THE

# LEGAL NEWS.

VOL. XX. APRIL 1, 1897. No. 7.

## SUPREME COURT OF CANADA.

OTTAWA, 24 March, 1897.

Quebec]

BEAUHARNOIS ELECTION CASE.

BERGERON v. DESPAROIS.

*Controverted election—Preliminary objections—Service of petition—Bailiff's return—Cross-examination—Production of documents.*

A preliminary objection filed to an election petition was that it had not been properly served. The bailiff's return was that he had served it by leaving a copy "duly certified" with the sitting member. By Art. 56, C.C.P., a writ or other document is served by giving a copy to the person on whom service is to be effected, certified by the prothonotary, attorney or sheriff, and it was claimed that the return in this case should have shown by whom the copy was certified. On the hearing the counsel for the sitting member wished to cross-examine the bailiff as to the contents of the copy, but without producing it, but was not allowed to do so.

*Held*, that the bailiff's return was good. Art. 78 C. C. P. only requires a return that he had served a copy, and the words "duly certified" were superfluous.

*Held* also, that counsel could not cross-examine the bailiff as to the contents of the copy served, without producing it or laying a foundation for secondary evidence.

Appeal dismissed with costs.

*Foran, Q.C.*, and *Ferguson, Q.C.*, for appellant.

*Choquet*, for respondent.

Nova Scotia.] 24 March, 1897.

LUNENBURG ELECTION CASE.

KAULBACH v. SPERRY.

*Election petition—Preliminary objections—Affidavit of petitioner—Bona fides—Examination of deponent—Form of petition—R.S.C., c. 9—54 & 55 Vic., c. 20, s. 3.*

By 54 & 55 V., c. 20, s. 3, amending The Controverted Elections Act (R.S.C., s. 9), an election petition must be accompanied by an affidavit of the petitioner "that he has good reason to believe and verily does believe that the several allegations contained in the said petition are true." The petitioner in this case used the exact words of the act in his affidavit.

*Held*, that the respondent to the petition was not entitled to examine him as to the grounds of his belief; that the act made the deponent the judge of the reasonableness of such grounds; and that the affidavit was not part of the proof to be passed upon at the trial of the petition.

It is not necessary that the petition should be identified in the affidavit as in case of an exhibit. The affidavit is presented merely to comply with the statute.

It is no objection to an election petition that it is too general, no form being prescribed by the act. Moreover, the inconvenience may be obviated by particulars.

*W. A. B. Ritchie, Q.C.*, for appellant.

*Russell, Q.C.*, and *Congdon*, for respondent.

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Prince Edward Island.] 24 March, 1897.

WEST PRINCE (P.E.I.) ELECTION CASE.

HACKETT v. LARKIN.

*Controverted election—Corrupt treating—Agency—Trivial and unimportant act—54 & 56 Vic., c. 20, s. 19.*

During an election for the House of Commons a candidate took C., a supporter, with him in driving out to canvass a particular locality. They stopped at a house where three voters lived, and C. took a bottle of liquor out of the wagon and went into the woods with two of the voters and remained some five

minutes, afterwards taking the third voter into his barn where he gave him two or three drinks out of the bottle and urged him to vote for the candidate with him. It did not appear that the latter saw C. take out the bottle or knew it was in the wagon. The candidate having been elected a petition was filed against his return, and he was unseated on the charge of corrupt treating by C., and acquitted on all other charges.

*Held*, that the act of C., in giving liquor to the voter in the barn and urging him to support his candidate was corrupt treating under the Elections Act.

C. was a member of a political association for a place within the electoral district supporting the candidate elected. There was no restriction on the members of the association to be confined in their work to the limits of the place for which it was formed, and the candidate admitted on the trial of the petition that he expected them to do the best they could for him generally.

*Held*, that the members were agents of their candidate throughout the whole district, and C. was therefore his agent.

Though the only act of corruption of which the sitting member was found guilty was trivial and unimportant in character, he was not entitled to the benefit of 54 & 55 V., c. 20, s. 19, as he had not used every means to secure a pure election. There were circumstances attending the commission of the corrupt act by C. which should have aroused his suspicions, and he should have cautioned C. against the commission of the act. Not having done so he had not brought himself within the terms of the above act.

Appeal dismissed with costs.

*McCarthy, Q.C.*, and *Stewart, Q.C.*, for the appellant.
*Peters, Q.C.*, Atty.-Gen. of P.E.I., for the respondent.

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24 March, 1897.

Manitoba.]

MARQUETTE ELECTION CASE.

KING v. ROCHE.

*Appeal—Preliminary objections—R. S. C., c. 9, ss. 12 and 50—Dismissal of petition—Affidavit of petitioner.*

A petition under the Controverted Elections Act (R.S.C., c. 9) against the return of the respondent at the election for the

House of Commons on June 23rd, 1896, was served on July 30th, and in September the petitioner was examined under sec. 14 of the Act. Notice of motion was afterwards given to strike the petition off the files of the Court on the ground that the affidavit of the petitioner was false, it having appeared from his examination that he had no knowledge of the truth or otherwise of the matters sworn to in the affidavit. The judge who heard the motion dismissed it, holding that the matter should have come up on preliminary objections filed under sec. 12 of the Act. His judgment was reversed by the full Court and the petition struck off.

*Held*, that the Court had no jurisdiction to entertain an appeal from this decision. That an appeal only lies from a decision on a preliminary objection (sec. 50), and that means a preliminary objection filed, under sec. 12, within five days frem the date of service of the petition.

Appeal quashed with costs.

*Howell*, Q. C., and *Chrysler*, Q. C., for the appellant.

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

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Manitoba.] 24 March, 1897.

WINNIPEG ELECTION CASE.

MACDONALD v. DAVIS.

MACDONALD ELECTION CASE.

BOYD v. SNYDER.

*Election petition—Service—Copy—Status of petitioner—Preliminary objections.*

On the hearing of preliminary objections to an election petition to prove the status of the petitioner, a list of voters was offered with a certificate of the Clerk of the Crown in Chancery, which, after stating that said list was a true copy of that finally revised for the district, proceeded as follows:

"And is also a true copy of the list of voters which was used at said polling division at and in relation to an election of a member of the House of Commons of Canada for the said electoral district, which original list of voters was returned to me by the returning officer for said electoral district in the same plight and condition as it now appears, and said original list of voters is now on record in my office."

*Held*, that this was, in effect, a certificate that the list offered in evidence was a true copy of a paper returned to the Clerk of the Crown by the returning officer as the very list used by the deputy returning officer at the polling district in question, and that such list remained of record in possession of said Clerk. It was then a sufficient certificate of the paper offered being a true copy of the list actually used at the election. Richelieu Election Case (21 Can. S. C. R. 168) followed.

Appeals dismissed with costs.

*Tupper, Q.C.*, for the appellants.

*Howell, Q.C.*, and *Chrysler, Q.C.*, for the respondents.

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24 March, 1897.

North West Territories.]

WEST ASSINIBOIA ELECTION CASE.

DAVIN v. MCDOUGALL.

*Appeal—Preliminary objections—Delay in filing—Order in Chambers—R. S. C. c. 9, ss. 12 and 50.*

By the Controverted Elections Act, R.S.C., c. 9, s. 12, preliminary objections to an election petition must be filed within five days from the service of the petition, and by sec. 50 an appeal can be taken to the Supreme Court from a judgment, rule, order or decision on such objections the allowance of which has, or which if allowed would have, put an end to the petition.

Preliminary objections were filed with the Clerk of the Court at 2.30 p.m. on the fifth day after the petition was served. By Jud. Order No. 6 of 1893, sec. 17, subsec. 1, the office of the Clerk is to be closed at 1 p.m. during the summer vacation comprising July and August. Mr. Justice Richardson in Chambers, on return of a summons calling upon the member elect to show cause why the objections should not be struck out or otherwise disposed of, held that the five days expired at 1 p.m. on August 3rd, and that the objections were not properly filed.

*Held*, that this decision was not one on preliminary objections, nor could any disposition of the matter put an end to the petition. Consequently no appeal would lie to the Supreme Court.

Appeal quashed with costs.

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

*Howell, Q.C.*, and *Chrysler, Q.C.*, for the respondent.

## COURT OF APPEAL.

LONDON, 12 March, 1897.

GRAHAM v. SUTTON, CARDEN & Co. (32 L.J.)

*Practice—Discovery—Inspection of books—Covering up parts not material—Mode of.*

Appeal from a decision of NORTH, J.

The plaintiff had obtained in the action an order for an account of the commissions due by the defendant company to him as their agent from the commencement of his agency in 1886; and he subsequently obtained an order for discovery. On November 30, 1896, an order was made for the production by the defendants of a large number of ledgers and other books for inspection by the plaintiff, his solicitors, and accountant; but the defendants were at liberty previously thereto to seal up such parts of the books as according to an affidavit to be made by one of their secretaries did not relate to the account.

The defendants alleged that their business would practically be stopped if these books were kept sealed during the whole period covered by the inspection; and they took out a summons asking that they might be at liberty on the inspection to cover up such parts of the books as did not contain entries relating to the account, and also to use certain of the books which had been sealed up in their business during the inspection, and for that purpose, if necessary, to unseal the sealed parts. North, J., made no order, except that the defendants might unseal and reseal on oath from time to time as the books might be required for their business such parts as did not relate to the account.

The defendants appealed.

Their Lordships (Lindley, L.J., Smith, L.J., Rigby, L.J.,) said that, though the order of November 30, 1896, might be in the common form, to enforce a literal compliance with it in this case would be oppressive; and though North, J., had given some relaxation, it was still more vexatious than was necessary for the purposes of justice. They discharged the order of North, J., and made an order giving the defendants leave on the inspection to cover up from time to time such parts of the books as did not contain entries relating to the account, and to produce for inspection such entries only as related to the matters in question,

without on each occasion sealing up the irrelevant entries, their secretary upon an inspection stating on oath that no parts of the books that were material had been covered up during it.

## QUEEN'S BENCH DIVISION.

LONDON, 13 March, 1897.

HAWKE (appellant) v. DUNN (respondent).—32 L.J.

*Gaming—"Place" used for purpose of betting—Betting Act*, 1853 (16 & 17 *Vict.*, *c.* 119), *ss.* 1, 3.

Case stated by justices.

An information was preferred by the appellant under section 3 of the Betting Act, 1853, against the respondent for unlawfully using a certain place—to wit, an inclosure known as the 1*l.* or Tattersall's Ring—for the purpose of betting with persons resorting thereto upon certain events and contingencies of and relating to horse-racing.

By section 1 of the Act, "No house, office, room, or other place shall be opened, kept, or used for the purpose of.....any person using the same.....betting with persons resorting thereto."

By section 3, "Any person who being the owner or occupier of any house, office, room, or other place, or a person using the same, shall.....use the same for the purposes hereinbefore mentioned, or either of them," is made liable to a penalty.

Tattersall's Ring is inclosed by a fence or paling about breast high, and is about forty yards long by thirty yards wide, and capable of containing more than 1,000 persons. Upon the occasion of a race meeting the respondent, a professional bookmaker, was with about 1,000 other persons present in Tattersall's Ring. He shouted the odds and made bets with every person who would bet with him. He did not confine himself to any fixed spot, and had no stool, umbrella, or anything in the nature of a fixture to denote where he carried on betting, but moved about.

The justices being of opinion that the respondent could not be convicted unless he had a certain fixed place from which he never moved, such as a stool or umbrella, dismissed the information.

The question for the opinion of the Court was whether the justices came to a correct determination in point of law.

The Court (Hawkins, J., Cave, J., Wills, J., Wright, J., and Kennedy, J.) held that the inclosure was a "place" within the meaning of the statute. One object the Legisla ture had in view was the suppression of that kind of gaming which took place in this case. To have passed an Act simply to suppress this kind of gaming in houses or offices would have been useless. It would be frittering away the statute to hold that a well-known defined inclosure bearing a name could not be called a place unless the respondent stood still. It was true that there was a rule that general words in a statute should be read as *ejusdem generis* with particular words preceding them; but that rule must be applied subject to the equally general rule that a statute ought to be construed so as to carry out its object.

Case remitted to the magistrates.

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## QUEEN'S BENCH DIVISION.

LONDON, 13 March, 1897.

GOLDSTEIN (appellant) v. VAUGHAN (respondent).—32 L.J.

*Sunday—Closing workshops—Exception in favour of Jews—Factory and Workshop Act*, 1878 (41 *Vict. c.* 16), *s.* 51—*Construction* —"*Open for traffic*" *on Sunday.*

Case stated by a metropolitan police magistrate before whom the appellant had been convicted upon an information laid by the respondent, an inspector of factories, charging that his workshop was open for traffic on Sunday.

The appellant's business was to make buttonholes for master tailors. He was of the Jewish religion, and having his workshop closed on Saturday, had availed himself of the exception within sections 50 and 51 of the Factory and Workshop Act, 1878, which entitled him to employ women and young persons on Sunday. His mode of doing business was as follows: He entered into arrangements with his customers to make buttonholes at certain prices. They sent the garments to the workshop and fetched them away. The buttonholes were not paid for when the work was left, nor when taken away, but accounts were kept and settlements arrived at, at times independent of these visits. The workshop was open on Sunday so that customers might send and fetch away garments in pursuance of

such prior arrangements; but it was not kept open for the purpose of making an arrangement with either an old or new customer; nor for the receipt of work from a casual customer. On Sunday, September 20, 1896, the appellant employed in his workshop a woman of the Jewish religion. Section 51 provides that "no penalty shall be incurred by any person in respect of any work done on Sunday in a workshop or factory by a young person or woman of the Jewish religion subject to the following conditions:.....(2) The factory or workshop shall be closed on Saturday and shall not be open for traffic on Sunday....." The learned magistrate thought that the facts brought the case within the words "open for traffic on Sunday," and convicted the appellant. The question for the Court was whether the facts brought the appellant's workshop within the words "open for traffic on Sunday."

The Court (Cave, J., and Grantham, J.) held that although it was not altogether easy to construe the word "traffic," yet the learned magistrate had upon the facts taken a somewhat too narrow view. They were of opinion, seeing that the work was brought in pursuance of arrangements made on previous days, that the appellant's workshop was not open for traffic.

Conviction quashed.

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## *MEASURE OF DAMAGES IN CASES OF INABILITY TO CONVEY GOOD TITLE TO LAND.*

That the decisions on this subject are irreconcilable is not surprising when one considers the diversity of opinion as to the ground upon which the distinction made in this regard between the case of a vendor's breach of a contract for the sale of realty and the like breach of a contract for the sale of chattels, rests.

In *Drake* v. *Baker* (34 N.J.L. 358), the New Jersey Supreme Court held, that where one agrees to sell real estate and subsequently discovers that his title is defective, and is on that account unable to complete his bargain, nominal damages only can be recovered against him, but limited the scope of the rule to the case of a vendor unable to perform by reason of a defect in his title, which was unknown to him when he entered into the contract. In *Gerbert* v. *Congregation of the Sons of Abraham* (35 Atl. Rep. 1121), the Court of Errors and Appeals overrules this case and, following *Bain* v. *Fothergill* (L. R. 7 H. L. 158), holds

that the rule restricting the recovery to nominal damages applies to every case where the vendor fails to convey through inability to make title; and that the rule is the same, whether the vendor has been guilty of fraud or not.

In several of the States a rule exactly the reverse of that adopted in New Jersey prevails. In these States the vendor's good or bad faith is treated as irrelevant to the question of the damages to be awarded, and in either case a recovery of substantial damages is allowed. (Maupin's Marketable Titles to Real Estate, 213.)

The doctrine which finds general favor in this country seems to be that which prevails in New York. By this, while a vendor contracting to sell in good faith, believing he has a good title, and afterwards discovering his title to be defective, for that reason, without any fraud on his part, refuses to fulfil his contract, is held liable to nominal damages only (*Conger* v. *Weaver*, 20 N. Y. 140; *Cockraft* v. *The N. Y. & H. R. R. Co.*, 69 N. Y. 201), yet, where he is chargeable with wrongful conduct, as where he fraudulently misrepresents or conceals the state of his title, or covenants to convey when he knows he is without authority to do so, even though he acts in good faith, believing that he will be able to procure a good title for the purchaser, he is held liable for the loss of the bargain. (*Pumpelly* v. *Phelps*, 40 N. Y. 59.) In this latter instance, however, if the purchaser knew, at the time he entered into the contract, that the ability of the vendor to convey good title depended upon a contingency, his recovery is limited to nominal damages, for under such circumstances the vendor can scarcely be said to have been guilty of wrong doing. (*Magraff* v. *Muir*, 57 N. Y. 155).

For a discussion of the reasons advanced for and against each of these rules, see Maupin on Marketable Titles to Real Estate, sec. 90, etc.; 3 Sedg. on Dam. 196; Sedg. El. of Dam. 320.—*University Law Review.*

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COLONIAL JUDGES IN ENGLAND.—Sir H. De Villiers, Chief Justice of the Cape Colony, is expected in London in April. The chief object of his visit is to take the oath as a Privy Councillor and his seat on the Judicial Committee. Sir Henry Strong, Chief Justice of the Supreme Court of Canada, is also expected to visit England shortly, for the same object.

## *PREVENTION OF THE PUBLICATION OF PORTRAITS OF PERSONS.*

We believe that the measure introduced in the legislature by Senator Ellsworth, to prevent the publication of portraits or attempted portraits of individuals without their consent, aims at a very desirable reform, and that it is possible, though perhaps not very easy, to frame a workable law. The debate in the senate last week disclosed that the principal practical difficulty concerns the question of caricatures, not intended for portraits pure and simple, but to point a moral or graphically present an argument. As remarked in an editorial in the *Evening Post* of March 5th, such cartoons are "allowable by prescription." They have been used with striking effect as expedients of political agitation both in this country and England for many years. The services of Thomas Nast in the movement against the Tweed ring are still vividly remembered. And in later times, personal cartoons have undoubtedly materially influenced the results even of presidential elections. Sensible as we are of the great susceptibility to abuse of such method of appeal to the public, we do not believe that popular sentiment demands or could be brought to favor its absolute suppression. It must be remembered that a person so caricatured has a clear and substantial remedy by an ordinary suit for libel if he chooses to exercise it.

The case is different where a portrait, or an alleged or attempted portrait, of a person is inserted in a periodical or other print, not with any didactic or satirical purpose, but merely to present his physiognomy to the public. If the workmanship be inferior or slovenly, and the result be actually to hold the subject up to ridicule or contempt, it may be that a cause of action would lie and a substantial recovery could be had for libel. But broader than this consideration is the one that, whether the portrait be good or bad, the right of privacy is morally entitled to protection, and it is desirable to guard such right, by legislation permitting suit to be brought and recovery readily to be had for unauthorized publications, even of true likenesses. This, of course, would not prevent the insertion in papers of portraits of individuals in proper cases. Experience of human nature shows that there is little difficulty in inducing the average man to consent that the light of his countenance be permitted to beam upon his appreciative and admiring countrymen, whenever an

editor of decent standing suggests that the veil of privacy be withdrawn.

As a rule, in the better class of publications, the consent of the subject is procured, and a photograph obtained from him as a basis for the lithographer's or engraver's art. Legislation of the kind proposed would tend to exclude the exhibition of mortifying snap-shots by newspaper artists, and enable the individual to control the time and manner of the appearance of his likeness. Undoubtedly the right now exists to enjoin the publication of the portrait of a living person. The difficulty is that often the first notice of the intention to publish is the actual appearance of the picture. If a cause of action for damages exists after publication, the recovery could scarcely be more than nominal where there is no caricature, but the intent was to present a *bona fide* portrait.

If any remedy be attempted it should take the form of a definite penalty, suable for by the person aggrieved. It would make the law practically nugatory to simply pronounce its infractions misdemeanors punishable by fine and to be prosecuted by district attorneys. The centres of the offending are the large cities and towns, where public prosecutors have always so much work of serious importance on hand that it could not be hoped that such comparatively petty infractions of law would be faithfully followed up.

On the theory of protecting the right of privacy, therefore, the experiment seems worth trying of conferring the right to sue for a penalty for the publication of any pictorial representation of a person's face or form.

The objection may be raised that a double and concurrent remedy would thereby be granted for such pictures as are libellous. But as matter of fact, a large majority of caricatures and cartoons that are now printed are unquestionably libellous, and it is not probable that men in public life would be more apt to prosecute an action for a small penalty than they are to sue for heavy damages for defamation. And a new law as proposed would give persons wantonly dragged into publicity a means of redress, the exercise of which would tend to make the newspapers more careful and discriminating. The key to the situation is that it is the custom now to deliberately violate legal rights, the newspapers taking all risk. If a tangible means of redress existed in favor of everybody, such risk would be more cautiously run.—*New York Law Journal.*

## *THE LATE LORD JUSTICE KAY.*

It is with regret that we record the death of Sir Edward Kay, which took place early on 9th March, at his London residence. He had suffered for two years from a serious internal malady, which, prior to his retirement from the Court of Appeal at the beginning of the present term, had compelled him to be absent for protracted periods. He underwent a second operation shortly before Christmas, and his indomitable courage and perseverance gave encouragement to the expectation that he would resume his duties as a Lord Justice; but it was eventually recognized that his strength would not be equal to the strain, and his resignation was accepted. Sir Edward Kay took so keen an interest in his judicial duties that he was most anxious to resume them. Almost up to the moment of his resignation he read the various reports with his accustomed diligence. But it must not be assumed that because he was attached to his duties in the Court of Appeal he displayed any undue inclination to cling to his office. His resignation was placed in the hands of the Lord Chancellor more than once before it was accepted. It was consistent with the conscientiousness he displayed in the hearing of cases that he should offer to retire from the Bench immediately his illness began seriously to interfere with his attendance to his duties. His career was laborious and meritorious in a high degree. His success was due entirely to his own exertions. He had no family influence to brighten his early days at the Bar, while his promotion to the Bench was solely in recognition of the professional eminence which his industry and ability had enabled him to acquire. The only occasion on which he stood for Parliament was in 1874, when he contested Clitheroe in the Liberal interest and was defeated. Determination was writ large on his long upper lip; his features were those of a man who had determined to succeed, and the look of austere dignity which settled upon them appeared to express his recognition of the fact that he had achieved his purpose. The fourth son of Mr. Robert Kay, of Bury, Lancashire, Edward Ebenezer Kay was born seventy four years ago. The late Sir J. Kay-Shuttleworth and the late Mr. Joseph Kay, Q.C., judge of the Manchester and Salford Palatine Court, were his brothers. He graduated at Trinity College, Cambridge, in 1844, and was called to the Bar at Lincoln's Inn in 1847, reading with the late Mr. George Lake Russell. Like many other

eminent lawyers, several of whom are now on the Bench, he started his career as a reporter. He was fortunate in the judge in whose Court he sat, the great weight attached to the judgments of Vice-Chancellor Wood, afterwards Lord Hatherley, giving a reflected importance to the five volumes of reports which bear the late Lord Justice's name. The first of these volumes was prepared by Mr. Kay alone; the remaining four were published in conjunction with Mr. Vaughan Johnson. In those days a good volume of reports was frequently the foundation of a large practice in the equity courts, and Mr. Kay, whose industry was inexhaustible, gradually acquired one of the largest businesses ever possessed by a junior in Lincoln's Inn. He was appointed a Queen's Counsel nineteen years after his call. His career as a leader was commenced in Vice-Chancellor Wood's Court, where in his early days he had sat as a reporter. He subsequently practised before Vice-Chancellors Giffard, James, and Bacon. It was before the last-named judge that he practised longest and acquired the most marked ascendency. His chief opponent was Sir Henry Jackson, who was appointed a judge and died before he took his seat on the Bench. In 1878 the proportions of his practice justified him in becoming a 'Special,' and during the three years that preceded his appointment to the Bench in 1881 he occupied at the Chancery Bar a position scarcely less distinguished than that held by Sir Horace Davey and Sir John Rigby in later years. For an equity lawyer he possessed a considerable measure of oratorical power. He submitted his arguments in vigorous language, and emphasized his points with the gestures of oratory. Even on the Bench his utterances were marked by a fervour not common in the Courts. While he delivered his judgments his body was scarcely less active than his mind. He was appointed to the Bench on March 30, 1881, in succession to Vice-Chancellor Malins. Nearly twelve months, therefore, have passed since he became entitled to retire from the Bench on a pension. He proved to be one of the most valuable judges of the Chancery Division, being rapid in his methods, sure in his judgments, and conscientious as to the smallest details of his work. His firm and ready grasp of facts enabled him to secure in the hearing of witness cases a larger measure of success than most Chancery judges have obtained, while the vigour with which he addressed himself to the task of simplifying the precedents of the Chancery Division,

and of discouraging the institution of administration actions, though it sometimes led him into excesses of zeal, was largely instrumental in bringing about the improvements that have been effected in the business of the equity courts. On some occasions he appeared to entertain an exaggerated notion of his duty to the public, and this led him into making comments on the conduct of solicitors for which no real basis could be found. Such was the case, for instance, when he severely censured commissioners for oaths, who receive merely eighteen pence for their trouble, for not reading the affidavits they swear. Towards the close of 1890, on the retirement of Sir Henry Cotton, Sir Edward Kay was promoted to the Court of Appeal. His appointment was approved, not only because he was the senior judge of the Chancery Division, but also because of the success he had attained as a judge of first instance. Though all his professional life had been spent in the Chancery Courts, he speedily made himself familiar with the business of Appeal Court I., where the common law appeals are heard. He showed himself to be of independent judgment, and in several important cases differed from his colleagues. He was accustomed to give ample reasons for his decisions, and to deal at length with the cases to which reference was made at the Bar. His judgments in the Reports would probably be more valuable if they were shorter. The late Lord Justice's austerity prevented him from becoming a really popular judge, though the conscientiousness and ability with which he discharged his duties on the Bench, and the zeal and industry with which he assisted in the labours of the Rule Committee, were fully recognized. Nor could he be regarded as a great judge. Probably no occupant of the Bench had a larger knowledge of cases. But, owing no doubt to his early labours as a reporter, he was wont to rely too much on "authorities." He did not display on the Bench that grasp of principle which distinguished Sir George Jessel and Lord Bowen, and rendered them independent of "cases."—*Law Journal* (*London*).

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POLITICAL ANTECEDENTS OF JUDGES.—"*Debrett's House of Commons and the Judicial Bench*" states that of the judges of the High Courts of Justice in England fifteen have won their way to the Bench after sitting as members of the House of Commons; in Ireland eight judges have used the same step to promotion; and in Scotland six judges of the Court of Session have been known as debaters in the House.

## *GENERAL NOTES.*

BENCH AND BAR.—In an article dealing with encounters between Bench and Bar, suggested by the recent passage of arms between Mr. Justice Hawkins and Mr. Kemp, Q.C., the *Pall Mall Gazette* says: "Most dramatic scene of all, but not before an English tribunal, was that which gave a Lord Chancellor to England. In 1757 Wedderburn, under great provocation from Lockhart, another Scotch barrister, used language to him in Court at Edinburgh which certainly cannot be justified. It was undoubtedly, as the Lord President said, when at last he did interfere, "unbecoming an advocate, and unbecoming a gentleman." Wedderburn, beyond himself with passion, retorted, "His lordship had said as a judge what he could not justify as a gentleman," (an admirable formula, by the way, when the judge is wrong). The Bench promptly and properly resolved that he must at once apologise, under pain of deprivation. Without another word he pulled off his gown, laid it in front of him, and said, "My lords, I neither retract nor apologise, but I will save you the trouble of deprivation; there is my gown, and I will never wear it more; *virtute me involvo*,' and with a bow he left the Court. That very night the future Lord Loughborough set out for London."

INTERESTING LIFE INSURANCE CASE.—Aaron Goldsmith and his wife were burned to death in New York City on December 20, 1896, and now there is going to be some litigation about a life insurance policy, taken out on the husband's life for the benefit of his wife. The question being which of the two died first, relatives and heirs of both sides will lay claim to the money, and the life insurance company will pay the amount into Court and compel the parties to fight. It is not known exactly in which way the New York Courts will decide, but under the Roman law the presumption is in favour of the husband having survived the wife, as being the stronger; wherefore his relatives will be entitled to the money. But that law no longer applies here. Professor Meilziner, of the Hebrew Union College, has discussed the matter in the newspapers from the Rabbinical side, calling attention to a like question discussed by Hillel and Shamai. In the Mishna the case is stated of a man and wife having no children, who perished together under the ruins of a house that tumbled over them. Her relatives claiming that he died first, demanded not only her dotal and paraphernal property, but also the dower due to her by Jewish law. His brothers, claiming that he survived her, hence held themselves out as sole heirs. The Shammaites held that since there is no possible way of determining who died first, the money in dispute is to be divided among the two contestants. Hillel, to the contrary, held that the property in dispute remains with the actual possessor, thus giving the wife's relatives only her paraphernal property. The Code of Maimonides and the Shulchan Aruch adopt this opinion. But in the present case the insurance money is in the hands of neither party.—*Jewish Chronicle.*