The Legal News.

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PARTNERSHIP.

Some of the more recent decisions in the United States show that the Courts of the different States still experience considerable difficulty in determining what constitutes a partnership as regards third persons. In *Smith* v. *Knight*, reported in 71 Ill. 148, A agreed to advance money from time to time to B, up to a certain amount, to enable B to carry on business; and B, on his part, agreed to pay interest on the average balance advanced, and also to divide the profits after deducting a fixed sum for expenses; but A was not to bear any losses. Under these circumstances the Court held that A and B were not partners as to third persons. The Court took an entirely different view in *Leggett* v. *Hyde*, 58 N. Y. 272, 17 Am. Rep. 244, in which it was held that the test of partnership is the receipt of the gains of the adventure as profits. Then, again, a view somewhat between these rulings was taken in *Harvey* v. *Childs*, an Ohio case, reported in 28 Ohio, 319, in which the Court expressed itself as follows: "Participation in the profits of a business, though cogent evidence of a partnership, is not necessarily decisive of the question. The evidence must show that the persons taking the profits shared them as principals in a joint business, in which each has an express or implied authority to bind the other." In the last mentioned case, the Court did not overlook *Leggett* v. *Hyde*, but distinguished it on the ground that in that instance there was a continuing trade, from which the authority of the lender might be implied, while in *Harvey* v. *Childs* it was but one transaction, where no credit was contemplated.

WRITTEN v UNWRITTEN JUDGMENTS.

Our contemporary, the *Albany Law Journal*, a few weeks ago, noted it as something strange that a publication in one of the Pacific States should have commenced to report the unwritten judgments of the Court of Appeal, and remarked that, in the State of New York, reporters found quite enough to do in keeping up with the written opinions of the Court of Appeal.

If the reports in the Province of Quebec were to be restricted solely to the written opinions, the number of cases reported, even in the highest Court, would be somewhat limited, for there are judges who seldom put their opinions in writing, even in cases of the greatest importance which are to settle the law on new and intricate points, but who usually content themselves with a verbal explanation of their views. It may be urged, in behalf of this practice, that there are some persons who write with difficulty and constraint, while they have acquired or naturally possess the gift of expressing themselves orally with ease and precision. Were it only the latter who eschewed pen and ink, the practice of delivering an *ex tempore* judgment could readily be excused; but, unfortunately, this is not always the case, and the absence of a written opinion too often marks a hurried examination of the record, the *ex tempore* delivery of the judgment becoming a convenient screen for vagueness of statement.

Seeing that the decisions of the Courts were often *vox et præterea nihil*, the legislature stepped in to require that the recorded judgments should disclose the reasons upon which the Court proceeded. As embodied in the Code of Civil Procedure, Art. 472, the law says that every judgment must mention the cause of action, and in contested cases "it must, moreover, contain a summary statement of the issues of law and of fact raised and decided, the reasons upon which the decision is founded, and the name of the Judge by whom it was rendered."

We are glad to bear our mite of testimony to the fidelity with which many of the recorded judgments conform to this injunction, but that it is often overlooked or neglected is incontestable. Seven years ago, the editors of *La Revue Critique* referred in terms of regret to the failure to comply with the statutory direction. "Combien y a-t-il maintenant d'arrêts de nos Cours qui ne contiennent aucun exposé quelconque des points de droit soulevés? Le nombre en est infini. Tous les jours, des jugements sont portés en appel, sur ce motivé simple et commode: 'Considérant que le demandeur n'a pas prouvé les allégations

matérielles de sa déclaration, la Cour déboute, &c.' Et la Cour d'Appel confirme dans les termes suivants: 'Considérant qu'il n'y a pas d'erreur dans le jugement dont est appel, confirme, &c.' Le plaideur ruiné par un semblable jugement, a-t-il au moins la conviction morale que les juges ont parfaitement saisi et compris tous les points de sa cause, qu'ils les ont appréciés et jugés? Nullement, et souvent même il peut en outre se plaindre d'avoir été jugé sur une question qu'il n'avait pas prévue, que son adversaire n'avait pas soulevée, et sur laquelle il n'a jamais eu l'occasion d'être entendu." (Vol. 1, p. 379.)

We believe that the judgments of the present day are not open to the sweeping charge made by *La Revue Critique*. There has been a change for the better and the reports bear witness to the improvement. But a further step in the same direction might probably be taken with advantage.

The pressure of business will no doubt be pleaded as a justification of the omissions complained of. However much force there may be in this it perhaps only proves the charge, because in order to deliver a judgment *ex tempore* in such a manner as to serve as a useful precedent, more time and study would in most cases be required, than would be occupied in reducing the principal reasons to writing. There is a middle course between the voluminous opinion, resembling a treatise in style and length, and the total absence of writing. The Judges who adopt the middle course, and never decide an important case without explaining their reasons in the judgment itself, or in an accompanying note, are undoubtedly doing a work of great advantage to the profession.

THE CIRCUIT COURT.

The business of the Circuit Court, which is superadded to the already laborious duties of the Superior Court judges in Montreal, is no inconsiderable addition to their official work. Mr. Justice Mackay sat in the Circuit Court from the 1st of March to the 21st inclusively, excepting Saturdays and Sundays. He decided two hundred and thirty-three contested cases, supported by evidence parole or documentary. *Ex parte* and default cases amounted to three hundred and seventy-three, but did not entail labour. The sittings generally took up from 10 a.m. to 4 p.m., with a recess at 1 o'clock of half an hour merely.

QUEBEC DECISIONS.

[Concluded from p. 180.]

Procès-verbal.—*A procès-verbal* can be modified only by another *procès-verbal* made in the same manner, and any alteration which a municipal council may pretend to make in a *procès-verbal* by a simple resolution is absolutely null and without effect, and this nullity may be invoked at any stage of the case.—*Holton & Aikins*, 3 Q. L. R. 289.

Promissory Note.—1. In an action against the maker of a note payable on demand, and generally, want of presentment is not a ground of demurrer. But if the defendant tender the debt and interest before plea filed, and bring the money into Court, the plaintiff will be condemned to pay costs.—*Archer* v. *Lortie*, 3 Q.L. R. 159.

2. The endorsement of payments on a promissory note is not an interruption of prescription. The limitation of five years operates to extinguish the debt, and nothing less than a new promise in writing can suffice to found an action upon. Any indorsement of interest or part payment of principal should be written by the debtor and signed by both parties.—*Caron* v. *Cloutier*, 3 Q. L. R. 230.

Repetition.—The action to recover money unduly paid is prescribed only by 30 years, though the exercise of such action involves the previous setting aside of a contract the action for the rescision of which is prescribed by a shorter time.—*Ursulines of Three Rivers* v. *School Commissioners*, 3 Q. L. R. 323.

Reprise d'instance.—1. The parties to the cause must be put in default to answer the petition *en reprise d'instance* before judgment can be given upon it, i.e., there must be a demand of plea.—*Hamel* v. *Laliberté*, 3 Q. L. R. 242.

2. A judgment of the Court, declaring the continuance well founded, is requisite, even where no cause is shown against the petition. —Ib.

Review.—1. It is competent to a party to inscribe in Review from a judgment rendered on a writ of *habeas corpus* by a Judge in Chambers. —*Reg.* v. *Hull*, 3 Q. L. R. 136.

2. No review can be had of a judgment of the

Superior Court concerning a municipal office.—*Fiset* v. *Fournier*, 3 Q. L. R. 334.

Sale.—1. N. being indebted to P. in the sum of $1300, offered as security a mortgage on three pieces of land, and a deed was accordingly executed; but it being afterwards found that N. could not legally hypothecate one of the three lots, a deed of sale was passed by which he conveyed said lot to P. for the expressed price of $400, with the verbal understanding that as soon as the whole amount due was paid to P. he would reconvey to N. the lot in question. Two months afterwards N. became insolvent and fled the country. The two lots mortgaged, having been brought to sale, realized some $900 for P., who claimed to retain the third lot for the balance due him, whereupon H., a judgment creditor (while admitting the validity of the mortgages), attacked the deed of sale as simulated and fraudulent, and contested P.'s right to prevent a judicial sale of said piece of land. *Held*, that the deed was void for total want of consideration, and the land never having passed under it, could be brought to sale as still forming part of N.'s estate.—*Pacaud* v. *Huston*, 3 Q. L. R. 214.

Sale, Resolution of.—Under the custom of Paris, the transferee pure and simple of a *prix de vente*, without other stipulation, might bring action *en résolution de vente* for default, either total or partial, of payment of price. The demand *en résolution* might also be made for default of payment of a constituted rent, price of an immoveable—even by the vendor who had sued for payment of price.—*St. Cyr* v. *Millette*, 3 Q. L. R. 369.

School Tax.—The school tax is not an annual rent and is not subject to the same prescription as annual rents.—*Ursulines of T. R.* v. *School Commissioners of Riviere du Loup*, 3 Q. L. R. 323.

Seamen's Wages.—Where, after a collision, the vessel injured was docked for the winter, and her voyage could not be resumed until spring, by reason of navigation of the St. Lawrence being closed until then, *held*, that her owners could not recover as part of their damages the seamen's wages while idle during the winter, and not more than would suffice to send them to the place where they were shipped, and to pay their wages until their arrival there.—*The Normanton*, 3 Q. L. R. 303.

Seignior.—1. Since the Seigniorial Act of 1854, the Seigniors are no longer bound to pay to the school Commissioners, the fortieth required by C. S. L. C. c. 15, s. 77, and a Seignior who had unduly paid this tax was allowed to recover the amount, even from the succ ssors of the Commissioners to whom he paid it.—*Ursulines of Three Rivers* v. *School Commissioners of Riviere du Loup*, 3 Q. L. R. 323.

2. Before 1854, when a Seignior became proprietor of land in his seigniory, whether by purchase, succession, exchange, or other title, such land became reunited to the domain.—*Pouliot* v. *Fraser*, 3 Q. L. R. 349.

3. But in the case of a Seignior *grevé de substitution*, this reunion was only temporary, and ceased at the opening of the substitution.—Ib.

Sheriff's Sale.—See *Adjudicataire.*

Subrogation.—Subrogation cannot be allowed under Art. 1156 C. C., unless it appears that the person who claims the subrogation paid the debt in relation to which he claims such subrogation.—*Chinic* v. *Canada Steel Co.*, 3 Q. L. R. 1.

Substitution.—The *grevés de substitution* are proprietors. They cannot bind the *appelés*, but they can alienate, and their acts of alienation are valid so long as the substitution is not open.—*Pouliot* v. *Fraser*, 3 Q. L. R. 349.

Temperance Act.—The first ten sections of 27 and 28 Vict. c. 18 (Temperance Act of 1864) have not been repealed by Art. 1086 of the Municipal Code.—*Hart* v. *Corporation of County of Missisquoi*, 3 Q. L. R. 170.

Undue Influence.—See *Election Law.*

Wager.—See *Bet.*

Water Course.—The recourse given by c. 51 C. S. L. C. is not exclusive, and the direct action before a competent Court is not taken away by this statute.—*Emond* v. *Gauthier*, 3 Q. L. R. 360.

Windows.—A proprietor cannot complain of windows in his neighbor's buildings at a distance prohibited by law, if his own buildings prevent the windows from overlooking his premises.—*Touchette* v. *Roy*, 3 Q. L. R. 260.

CURRENT EVENTS.

GREAT BRITAIN.

COMMON EMPLOYMENT.—No better exemplification of the length to which the doctrine of "common employment" has been permitted to go could be found than the case of *Swainson* v.

North-Eastern Railway Company, which was decided by the English Court of Appeal in the latter part of February. The plaintiff was the widow of a signalman porter in the service of the Great Northern Company, who was killed in the Leeds station by the negligence of an engine driver of the North-Eastern Company. The Leeds station is occupied by both companies under an agreement, and the expenses of that station are jointly defrayed by both companies. Amongst these expenses came the wages of the deceased signalman, and upon this ground it was argued that the Great Northern signalman was a *collaborateur* with the North-Eastern engine driver, whose negligence caused his death. The court below yielded to this argument, but it is not surprising to find that the Court of Appeal has unanimously reversed the decision of the Court below, and given judgment for the plaintiff. If the decision for the company had been allowed to stand, the *collaborateurs* which the law would have created might have been counted by thousands, for there are few large railway stations which are not occupied and paid for by more companies than one.

FRANCE.

The lawyers of Lyons, having become dissatisfied with M. Lagrevol, an appeal Judge, have unanimously resolved not to plead before him until he shall publicly apologize for his conduct towards them.

UNITED STATES.

SHALL WOMEN BE ADMITTED TO THE BAR?—The following is the brief presented by Mrs. Lockwood in support of the bill pending in Congress to allow women to practice law in the Federal Courts:

To the Honorable the Senate of the United States:

IN SUPPORT OF HOUSE BILL NO. 1077, ENTITLED, "A BILL TO RELIEVE CERTAIN DISABILITIES OF WOMEN."

The provisions of this bill are so stringent that, to the ordinary mind, it would seem that the conditions are hard enough for the applicant to have well earned the honour of the preferment, without making *sex* a disability.

The Fourteenth Amendment to the Constitution declares that "all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are *citizens* of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States. Nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

To deny the right asked to be granted in this bill, would be to deny to your relator and other women citizens the rights guaranteed in the Declaration of Independence to be self-evident and inalienable, "life, liberty, and the pursuit of happiness," a denial of one of the fundamental rights and privileges of citizenship; "the denial of the right of a portion of the citizens of the commonwealth to acquire property in the most honorable profession of the law, thereby perpetuating an invidious distinction between male and female citizens equally amenable to the law," and having an equal interest in all of the institutions created and perpetuated by this Government.

The Articles of Confederation declare that "The free inhabitants of each of these States (paupers, vagabonds, and fugitives from justice excepted) shall be entitled to all privileges and immunities of free citizens in the several States."

Article 4th of the Constitution says: "Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State"

Illinois, Michigan, Minnesota, Missouri, North Carolina, Wyoming, Utah, and the District of Columbia admit women to the bar. What then? Shall the second co-ordinate branch of the Government, "the Judiciary," refuse to grant what it will not permit the States to deny, the privileges and immunities of citizens, and say to these women attorneys, when they have followed their cases through the State courts to that high tribunal beyond which there is no appeal, "you cannot come in here, we are too holy;" or, in the words of the learned Chancellor, declare that "By the uniform practice of the Court, from its organization to the present time, and by a fair construction of its rules, none but men are admitted to practice before it as attorneys and counsellors. This is in accordance with immemorial usage in England, and the law and practice in all the States until within a recent period, and the

Court does not feel called upon to make a change until such a change is required by statute, or a more extended practice in the highest courts of the State." With all due respect for this opinion, we beg leave to quote the rule for admission to the bar of that court as laid down in the Rule Book:

"RULE No. 2.—*Attorneys.*

"It shall be requisite to the admission of attorneys or counsellors, to practice in this court, that they shall have been such for three years past in the Supreme Courts of the States to which they respectively belong, and that their private and professional character shall appear to be fair."

There is nothing in this rule, or in the oath which follows it, either express or implied, which confines the membership of the Bar of the U. S. Supreme Court to the male sex. Had any such term been included therein it would virtually be nullified by the 1st paragraph of the United States Revised Statutes, ratified by the 43rd Congress, December 1, 1873, in which occur the following words: "In determining the meaning of the Revised Statutes, or of any act or resolution of Congress passed subsequent to February 25, 1871, words importing the singular number may extend and be applied to several persons or things; words importing the masculine gender may be applied to *females*," etc., etc.

Now as to "immemorial usage in England." The Executive branch of that government has been vested in an honored and honourable woman for the past 40 years. Now is it to be supposed that if this distinguished lady, or any one of her accomplished daughters, should ask to be heard at the Bar of the Court of the Queen's Bench, that Court, the practice of which the United States Supreme Court has set up as its model, that she would be refused?

Blackstone recounts that Ann, Countess of Pembroke, held the office of Sheriff of Westmoreland, and exercised its duties in person. At the assizes at Appleby she sat with the judges on the bench. See Coke on Lit., p. 326. The Scotch sheriff is properly a judge, and by the statute 20 Geo II., c. 43, he must be a lawyer of three years' standing.

Eleanor, Queen of Henry Third of England, in the year 1253, was appointed Lady Keeper of the Great Seal, or the Supreme Chancellor of England, and sat in the Aula Regia or King's Court. She in turn appointed Kilkenny, Archdeacon of Coventry, as the sealer of writs and common law instruments, but the more important matters she executed in person.

Queen Elizabeth held the Great Seal at three several times during her remarkable reign. After the death of Lord Keeper Bacon she presided for two months in the Aula Regia.

It is claimed that "admission to the bar constitutes an office." Every woman post mistress, pension agent, and notary public throughout the land is a bonded officer of the Government. The Western States have appointed women as school superintendents, enrolling and engrossing clerks for their several Legislatures and State Librarians.

Of what use are our seminaries and colleges for women if after they have passed through the curriculum of the schools there is for them no preferment, and no emolument; no application of the knowledge of the arts and sciences acquired, and no recognition of the excellence attained.

But this country, now in the second year of the second century of her history, is no longer in her leading strings, that she should look to Mother England for a precedent to do justice to the daughters of the land. She had to make a precedent when the first male lawyer was admitted to the bar of the United States Supreme Court.

Ah! this country is one that has not hesitated when the necessity has arisen to make precedents and write them in blood. There was no precedent for this free Republican Government and the war of the Revolution; no precedent for the war of the Rebellion; no precedent for the emancipation of the slave; no precedent for the labor strikers of last summer. The more extended practice, and the more extended public opinion referred to by the learned Chancellor has already been accomplished. Ah! that very opinion telegraphed throughout the land by the "associated press" brought back the response of the people as on the wings of the wind by that same press, asking you for that special act now so nearly consummated, which shall open this door of labor to women.

BELLA A. LOCKWOOD,
Attorney and Solicitor.

WASHINGTON, D. C., March 7, 1878.

EXCLUSIVE TELEGRAPHIC PRIVILEGES A REGULATION OF COMMERCE.—On Monday the Supreme Court of the United States, by Chief Justice Waite, filed an opinion, from which Field and Hunt, JJ., dissent, holding that the granting by a State to a company exclusive telegraphic privileges is a regulation of commerce within the meaning of the Federal Constitution; that the telegraph has become indispensable to the business of the world, both as to private persons and Governments, and that it cannot be thus limited or restricted by State law. This is an opinion of the greatest importance, as it virtually takes all power from the States to regulate telegraphs or telegraph companies, a power which they have exercised ever since there was a telegraph. We are not prepared to say the opinion is not right; in fact we think it is. Are not railroads "indispensable to the business of the world, both as to private persons and Governments," and if so, can a State give a railroad company any exclusive privileges?—*Chicago Legal News.*

THE U. S. BANKRUPT ACT.—The Senate committee on judiciary have reported, without recommendation, a bill to repeal the bankrupt law. The views of the members of the committee were not at all harmonious, but a majority directed the report made, and several who did not favor repeal consented that the bill should be reported without recommendation. If the feeling of the committee is an index of that of the Senate the passage of the bill by that body seems certain. The House is sure to take like action on the matter, and the only hope of those interested in a perpetuation of the law is in delaying action in one or the other of the two houses. We sincerely hope that they may not be able to do so, for the great majority of the people, both business men and lawyers, have become convinced that the bankrupt law is productive of much more harm than good, not only to business interests but to those of the legal profession. In one or two instances the courts have severely animadverted on the opportunities for fraud it affords. *Matter of Allen*, 17 Alb. L. J. 170. In various ways it operates to injure the community, and even its friends admit that essential amendments are needed if it should remain in force. No two persons agree as to what amendments should be made, and the only solution of the difficulty is that proposed by the Senate committee, namely, unconditional repeal.—*Albany Law Journal.*

CAPITAL PUNISHMENT IN IOWA.—The State of Iowa, after an experience of several years under legislation not permitting capital punishment for murder, has restored the death penalty. This State is very favorably situated for testing whether it is better for the community to inflict death as a penalty for murder, having an agricultural community with fertile lands, and with no large centres of population so as to develop what is known in our great cities as the criminal class. If an experiment of this kind ought to succeed anywhere it is in Iowa, but we judge that it has not from the circumstance that the change mentioned has been made.—*Ib.*

VANDERBILT'S WILL.—The Vanderbilt will case, which has for some months occupied most of the spare time of the surrogate of New York, has been productive at length of an opinion from that official, wherein the question whether the declarations or admissions of a legatee under the will tending to show undue influence, or the absence of testamentary capacity are admissible in evidence in behalf of the contestants, is elaborately and learnedly discussed. Numerous authorities, American and English, are examined, and the conclusion reached that the declarations and admissions should be excluded.—*Ib.*

PROPERTY IN A CORPSE.—The case of *Guthrie* v. *Weaver*, 1 Mo. App. Rep. 136, was an action of replevin to obtain what was described to be a coffin of the value of $90, with its contents. The contents were the dead body of plaintiff's wife, who was the daughter of defendant. The body had, with the consent of plaintiff, who had paid for the coffin containing it, been buried in a cemetery lot belonging to defendant. Thereafter plaintiff demanded a delivery of the coffin and body to him that he might reinter them, and this being refused, he brought this action. The court held that there is no property in a corpse, that the relatives have only the right of interment; that this right in the case at bar, having been exercised by burial in the father's lot, with the consent of the husband, no right to the corpse remained except to protect it from insult. The doctrine that there is no absolute property in a dead body has been asserted in

several cases. *Wynkoop* v. *Wynkoop*, 42 Penn. St. 293; *Pierce* v. *Proprietors of Swan Pt. Cemetery*, 10 R. I. 227; 14 Am. Rep. 667; *Kemp* v. *Wickes*, 3 Phillim. 264. By the old English law the charge of the body belonged exclusively to the ecclesiastical courts. The only common law remedy for a wrongful removal was by criminal process. In *Rex* v. *Sharpe*, Dears. & B. 160, an indictment against a man for removing his mother's body from one graveyard for the purpose of burying it in another, was sustained. But under the old English law it was the practice to arrest and detain dead bodies for debt. In several States, Rhode Island, Massachusetts, etc., there are statutes forbidding this. For an interesting discussion of the subject, see *Pierce* v. *Proprietors, etc.*, *supra*, and notes, 14 Am. Rep. 676, 678.

NEWSPAPER CENSURE, WHEN PRIVILEGED.—In the case of *Gott* v. *Pulsifer*, 122 Mass. 235, plaintiff brought action for an alleged false and malicious libel published concerning the image known as the "Cardiff Giant," in defendants' newspaper. The image belonged at the time to plaintiff, and he had made a contract with one Palmer to sell it to him for $30,000. Defendants' newspaper in a humorous article charged that the "giant" was a humbug, and that it had been sold in New Orleans for the sum of eight dollars. In consequence of the appearance of this article the sale to Palmer was not made. The jury found for defendants. The Supreme Court sustained certain exceptions taken by the plaintiff and gave a new trial, saying, however, that "the editor of a newspaper has the right, if not the duty, of publishing for the information of the public, fair and reasonable comments, however severe in terms, upon anything which is made by its owner a subject of public exhibition as upon any other matter of public interest; and such a publication falls within the class of privileged communications for which no action can be maintained without proof of actual malice." See, as supporting this rule, *Dibden* v. *Swan*, 1 Esp. Cas. 28, where Lord Kenyon charged that the editor of a newspaper may fairly and candidly comment on any place or species of public entertainment, and that if done fairly and without malice or view to injure the proprietor, however severe the censure, the justice of it screens the editor from legal animadversion. See also *Carr* v. *Hood*, 1 Campb. 355; *Henwood* v. *Harrison*, L. R. 7 C. P. 606; *Fry* v. *Bennett*, 28 N. Y. 324; *Gregory* v. *Duke of Brunswick*, 6 M. & G. 953.—*Ib.*

AGENCY—A SUMMARY OF RECENT DECISIONS.

[Wm. Evans, in *Law Times*, London.]

First, as to the authority of joint principal and joint agents:

Each of several co-owners of a thing can only sell or authorize the sale of his own interest in that thing; but all the co-owners may combine to sell or authorize the sale of the whole thing. There is, again, nothing which precludes several co-owners from jointly retaining a solicitor to bring or defend an action relating to their common property. Whether they have done so or not, depends upon the circumstances of the particular case: Keay *v.* Fenwick, 1 C. P. Div., 745.

The mere taking of a bill from one of several joint owners of a ship, who is also the ship's husband, is no legal release of the liability of his co-owners.

In an action for commission, brought by shipping agents against all the co-owners of a ship, with the exception of one, D, the ship's husband, the mere fact that the plaintiffs, knowing that the defendants were co-owners of a ship with D, took a bill from him for the amount due to them, and proved against his estate in respect of such bill, is not sufficient to discharge the defendants: Bottemley *v.* Nuttall, 5 C. B. N. S., 122; 28 L. J., 110, C. P.; Keay *v.* Fenwick, 1 C. P. Div., 745.

An unauthorized order to sell, given by one joint owner, is ratified by the other joint owners joining in a power of attorney, enabling their agents to convey their respective shares: Keay *v.* Fenwick, 1 C. P. Div., 745.

Secondly, as to the existence of implied authority to bind the principal:

With respect to the evidence of an agent's authority to sell goods in his own name, it has been decided that the fact that a principal has intrusted an agent with the possession of goods for the purpose of selling them is, as between the agent and third parties buying the goods, *prima facie* evidence that the agent is authorized to sell them in his own name. Hence, if the court is satisfied that no limitation of the

agent's authority was disclosed to the buyer, a set-off of a debt due from the agent is a good defence to a claim by the principal against the buyer, notwithstanding that the agent, though so intrusted with the goods, was under an agreement with his principal not to sell in his own name: *Ex parte* Dixon; *Re* Henley, L. Rep. 4 Ch. Div., 133; 46 L. J. 20, Bank.; 35 L. T. Rep. N. S., 644.

Lord Justice Brett explained, in a subsequent case, that the statement by Mr. Justice Willes, in Semonza *v.* Brimley, 18 C. B. N. S., 467, to the effect that it must be shown that the agent acted with the authority of his principal, was due to the fact that he was dealing with the demurrer; and that such authority is shown when the facts prove that he is intrusted as a factor: *Ex parte* Dixon; *Re* Henley, 4 Ch. Div., 133.

An agent to whom bills of lading are handed for the purpose of obtaining possession of the cargo of a stranded vessel, has implied authority to bind the owner by an agreement to pay, on condition of the cargo being given up, charges for which there is a lien on the cargo: Hingston *v.* Wendt, 1 Q. B. Div., 367.

An auctioneer has a possession coupled with an interest in goods which he is employed to sell; not a bare custody, like a servant or shopman. There is no difference whether the sale be on the premises of the owner or in a public auction room. The auctioneer has also a special property in such goods, with a lien for the charges of sale, commission and the auction duty: Williams *v.* Millington, 1 H. Bl., 81, 84, 85. The catalogue and conditions may afford evidence that he has contracted personally, and so be liable for the non-delivery of goods and the like: Woolfe *v.* Horne, 2 Q. B. Div., 355. The authorities are conclusive to show that a broker acting for one of the contracting parties making a contract for the other, is not authorized by both to bind both; but the broker who makes a contract for one may be authorized by that person to make and sign a memorandum of the contract, and the signed entry in the broker's book is a sufficient memorandum of the bargain to satisfy the Statute of Frauds: Thomson *v.* Gardiner, 1 C. P. Div., 777.

A broker who acted for the plaintiff, made a contract for the sale of goods to the defendant. He sent a note to each party, but signed only that which was sent to the seller. The contract was entered in the book and duly signed. The defendant kept the note which was sent to him, and made no objection until called upon to accept the goods. The court held that the conduct of the defendant amounted to an admission that the broker had authority to make the contract for him: Thomson *v.* Gardiner, 1 C. P. Div., 777.

Thirdly, as to questions of ratification:

In order to amount to a ratification after attaining a full age, within 9 Geo. 4, c. 14, s. 5, Chief Justice Cockburn states the rule that "there must be a recognition by the debtor, after he has attained his majority, of the debt as a debt binding upon him:" Rowe *v.* Hopwood, L. Rep. 4 Q. B., 1. A recognition when of full age, and a promise to pay it "as a debt of honor," when of ability, is not such a ratification: Maccord *v.* Osborne, 1 C. P. Div., 568. By ratification is meant an admission that the party is liable and bound to pay the debt: Per Parke, B., Mawson *v.* Blane, 23 L. J., 342 Ex.; 10 Ex. 206-210.

When a policy of marine insurance is made by one person on behalf of another without authority, it may be ratified after the loss of the thing insured by the party on whose behalf it is made, though he knew of the loss at the time of the ratification: Williams *v.* North China Insurance Company, 1 C. P. Div., 757. The justice as well as the authority of this principle was insisted upon by the Court of Appeal, in a case decided in 1876, where Chief Justice Cockburn pointed out that, where an agent effects an insurance subject to ratification the loss insured against is very likely to happen before ratification, and it must be taken that the insurance so effected, involves that possibility of the contract: Ib.

A set-off cannot be maintained of a debt contracted by the plaintiff during infancy, and not ratified by him in writing after full age: Rawley *v.* Rawley 1 Q. B. Div., 460.

Fourthly, as to the agent's right to commission:

In considering whether an agent is entitled to commission for the introduction of a purchaser or capital, the question is whether the purchase or advance was the result of that introduction, or of an independent negotiation between the parties. *Causa proxima* is not the

question; the agent must show that some act of his was the *causa causans*. In Tribe *v.* Taylor, 1 C. P. Div., 505, the defendants agreed to give the plaintiffs a commission of five per cent. on purchase money, or on capital introduced into his business. They introduced a person who advanced £10,000, and who in the course of a few months entered into an agreement of partnership on making a further advance of £4,000 by way of capital to the concern. Commission on the former sum was duly paid; but the court held, in an action to recover commission on the £4,000, that the plaintiffs could not recover, inasmuch as the latter was not made in consequence of their negotiations. Where, however, A employs B to sell a ship, and agrees that if a sale is effected to any person "led to make such offer in consequence of" B's mention or publication of it, B should be paid a commission, the Common Pleas Division held that B was entitled to his commission although the purchaser was led to purchase merely from hearing of B's publication: Bayley *v.* Chadwick, 36 L. T. Rep. N. S., 740.

Fifthly, as to questions relating to the scope of the agent's employment:

The cases which have arisen upon this subject, it has been said, have from the earliest time been productive of much astute and interesting discussion in courts of law, and eminent judges have differed widely in their decisions. It has always been a matter of extreme difficulty to apply the law to the ever varying facts and circumstances which present themselves. There is, however, no doubt as to the true principle which ought to guide us. It was laid down in Lord Holt's time, and repeatedly since, that whenever a master intrusts a horse or carriage, or anything which may readily be made an implement of mischief, to his servant, to be used by him in furtherance of his master's business, or for the execution of his orders, the master will be responsible for the negligent management of the thing entrusted to the servant, so long as the latter is using it or dealing with it in the ordinary course of his employment: Rayner *v.* Mitchell, 2 C. P. Div., 360, per Lord Coleridge. Hence the court held that a carman was not acting within the scope of his authority when, without his master's permission, and for a purpose of his own, wholly unconnected with his master's business, he took out his master's horse and cart and injured a cab: Ib.

Sixthly, as to the position or status of branch banks:

Branch banks are agencies of the principal banking corporation or firm; the branches and the firm are identical. In Prince *v.* Oriental Bank Corporation, 38 L. T. Rep. N. S., 41, a promissory note, payable at a branch bank, became due, and the manager cancelled it as paid, remitting to the principal bank a draft for the amount in favour of the bankers of the payees. The note, however, had not been paid, but was dishonoured. The next day the manager of the branch bank wrote to the manager of the principal bank, requesting him to cancel the draft. The dishonoured note was returned, indorsed "Cancelled in error." Neither the payees nor their bankers were informed that the note had been paid. The privy council had applied the above rule, and, affirming the judgment of the court below, held that the payees could not maintain an action for money had and received against the principal bank.

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

By Joel P. Bishop.

Few men, in any trade, can do good work without good tools: and none, without such tools, can do their good work rapidly.

The books in a lawyer's library are, for the most part, his tools. Now and then, perhaps a mere speculative treatise, upon the law or some branch of it, may be found covered with dust, upon an upper shelf; but in general our American lawyers avoid all such as they would poison. Nor, though the prejudice against this class of books may be carried too far, is it altogether mistaken. In the opinions of judges, delivered in actual causes before them, and in the treatises of authors expounding the law for practical use, more or less of what would be deemed mere speculation, if it stood by itself will necessarily appear. For example, Lord Chief Baron Abinger, in delivering an opinion, once said: "It is admitted that there is no precedent for the present action by a servant against a master. We are therefore to decide the question upon general principles, and in doing so, we are at liberty to look at the conse-

quences of a decision the one way or the other."* He then went on to produce speculations, as some would term them, out of which the determination of the court was evolved. And, in our books of reports, many such cases occur. So, a law-treatise, if truly practical, will present its topic in such a way that the reader will see the reasons — the speculations—on which the law proceeds, though it may have no special sections on how it should be; not only because the legal reasons are the law, likewise because, otherwise, the reader could not be aided in forming his judgment as to how a new question would probably be decided. In these fountains, therefore, the practitioner has the speculations, all the more valuable for being in a practical form. And he would not seem to be in particular need of others. The defects in the law, and the methods of curing them, may not there be shown; but this is a sort of speculation not specially within the jurisdiction of a practising lawyer, or of the court to which he applies for the enforcement of his views, but it is for the legislator. The practitioner, therefore, has little more occasion for this class of books, however meritorious and useful, than for treatises on the calculus and on mental science.

There are, however, some books—and there ought to be more—of a highly practical sort, not within the scope of this article. As illustrative, I will mention Reed's "Practical Suggestions," published some three years ago. In this book an able lawyer, who had made the conduct of lawsuits a special study, and had risen to be a leader at the bar, especially in the trial of causes, gives to his younger and less successful brethren the results of his investigation and experience in the "Management of Lawsuits and Conduct of Litigation, both in and out of Court." This is a book to be read and studied by every lawyer, especially of the junior class. It is in the highest degree practical, yet it is not a tool of the trade. It is rather a sharpener of tools, and an instructor in their use. And there are other books of the highest practical value which are not tools. This article is of the practical sort, but it is not a tool.

Let us consider, then, the tools of the legal trade.

* Priestley v. Fowler, 3 M. & W. 1, 5.

And, for the first step, we must form an accurate idea of the thing to be done with them; because, always, a tool must be adapted to the particular work. An awl is excellent in making a shoe; but, heat it as we will, it will not draw a train of cars.

A lawyer in his office is approached by a client for advice. What the client wants is to be informed how, on the presentation of given facts to the court having jurisdiction over them, or of known testimony to the court and jury, the tribunal will decide the case. This is always the precise thing sought—what *will be*, not what has been. I do not forget that we look to the past in judging of the future; just as a sea-captain, in considering whether to reef, thinks of the signs which the past has shown as indicating an approaching gale. But what he is anxious to learn is, not whether there was a gale yesterday, but whether one is coming now. And no lawyer in his practice has ever occasion to know what has been held as law heretofore, except as evidence of what may be held hereafter. If, instead of advising a client, one is acting as conveyancer, or as the draughtsman of an ordinary contract, his ultimate thought relates to what the courts may hereafter hold of the instrument should it come into litigation, and he looks to what has been only as indicating what will be.

But, in the law, as in other things, there is constant progress, and there are changes. Events will appear which never, even in form, transpired before, and out of the new events new questions will arise. And, where the past approaches nearest to repeating itself, the likeness of to-day to yesterday is not perfect, rendering it uncertain whether the seemingly old question of to-day should be decided in the same way as before. Moreover, in correcting the errors of the past, the courts sometimes overrule their former decisions. Hence the results to which the courts have already arrived constitute only a part of what the lawyer has to understand and explain; there is another and much more difficult part beyond. And his tools must be adapted to the accomplishment of both, and he must know how to use the tools, else he will wrong his clients and the courts, and fail of acquiring the due rewards of the profession for himself. This is so in all departments of the profession; there is no ex-

ception. It is just as important to determine —and correctly—whether a court can be brought to overrule an adverse decision, as to find the decision itself; just as essential to judge truly in advance how a new question will be decided, as how an old one has been; just as essential to ascertain whether one seemingly old is really such, as how the admitted old should be decided now.

It is idle to say that the lawyer needs tools to do the easy part of the work, but the difficult part may be done without tools. A babe feels itself competent, even without a ladder, to grasp and handle the moon; and there are plenty of babes in the law who do not doubt that, if they are helped to ascertain what has been decided heretofore, they can manage the rest by their own unaided brains—tools, for high achievements, they despise; they would like help in walking but they can soar alone. I am not writing for such; but for those who know that, of all earthly aid which a mortal may crave, the most helpful is the simple suggestion of the thing which, when suggested, is absolutely plain and obvious. The want of the simple suggestion is what, for ages, deprived the world of the steam-engine, the railroad track, the telegraph, the sewing-machine, and the thousand of other inventions which distinguish the present times from those of old. And there is no department of thought in which the simple suggestion is more important than in the law. Most of what, in the United States, passes for, and is referred to, as authority, is not truly such. The English decisions since the Revolution, and those of states other than our own, have no binding force with us; yet they are listened to by the courts with respect, and, if they are uniform, and the reasoning of the judges in them appears sound, they will almost always be followed. Hence the practioner must know how to find them, how to estimate their value, and how to reason from them; and must have tools for doing this work. If a case of this class is against him, he must be able to detect fallacies in it, and to convince the court that those which he points out are fallacies in truth.

Let us see, then, what we have as practically essential. First, the lawyer must be able to find, and have the tools for finding, every case, English or American, ancient or modern, which will have any bearing on whatever question may possibly arise. This will not include every case in the books; because a doctrine once held may have been overruled, or superseded by legislation, or varied or enlarged by later decisions; or, otherwise, a case may be no longer of practical avail. I said, "able to find;" but an actual finding, or especially an actual using, will not always be necessary. In most circumstances a limited number will suffice; but in some all should be examined, and in rare instances the whole should be actually produced in court. Secondly, the legal doctrine on which the cases proceed must be understood, else their application to the question in hand cannot be made. The doctrine is not always expressed in the cases which really proceeded upon it, or in any other book; but not unfrequently, though not as the general rule, the practitioner will be compelled to search it out by the light only of his own unaided understanding, and satisfy the judge of its correctness by showing how it harmonizes and explains the cases, and accords with the other doctrines, and with the spirit, of the law. The more fully and accurately the doctrine of the law appears in any book, the better is it as a tool. Thirdly, where the question is new, or has been decided only in England or some other State—a class which is believed to embrace more than half the cases argued and adjudged in our State courts, indeed, almost the whole in our younger states—the practitioner must be able to go to the very "bottom of things," and make the whys and wherefores tell in every sentence he utters. To cite merely, in an unreasoning manner, the dry conclusions of law arrived at elsewhere, is to betray the cause of the client. Fourthly, he must, as already said, be able to discern when there is a reasonable prospect of getting a prior decision of his own court overruled; to which end he must know the limits of the doctrine of *stare decisis*, and the reasons which fix each particular limit. Whether he attacks the former decision or defends it, he must be absolutely "at home" in this whole learning. To do this requires, especially, a knowledge of the doctrines of the law as distinguished from the cases.

I have thus far assumed that the law is, what it is generally understood to be, a system of

doctrines, which are evidenced by the decisions, and not the decisions themselves. Lord Mansfield expressed the idea thus: "The law does not consist of particular cases, but of general principles, which are illustrated and explained by these cases."* And Tucker, P., in the Virginia Court: "Though we search for precedents, to discover and illustrate principles, the law depends at last upon principles, and not upon the precedent."† This is the view of the law entertained by every successful practitioner. But there are lawyers who deem it erroneous. According to them it is not *law* at all; it is a conglomeration of adjudged cases, by analogies to which succeeding cases are to be decided. These lawyers may be likened to one who should believe it not to be a law that material substances above and upon the earth gravitate towards its centre, and who should spend his days and nights in collecting, and burden his memory with remembering, particular instances in analogy to which he would hope, but not be sure, material things would move hereafter; enquiring specially for those instances in which new-made cheese had dropped to the moon, and leaden bullets had fallen upwards from pavements and killed wild geese flying for more congenial climes. Now, this view of the law may be correct—at least, the present article does not deny it—but those who entertain it have no occasion for tools of the legal trade, because they have nothing to do with which to employ the tools. They may, indeed, so long as no revolution in professional thought occurs, get some work at making digests, or instructing young candidates for honors at the bar, because herein their labours are brought to no practical test by which they can be shown to be abortive. But, assuming their views to be correct,, still they cannot advise a client correctly, or manage well his cause in court; and the reason is that though, as we assume, their views are just, yet, to practice from them, they must know the facts and results of the many hundred thousand cases from which the analogies are to be taken, as the only possible means by which to find the particular case required. Then, should they find the right case and produce it to the judge, they, holding it to be in itself supreme, and rejecting the idea that it is a mere manifestation of a law which exists separate from itself, would have no power of satisfying the court of its application to facts differing in any degree from those involved in it. Nor would there be any fulcrum on which to rest a lever for upsetting a case which had been wrongly decided. Indeed, it could not be said that any decision had been wrong. Again, no lifetime would be sufficient to read the cases; and, supposing them to be read and remembered, no powers could keep pace with the constantly accumulating mass. If a man enters upon this line of study and practice, he is soon overburdened, and his brain becomes broken by the mass piled upon it; he is bewildered, and he loses all capacity to do anything well. Holding, as we assume, to the truth, he becomes a martyr in the cause of truth, but the emoluments of a successful practice can never be his. His home is in Heaven, with the martyrs who have gone before, and the sooner he arrives there the better for him.

[To be Continued.]

* Rex v. Bembridge, 3 Doug. 327, 332.

† Williamson v. Beckham, 8 Leigh, 20, 24.

PERILS OF JUDGES.—The narrow escape of the Master of the Rolls from assassination, by a gentleman whom there is too much reason to believe is irresponsible, revives the recollection of the less deadly attack upon Vice-Chancellor Malins some time ago. Not to quote instances far back in legal history, there have been occasions within the last twenty-five years when the perils of judicial administration have been brought before the public. A prisoner at an assize on the Northern Circuit, on receiving sentence, stooped down and took off his heavily nailed boot, which he hurled at the head of Mr. Justice Cresswell. That stern but eminently just judge for a moment appeared to quail, but in the next instant recovered, and quietly directed the prisoner to be removed. Sir Samuel Martin and Mr. Justice Hawkins have both appeared in inferior courts to obtain protection against persons who had threatened them. The circumstances of the attack upon Sir George Jessel are nearly parallel with that upon the present Solicitor-General when he was Mr. Giffard. At the Old Bailey, about twenty years ago, Mr. Giffard was performing his duty as counsel, when a poor mad gentleman came up to him, and saying, "Remember Cardiff," fired upon him, happily without injury to one destined to take one of the first places at the Bar. It is impossible to guard against any such attacks when they are made by madmen; and, unhappily, the mental worry of litigation is only too surely calculated to develop any incipient or latent tendency to lunacy. The public will rejoice that the most capable, and certainly the most industrious judge we have on the bench has escaped the attack of an assassin. Sir George Jessel does not spare himself, and the example he sets is beyond all price to the public at large.—*Echo.*