competition which exists among them, by which they are induced most of the time to lay aside such precautions as are necessary to secure a safe risk, and which make them accept a premium which otherwise, if listening to common prudence only, they would refuse. This is, evidently, an incentive, I must say, to the committal of the crime, the extension of which is now so loudly complained of, and justly so.

"Be it as it may, the prevalence of arson in our midst, it must be admitted by all, has justly alarmed the public, for it is a crime which involves very often the danger of loss of life and property, and the alarm is the greater, when it is seen that incendiaries band themselves together for the commission of the nefarious crime.

(After referring to the sale of newspapers on the streets by young girls, his Honour continued :—)

"In the next place, I would refer you to that revolting spectacle that one sees very often—much too often—on our principal streets, filled with our wives and daughters and sisters, as well as people of all classes, attending to their business and occupations. I mean the presence of those most unfortunate beings, those cripples of all sexes and ages, who, in order to excite sentiments of charity, lay before the passer-by their hideous infirmities. The effects of such a sight, in some cases, are well known, and I need not quote to you here, to convince you, the sayings and writings of the learned and experienced on the subject.

"Here again, a reform is called for. These poor unfortunates should not be allowed to stand on the public thoroughfares, it seems to me, with the expectation that a helping hand is about to come to their assistance. There are, in our large and prosperous metropolis, many charitable and philanthropic institutions of all kinds ready to give them as comfortable an abode as they can expect, and I consider that the proper authorities, in attending to this, as well as to the other first-mentioned matter, would only be performing their part, which, I am sure, would not be an uncharitable one. Let their attention be called to the subject and they will be, no doubt, properly attended to."

GENERAL NOTES.

Rules of Evidence.—Mr. Justice Mathew seems determined not to let a pedantic adherence to strict rules of evidence prevent him from doing justice speedily. In a marine insurance case the plaintiff's counsel proposed to read letters that had passed between the plaintiff and his broker to show what was the position of affairs. An objection that the letters were not evidence was promptly overruled by the learned judge, who said that he would not listen to it in the case of commercial documents, the reading of which might save much evidence and waste of time. Old-fashioned lawyers may cavil, but there can be no doubt now that Mr. Justice Mathew's elastic procedure has done much towards the success of the Commercial Court. In the same action his lordship stated that in commercial cases a copy of the correspondence should always be made for the judge's use, and would always be allowed on taxation.—*Law Journal* (*London.*)

Fictitious Capital.—A great deal of joint stock capital is said to be illusory—of issued capital, that is, for of course nominal capital furnishes no criterion—and there is a good deal of truth in the allegation. Promoters can, and often do, fix a fancy price for the property which they create the company to buy—for instance, out of a capital of 74,000*l*, in one case, 52,000*l*. was put down as representing a visionary goodwill, and on the faith of this unsubstantial asset the company obtained credit in the market. But it is one thing to say that this is done, and another to say that it can be done with legal impunity. If shares are issued as fully paid under a registered contract as against property transferred to the company, the consideration must, in the *bona fide* judgment of the directors, be the equivalent of cash. A fancy price will not make the shares to be paid up under section 25. It may be said that it is easy, instead of issuing paid-up shares against the property, to sell for a fixed sum in cash—an inflated price—and apply the money in paying up the vendor's shares; but here again the promoter vendor finds himself checkmated by *Erlanger* v. *The New Sombrero Phosphate Company*, unless he has furnished the company with a competent and independent board of directors. Furthermore, the company has its remedy against directors who betray it into an improvident contract.—*Ib.*