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IMMUNITY OF FOREIGN MEN OF WAR.

An interesting and important question, says the *Solicitor's Journal*, was recently decided by Sir R. Phillimore, on an application for the arrest of the United States war frigate *The Constitution*, and her cargo, for a sum claimed for salvage services rendered on the occasion of her recent accident off the coast of Dorset. The general exemption of ships of war from local jurisdiction, founded not upon any absolute right of extra-territoriality, but upon principles of public comity and convenience, and arising from the presumed consent of nations, was very clearly laid down in the American case of *The Exchange* (7 Cranch, 135), where Chief Justice Marshall, in delivering the judgment of the court, said, "It is impossible to conceive, said Vattel, that a prince who sends an ambassador, or any other minister, can have any intention of subjecting him to the authority of a foreign power. Equally impossible was it to conceive that a prince who stipulates an asylum for his ship of war in distress should mean to subject his navy to the jurisdiction of a foreign sovereign. And if this could not be presumed, the sovereign of the port must be considered as having conceded the privilege to the extent in which it must have been understood to be asked." The same view was afterwards taken in the *Independencia* (7 Wheat. 283); and in the case of the *Charkieh* (21 W. R. 437, L. R. 8 Q. B. 200) Mr. Justice Blackburn remarked that "there is authority for saying that courts of justice cannot proceed against a sovereign or a State, and I think there is also authority for saying that they ought not to proceed against ships of war or national vessels: and it is clearly desirable that this rule should be established, otherwise wars might be brought on between two countries." But in a case relating to the same vessel (22 W. R. 63, L. R. 4 Adm. 93) Sir R. Phillimore said that it was by no means clear that a ship of war to which salvage services have been rendered may not, *jure gentium*, be liable to be proceeded against in a court of admiralty for the remuneration due for such services. "It is very remarkable," he added, "that Lord Stowell declined to pronounce any opinion upon this point in the case of *The Prins Frederik* (2 Dods. 451)." In the case of *The Constitution* Sir R. Phillimore seems to have discarded his former doubts, for he held that *The Constitution*, being a war frigate of the United States Navy, and having on board a cargo for national purposes, was not amenable to the civil jurisdiction of this country.—The *American Law Review* says that this decision is the first express recognition in an English court of the principles laid down by the Supreme Court of the United States in 1810, in the above-named case of *The Exchange*.

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

MONTREAL, February 4, 1879.

Sir A. A. DORION, C.J., MONK, RAMSAY, TESSIER & CROSS, JJ.

RICHELIEU et al. (plffs. below), Appellants, and CITY OF MONTREAL (deft. below), Respondent.

Corporation—Damages—Non-Observance of by-law.

The appeal was from a judgment of the Superior Court (Dunkin, J.), dismissing an action of damages which appellants had brought against the Corporation of Montreal, for having issued a license to one Corbeil to keep a private butcher's stall, contrary to one of defendants' by-laws. The plaintiffs complained that they, as butchers, were injured in their trade by this contravention of the by-law.

The Court below dismissed the action on the ground that the plaintiffs had failed to prove that the Corporation had ever granted a license to Corbeil, as alleged.

RAMSAY, J. There is no contest as to the facts of this case. The appellants took a butcher's stall in the St. James Market, there being then in force a by-law which prohibits the sale of meat outside of the markets without a special license to this effect, and that no such license will be granted to keep a stall within 300 yards of any market. One Corbeil paid $100 two years running for a license, and actually did open a stall within the limit of 300

yards. He never had a license, and the Corporation tendered back the $200.

The first question that it seems ought to be considered is whether the conditions mentioned in the by-law, for obtaining a license to sell outside of the markets, can be considered as a warranty to those interested, that the corporation shall observe its own by-law. The question is not free from difficulty, but we have not to decide it. Corbeil never had authority to sell outside the market, and his payment of $100 to the respondent's clerk surreptitiously, could not be construed into anything tantamount to such an authorization, or to a license, which is what the by-law contemplates.

The appellants may have a remedy, but it certainly was not against the Corporation. They complain that the Recorder dawdled over the case when Corbeil was prosecuted. I don't think the Corporation was obliged to prosecute.

Judgment confirmed.

Doutre, Doutre & Robidoux for appellants.

R. Roy, Q.C., for respondent.

WORKMAN et vir (claimants below), Appellants, and RENNY et al. (inspectors contesting below), Respondents.

Insolvent—Contingent interest of insolvent's wife.

The appeal was from a judgment of the Superior Court, Mackay, J., 4th June, 1878, rejecting the claim filed by the female appellant on the insolvent estate of her husband. The judgment was in these terms:

"The Court, etc....

"Considering that the bankrupt Mulholland was known by the claimant Ann Workman, at date of her marriage, to be a trader exposed to the vicissitudes of trading, and yet she stipulated for a possible emolument which could not be, and cannot be truly calculated or exactly known till the death of the bankrupt Mulholland; said emolument dependent upon what property should or might be left in his succession by him, Mulholland, at his death;

"Considering the claim, now being adjudged upon, is not named in the marriage contract for a sum of money, or for dotal money, or a debt *à terme*, and the mass, or *corpus*, upon or against which the claimant makes claim upon the pending bankruptcy-proceedings, is other than the one upon, out of or against which her marriage contract gave her right to claim, the said contract giving her the right to make option of part of the mass or *corpus* of the succession of said H. Mulholland, provided she be living at his death;

"Considering that the usufruct or *jouissance* stipulated in favor of claimant, at her option, provided she survive her husband Henry Mulholland, was and is not of any named sum of money, or may be left in his succession by Henry Mulholland at death, and the said usufruct or *jouissance*, as stipulated, is not to control or affect the distribution under the present bankruptcy proceedings, nor to be provided for or valued in any way, as is (without right) claimed by said Dame Ann Workman;

"Considering that the claim of said Dame Ann Workman is not such an one as could or can be barred by any discharge obtained by the bankrupt Mulholland, as result of, or by or under the proceedings in the insolvency against him, and so the said claim was and is not called for, and is not to be allowed;

"Considering that under the claim of the said Ann Workman as made, we have not to deal in any way with the gift in the marriage contract of £250, and that the contestation of the claim as formulated is well founded;

"Doth maintain said contestation," &c.

RAMSAY, J. The female appellant was married to Mr. Mulholland in April, 1834. Prior to the marriage, a contract was entered into between them, by which it was stipulated that should the said Ann Workman survive her said husband, she should be entitled to the sum of £250 cy., or at her option, the legal interest of one-third of the property movable and immovable, debts active, mortgages and assets belonging to the succession and estate of the said Henry Mulholland. If there was issue of the marriage, she was only to have the life enjoyment of it, but if no children were born of the marriage, then she was to have the £250, or the one third of the estate in full property. The marriage contract stipulated, for the security of this donation, a general hypothec, which was registered by memorial the 23rd August, 1843.

Mulholland became insolvent, and his wife filed a claim on his estate for what she calls her contingent or conditional rights in case she survives her husband. This claim she assumes to be probably one-third of all her husband's

possessions, without taking into consideration his liabilities, and she contends that a dividend amounting to one-third of the active of his private estate should be reserved until the event should determine whether she has a *gain de survie* at all. I am astonished that having taken up this position, she should have stopped short there. If her pretention is founded, it would have required at least one half of the estate to protect this imaginary right. The fact is she has no right to any determinate thing but that of which Mulholland dies possessed during her lifetime, if she abandons her option of £250 cy. It is his death before hers which not only constitutes her right, but which determines of what it shall consist. She has no more right to an article of the estate as it now stands, than she has to all the property sold to her husband since their marriage. Nor is there any other mode of fixing a value for her contingent claim, except as regards the £250, for it not only depends on the accident of her husband's predecease, but on the eventuality of his possessing anything when he dies. There is no measure for such a chance.

To this I may add that I very much question whether the marriage contract gives the wife a third of the estate without deducting the debts. Can it be said that a man's assets belong to him without deducting his debts? Again, would a general mortgage for an obligation totally contingent in amount be good under the old law? But on these questions it is not for us now to express any opinion.

Judgment confirmed.

Wurtele & Sexton for appellants.

J. S. C. Wurtele, Q. C., and *A. Lacoste, Q. C.*, counsel for appellants.

Bethune & Bethune for respondents.

Les Clercs Paroissiaux de St. Viateur (defts. below), Appellants, and Labelle, (plff. below), Respondent.

Corporation for educational purposes—Negligence.

This was an appeal from the judgment of the Superior Court, Torrance, J., condemning the appellants to pay damages for the death of respondent's husband. See Legal News, vol. 1, p. 63. The death of respondent's husband was caused by the explosion of a cannon which was being fired under the direction of the appellants to celebrate the *fête* of St. Jean Baptiste. The defence was that the defendants (appellants) being a corporation incorporated especially for educational purposes, could not be held liable for the *délits* or *quasi délits* of the members thereof; further, that deceased contributed to the accident, as he subscribed money to buy the powder which was used on the occasion.

Sir A. A. Dorion, C. J., said it appeared that one of the professors of the appellants' college was present and directed the operations. The deceased was on his own property, at a distance of four arpents, when he was struck in the side by a fragment of the cannon. He did not contribute in any way to the accident.

Judgment confirmed.

Jetté, Béique & Choquet for appellants.

Duhamel, Pagnuelo & Rainville for respondent.

PRACTICE—SECURITY FOR COSTS—PLAINTIFF TEMPORARILY RESIDENT IN ENGLAND.

ENGLISH COURT OF APPEAL, MAY 27, 1879.

Redondo v. Chaytor.

A plaintiff, who is a foreigner, domiciled abroad, and has come to England for the purpose of bringing an action, and intends to leave England as soon as the action is decided, cannot be compelled to give security for costs.

The action was brought by the plaintiff, who was a foreigner, against the defendants, as executors of a person named John Foster, to recover certain arrears of an annuity, which were alleged to have been due from the testator to the plaintiff. The statement of claim alleged that Mr. Foster entered into an agreement with the plaintiff, by which it was provided that in consideration of the plaintiff going abroad, and continuing to reside abroad, Mr. Foster was to pay her an annuity as long as she lived. The statement of claim further alleged that the plaintiff had resided abroad since the making of the agreement, until she came to this country, temporarily, for the purpose of the present action. From the affidavits, which were filed, the court came to the conclusion that the plaintiff was in this country *bona fide* for the purpose of carrying on the action, but only temporarily, and intended to go abroad again when the action was decided. On the application of the defendants,

Lindley, J., made an order at chambers that the plaintiff should give security for costs.

This order was rescinded by the Common Pleas Division, and the defendants appealed.

Fullerton, for the defendants, cited *Goodwin* v. *Archer*, 2 P. Wms. 452; *Adderly* v. *Smith*, 1 Dickens, 355; *Duke de Montellano* v. *Christin*, 5 M. & S. 503; *Ainslie* v. *Sims* 17 Beav. 57; *Pray* v. *Edie*, 1 T. Rep. 267; *Ciragno* v. *Hassan*, 6 Taunt. 20; *Jacobs* v. *Stevenson*, 1 B. & P. 96: *Anon.*, 8 Taunt. 737; *Oliva* v. *Johnson*, 5 B. & Ald. 908; *Naylor* v. *Joseph*, 10 J. B. Moore, 522; *Dowling* v. *Harman*, 6 M. & W. 131; *Tambisco* v. *Pacifico*, 7 Ex. 816; 21 L. J. 276; Ex.; *St. Leger* v. *Di Nuovo*, 2 Scott, N. R. 587; *Cambottie* v. *Inngate*, 1 W. R. 533; *Swinbourne* v. *Carter*, 22 L. T. Rep. (O.S.) 123; 2 W. R. 80; *Swanzy* v. *Swanzy*, 4 K. & J. 237; *Raeburn* v. *Andrews*, 30 L. T. Rep. (N.S.) 15; L. Rep., 9 Q. B. 118; *Westenberg* v. *Mortimore*, 32 L. T. Rep. (N.S.) 402; L. Rep., 10 C. P. 438.

Lumley Smith, for the plaintiff, cited *Calvert* v. *Day*, 2 Y. & C. Ex. 217.

THESIGER, L. J. I have been asked to deliver judgment first, although there is no difference in the result at which the members of the court have arrived. The case comes before us as an appeal by the defendant from an order of a divisional court, rescinding an order of Lindley, J., by which the plaintiff had been directed to give security for costs. The action is brought against the executors of a person named Foster, to recover certain arrears of an annuity alleged to be payable to the plaintiff under an agreement, by which Mr. Foster, in consideration of the plaintiff going and residing abroad, agreed to pay her an annuity for as long as she might live. The statement of claim alleges that the plaintiff has resided abroad since the making of the agreement, until she came temporarily to this country for the purpose of the present action; and it is out of the statement of claim, and on the affidavits which have been filed, that the question of security for costs arises. It is sufficient to say that, in my opinion, the true inference to be drawn from the facts is that the plaintiff is *bona fide* here for the purpose of this action, but is only temporarily here, and if the action is determined in her favor, will certainly leave this country, and very probably, if the action is determined against her, will leave the country under such circumstances as to prevent the defendants from successfully issuing process for the costs of this action. Therefore, unless there is a settled practice that under such circumstances a plaintiff cannot be ordered to give security for costs, there is some reason why the plaintiff in this case should be called upon to give security. But the Common Pleas Division have decided that the established rule of practice is that, whether the plaintiff be a foreigner or an Englishman, where he is resident in this country at the time of the application for an order for security for costs, though only temporarily so resident, the courts have no power to require him to give security. I think this decision is right, and in order to show that it is so, it is necessary to go into the cases which have been referred to on the point. In favor of the view that a plaintiff who is temporarily resident within the jurisdiction cannot be compelled to give security for costs, there are five cases in which the point has been decided. In 1815, *Ciragno* v. *Hassan*, 6 Taunt. 20; in 1819, an *Anonymous case*, 8 id. 737; in 1827, *Willis* v. *Garbut*, 1 Y. & J. 511; in 1840, *Dowling* v. *Harman*, 6 M. & W. 131; and in 1852, *Tambisco* v. *Pacifico*, 7 Ex. 816. So far I have only referred to the authorities at common law, and in addition to these decisions the text-books at common law practice, viz., Chitty's Archbold's Practice, vol. 2, p. 1415, 12th ed., and Lush's Practice, vol. 2, p. 981, 3d ed., state the rule to the same effect, though some doubt is expressed, because there have been decisions to the contrary. Three decisions have been cited in argument, which were supposed to be contrary to the conclusion at which the court below has arrived; but two of these cases, when examined, appear to be no authority for the proposition to support which they were cited. These are *Naylor* v. *Joseph*, 10 J. B. Moore, 522, and *Gurney* v. *Key*, 3 Dowl. P. C. 559; for in both those cases, though the plaintiffs may have been within the jurisdiction of the court when the actions were brought, yet it is clear that when the applications for security for costs were made they were out of the jurisdiction. Therefore, there is only one case which is really in favor of the contention that security for costs can be ordered in a case like the present, and that is *Oliva* v. *Johnson*, 5 B. & A. 908, decided in 1822.

That case was decided by the Court of Queen's Bench after *Ciragno* v. *Hassan*, 6 Taunt. 20, and the *Anonymous case*, 8 Taunt. 737, had been decided in the Common Pleas, and neither of these cases were cited. But when the point came before the Court of Exchequer in 1840, in *Dowling* v. *Harman*, 6 M. & W. 131, although *Oliva* v. *Johnson*, was not cited, yet (as pointed out by Martin, B., in *Tambisco* v. *Pacifico*, 7 Ex. 816) it is clear that it must have been in the mind of one of the judges at least, for Parke, B., who took part in the decision in *Dowling* v. *Harman*, had been counsel in *Oliva* v. *Johnson;* and, besides, when the point came again before the Court of Exchequer in *Tambisco* v. *Pacifico*, *Oliva* v. *Johnson*, was cited, and notwithstanding that decision, the court followed what seems to me to be, with one exception, the unanimous view that has been taken, and decided that security for costs could not be ordered; and in all the cases, except *Oliva* v. *Johnson*, it may be observed that the courts did not deal with the question as if they had to decide whether security for costs might reasonably be ordered, but in all these cases they have decided on the settled practice of the courts. That is how the question stands, so far as the common-law authorities are concerned, and it seems impossible, on the state of the decisions, to hold otherwise than as the Common Pleas Division have held. But Mr. Fullerton says that there are some cases in equity which are in conflict with their decision. The first of these cases is *Ainslie* v. *Sims*, 17 Beav. 57, decided in 1853. No doubt in that case the rule previously laid down in the common-law courts was not followed by the Master of the Rolls, but none of the common-law authorities were cited, and, moreover, in the previous year, *Tambisco* v. *Pacifico* was decided, which was directly contrary; besides which, in the same year (1853) there was a decision to the contrary in Chancery (*Cambottie* v. *Inngate*, 1 W. R. 533), where Wood, V. C., called attention to the common-law authorities, and pointed out that they had not been referred to before the Master of the Rolls, and said that for that reason he did not feel bound to follow the decision in *Ainslie* v. *Sims*. He says: "By the comity of nations a foreigner, while in this country, was entitled to the same relief in a court of justice as a British subject; on quitting the country the same security could be demanded from both of them. In *Willis* v. *Garbutt*, 1 Y. & J. 511, Alexander, C. B., said, 'no one can have security for costs until his opponent has quitted the country.'" But it is said that, although Wood, V. C., took that view in 1853, he took a different view in 1858 in *Swanzy* v. *Swanzy*, 4 K. &. J. 237. I have seen the report of that case, and it seems to me that the Vice-Chancellor did not withdraw from the view he took in 1853, nor did he express any opinion to the effect that the decision in *Ainslie* v. *Sims* was right. It seems to me that *Swanzy* v. *Swanzy* was decided upon a totally different principle from that suggested on behalf of the defendants in the present case; that is, that when a plaintiff, whether a foreigner or an Englishman, who is temporarily resident in this country, in order to mislead the defendant, either conceals his address, or gives a false address, or lives at his residence under a false name, under such circumstances the conduct of the plaintiff is in the nature of a fraud on the court, and therefore he will be ordered to give security for costs. In *Fraser* v. *Palmer*, 3 Y. & C. Ex. 280, Alderson, B., said: "If a plaintiff gives the right description of his place of abode when he files his bill, his circulating about afterward is immaterial unless he goes abroad. He is still open to the process of the court. It is a different thing if he makes a false statement as to his residence; he is then guilty of a fraud on the court, and on that ground is made to give security for costs. It cannot be contended that a person is to give that security on the mere ground that he is in the habit of moving from place to place. The evident meaning of Lord Abinger's dictum in *Calvert* v. *Day* is this, that it is no excuse for a man to say that he is a hawker and peddler in order to give a false description as to his place of residence." Therefore that explains the meaning of the Vice-Chancellor in *Swanzy* v. *Swanzy*, and shows that *Calvert* v. *Day*, 2 Y. & C. Ex. 217, the peddler's case, is no authority on the present point. So stand the authorities, and therefore it seems to me that there is no course open to us except to dismiss this appeal. We are not called upon to say what, if the matter were *res integra*, would be the proper rule, but only to say whether the court below has acted rightly or wrongly in the view which they have

taken as to what the rule of practice is. But, as I believe one member of the court has a strong feeling that the present rule is unreasonable, I shall say a few words as to my own view of the matter. From one point of view, if it is clear that a man will leave the country before any execution against him can be satisfied, it would appear unreasonable to hold, from the mere fact that he is temporarily resident within the jurisdiction, that he ought not to be called upon to give security for costs. It is clear that in the converse case no such hard and fast rule exists, for, although generally a plaintiff resident out of the jurisdiction can be called upon to give security for costs, yet it has been held that when he is only temporarily out of the jurisdiction, and his permanent residence is within the jurisdiction, and there is every probability of his returning, the court will not compel him to give security. Again, if a plaintiff, who is permanently resident out of the jurisdiction, but has property within the jurisdiction which can be made subject to the process of the court, in such a case, the reason of the rule being withdrawn, the rule gives way, and the court will not order security to be given. It might fairly be said that the converse ought to hold good, and that where the court sees every probability of the plaintiff going out of the jurisdiction, if he should fail in his action, before the process of the court could be executed against him, this should be considered good ground for ordering security for costs; on the other hand, however, it is neither convenient nor proper to extend the cases in which plaintiffs are compelled to give security for costs. Although I can see some strong reasons why a change in the rule might be beneficial, I do not wish to be understood as giving an opinion in favor of a change.

Baggallay, L. J. The authorities both at common law and in Chancery courts have been so fully explained by Thesiger, L. J., that I only wish to make a few observations with reference to the case of *Swanzy* v. *Swanzy*. In all proceedings in chancery it was always necessary for the plaintiff or petitioner to state his residence accurately and fully, and as a general principle, independently of whether the plaintiff was a foreigner or not, or was temporarily or permanently resident within the jurisdiction of the court, it was sufficient ground for ordering him to give security for costs if his residence was not truly and accurately stated on the bill when it was filed. In *Swanzy* v. *Swanzy* the plaintiff had taken lodgings in one place and had then gone to live in another place, in both cases under a name which was not really her true name. That clearly amounted to a failure to give the description required, and that alone was sufficient to cause the court to order security for costs to be given, quite irrespective of the question of the plaintiff being a foreigner. I may add, that I think the principle always acted on, except in one or two cases, is that laid down by Wood, V. C., in *Cambottie* v. *Inngate.*

Bramwell, L. J. The question is as to what the practice of the court is, and I cannot disagree with the judgment of the court, for I think that it is as Thesiger, L. J., has laid it down. I must admit that I formerly thought it was otherwise, and I wish we could alter it. If one looks at what is to be guarded against, it is the possibility of the defendant, if he should hereafter be successful, losing the fruits of his judgment; but, as the practice stands, we do not inquire whether in all probability the plaintiff or his goods will be here after judgment, but whether they are here now. I cannot but think that the practice is unreasonable, and I regret that it is as it has been shown to be.

Judgment affirmed.

CURRENT EVENTS.

ENGLAND.

Despatch of Business in England.—The Lord Chief Justice recently remarked: "The fact is, that the judicial strength of the country is not sufficient to enable the judges to be in town and country at the same time. They cannot be absent on the winter assizes and also sitting here at Westminster. I find that the arrears in the courts are such as to require the constant sitting of the court in *banc;* but there are only two judges available, and the *nisi prius* must be suspended for six weeks, though there are 850 causes entered for trial." The *Law Journal* says: "We are well aware that, both in the House of Lords and in the House of

Commons, judges and barristers will rise in their places and protest against additions to the bench. But facts and figures seem to be too strong even for those who think that driving suitors away from court by infinite delay is practically equivalent to the trial and decision of their causes. With 800 causes waiting to be heard, and with one Division of the Court of Appeal closed for seven weeks, it will require some courage to assert that it is not desirable to increase the number of judges. The policy of holding four criminal assizes in the legal year has fairly broken down the working power of the bench; and if the country still insists on that policy, it must take measures to remove the intolerable wrongs thereby inflicted on the suitors in our civil courts." In a recent number of *The Solicitors' Journal*, we find a communication from a solicitor, who spent one hour and three quarters awaiting his turn to procure a summons from the judge's clerks. First, he went into a line of fifteen or eighteen persons to procure the form of a summons from a clerk; second, he went into another line of twenty or twenty-five to procure the number and return and entry in the list from another; third, he went into line with about twenty to obtain from the first clerk the stamp. For all this he was entitled to charge 3s.

GENERAL NOTES.

An Equestrian Procession to Westminster Hall.—His Lordship (Shaftsbury) had an early fancy, or rather freak, the first day of the term, (when all the officers of the law, king's counsel, and judges, used to wait upon the great seal to Westminster Hall,) to make this procession on horseback, as in the old time the way was, when coaches were not so rife. And accordingly the judges, &c. were spoken to to get horses, as they and all the rest did by borrowing and hiring, and so equipped themselves with black foot cloths in the best manner they could; and diverse of the nobility, as usual, in compliment and honor to a new lord chancellor, attended also in their equipments. Upon notice in town of this cavalcade, all the show company took their places at windows, and balconies, with the foot guard in the streets, to partake of the fine sight; and being once settled for the march, it moved, as the design was, statelily along. But when they came to straits and interruptions, for want of gravity in the beasts and too much in the riders, there happened some curvetting, which made no little disorder. Judge Twisden, to his great affright, and the consternation of his grave brethren, was laid along in the dirt; but all, at length, arrived safe without loss of life or limbs in the service. This accident was enough to divert the like frolic for the future, and the very next term after, they took to their coaches as before.—*Roger North's Examen*, p. 57.

The Man With The Dying Speech.—When the vacancy occurred in the Exchequer Bench, which was afterwards filled by Mr. Adams, the Ministry could not agree among themselves whom to appoint. It was debated in council, the King, George II., being present; and the dispute growing very warm, His Majesty put an end to the contest by calling out, in his usual English, "I vill have none of dese, give me de man wid de dying speech," meaning Adams, who was then Recorder of London, and whose business it therefore was to make the report of the convicts under sentence of death. —*Miss Hawkins' Memoirs.*

RECENT ENGLISH DECISIONS.

Accounts.—In a bill by principals against agents, to take accounts or rectify accounts already settled, the transactions extended over nearly 20 years, and many errors and overcharges were alleged. *Held*, that although the labor was enormous, it was a case for re-opening the accounts, and not merely one to "surcharge and falsify."—*Williamson* v. *Barbour*, 9 Ch. D. 529.

Advances.—By his will, made in 1864, a testator made his six children his residuary legatees, and provided that the sums which he had lent to his two sons should be deducted from the shares which they would be thereby entitled to. Subsequently he wrote to each of his sons, offering to write off part of the debt in each case, if the son would send him a promissory note for the balance. It did not appear that any notes were given. He died in 1874. *Held*, that in spite of the letters, the sons must bring the entire debts into hotchpot.—*Smith* v. *Conder*, 9 Ch. D. 170.

Assignment.—T. contracted with J. to build him a steam launch for £80, to be paid when the boat was done. J., however, advanced him

£40 on account. Afterwards, before the work was done, T. being in debt to R., agreed to make over to him the other £40, and he wrote to J.: "I hereby assign to R. the sum of £40, or any other sum now due or that may hereafter become due in respect of" the boat. J. promised to give the matter his attention. *Held*, that the letter was not an order to pay money, but an assignment of a debt.—*Buck* v. *Robson*, 3 Q. B. D. 686.

Bill of Lading.—The plaintiffs shipped 280 bags of sugar on the defendant's ship, under a bill of lading signed "P. & K., agents." The Court found that they were the agents of the defendants to give this bill, though without the knowledge of the plaintiffs. P. & K. were charterers of the ship for the voyage. The bill of lading undertook that the sugar should be delivered in good condition, excepting the usual risks, and "any act, neglect, or default whatsoever of the pilot, master, or mariners in navigating the ship, the owners of the ship being in no way liable for any of the consequences of the causes above excepted; and it being agreed that the captain, officers, and crew of the vessel, in the transmission of the goods as between the shipper, owner, or consignee thereof, and the ship and ship-owner, be considered the servants of such shipper, owner or consignee." Some oxide of zinc in casks was negligently stowed on board in such a way that the sugar was damaged by it. *Held*, that the damage was not within the exceptions in the bill of lading, and the defendants were liable.—*Hayn* v. *Culliford*, 3 C. P. D. 410.

Collision.—The court found that, while a ship was in charge of a pilot within a district where the ship was obliged, by statute, to employ such pilot, she dragged her anchor and got in collision with a bark, wholly through the negligence of the pilot. *Held*, that the shipowners were not responsible for the damage—*The Princeton*, 3 P. D. 90.

Company.—1. H. acted as director of a company, but stated that he accepted the office on the distinct understanding that no share qualification was necessary, and none was in law necessary. He also said he never intended to take any, and did not know, until winding-up proceedings were taken, that he had been put on the register of shareholders. But by a vote of the directors, at a meeting when he was absent, his name was put on, and shares allotted him. *Held*, that he was not a contributory. As director, he was not presumed to know the contents of the company's books.—*In re Wincham Shipbuilding, Boiler, & Salt Co. Hallmark's Case*, 9 Ch. D. 329.

2. A contributory cannot set off a debt due him from a company in voluntary liquidation against a claim for calls, whether made before or after the liquidation. *Brighton Arcade Co.* v. *Dowling*, L. R. 3 C. P. 175, criticised.—*In re Whitehouse*, 9 Ch. D. 595.

Contract.—The defendant, a builder, made a tender to do work, giving sufficiently full particulars, in the opinion of the Court, to designate the conditions definitely enough. The plaintiff, an architect, answered, accepting the tender, and added that his solicitors would "have the contract ready for signature in a few days." Defendant, finding he had made a mistake in his tender, withdrew it. *Held*, that the tender and acceptance made a contract, the document to be made by the solicitor being merely to put the contract in form.—*Lewis* v. *Brass*, 3 Q. B. D. 667.

Criminal, Reward for apprehension of.—G. committed forgery and absconded, and a reward was offered by the defendants. The handbills stated the facts, and that £200 reward would be paid "to any person or persons giving such information to A., superintendent of police at D., or to H., superintendent of police at W., as will lead to the apprehension of the said G." The plaintiff was chief constable at E., and a man presented himself there before him, and said, "You hold a warrant for me; I am wanted for forgery." Plaintiff asked his name, and the reply was, "You know already and hold a warrant." Plaintiff thought the man was drunk, left him alone in a private room, and examined a newspaper, where he found the advertisement, "G. wanted for forgery," and, getting the man to remove his hat, recognized him, from the description, to be G. Thereupon he telegraphed to A., at D., "Do you hold warrant for apprehension of G. for forgery?" The reply was, "I still hold warrant for G., and I should like him to be apprehended." Plaintiff then "apprehended" G., and he was convicted. *Held*, that plaintiff was not entitled to the reward, as G. surrendered himself.—*Bent* v. *Wakefield Bank*, 4 C. P. D. 1.