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LITIGATION IN PARIS.

If we may accept the statements of an article in *Le Figaro*, the arrears of legal business in London are far exceeded by the accumulation in Paris. The writer, M. Albert Bataille, takes as an example a simple action of damages by a poor man who has been run over in the street by a *fiacre*. Two years, he says, usually elapse before a judgment is obtained from the court of first instance. Then an appeal is taken, and as the accumulation of arrears is still greater before the appellate courts than before the courts of first instance two additional years elapse before a final decision is arrived at.

From this wearisome ordeal one class of litigants is free. "Il n'y a plus guère que les procès d'acteurs et d'actrices qui se jugent vite. Qu'un cabotin de quatrième ordre fasse une esclandre à son directeur, qu'une chanteuse de café-concert soit saisie, vite on leur donne un tour de faveur, en laissant les affaires les plus considérables en souffrance." The writer suggests the organization of temporary tribunals for the disposal of arrears, to be followed up by the enactment of a clause like this: "Tout procès doit être jugé dans trois mois, à peine de forfaiture et de prise à partie des magistrats."

The other measures of relief proposed are to simplify or abolish procedure and to send petty cases before justices of the peace. As to the latter point the writer says: "J'estime enfin qu'il faudrait enlever aux tribunaux la connaissance d'une foule de causes absolument indignes d'eux. Je ne parle pas seulement de tous ces petits procès de locataires, qu'il faut renvoyer devant les juges de paix, à condition toutefois de les choisir parmi les jurisconsultes sérieux et non parmi les galopechopine d'élections. Mais les tribunaux perdent leur temps à des vétilles encore plus ridicules. A quoi croyez-vous, par exemple, que s'occupent généralement les quatre chambres correctionnelles de Paris ? A juger des escrocs, des voleurs, des banquiers véreux ? Pas du tout. Les tribunaux correctionnels consacrent la majeure partie de leur journée à juger la grande querelle de Mme Chapuzot et de Mme Gibou. Mme Gibou a traité Mme Chapuzot de vieille guenon ; Mme Chapuzot a riposté par une claque. Les deux commères se sont assignées mutuellement : les voilà à l'audience avec chacune douze témoins et un avocat. Les vingt-quatre témoins défilent à la barre. Les deux avocats plaident et longuement, parce que la cliente veut de l'éloquence pour son argent. Le président fait des mots, le public se tord, le tribunal renvoie les deux plaignantes dos à dos. Voilà une demi-journée perdue * * * Pourquoi encombrer le tribunal de ces querelles misérables? De grâce, renvoyez donc Mme Chapuzot et Mme Gibou devant le juge de paix de leur quartier, et ce sera encore trop d'honneur !"

We have noticed M. Bataille's effusion more as a curiosity than anything else. We have not much acquaintance with his writings, but this single article is amply sufficient to show that he belongs to the numerous class of reformers to whom reforms appear marvellously simple merely because those who propose them are so shallow that they are totally ignorant of the difficulties to be contended with. Who else would write: "Il faudrait aussi supprimer cette odieuse machine qui s'appelle la procédure civile. Il paraît qu'on s'occupe à la Chambre de modifier le Code de procédure. Il n'y a qu'un moyen de le modifier, c'est de le détruire."

PROLIXITY.

A curious case, *Hill* v. *Hart-Davis*, has occurred in England, in which it was held that the Court has an inherent power to punish prolixity by taking a document off the file. As prolixity is a defect not peculiar to any country the proceedings are worthy of notice. An application was made to the Court to take an affidavit of documents off the file, in that it was prolix and irrelevant. The action was brought by the trustees of the Independent Mutual Brethren Friendly Society to restrain the publication of certain statements contained in a circular issued by the defendant with reference to the affairs of the society, and

alleging that it was insolvent. The defence was that the statements were true. The defendant having obtained an order for the production of documents by the plaintiffs, they made and filed an affidavit of very great length, containing 307 sheets and 1,146 folios, for a copy of which the defendant had to pay £19 2s. Among other things the plaintiffs set out separately, by their dates and names of the writers and recipients, 4,216 letters from the secretary of the society to the agents of the different lodges, and also a very large number of receipts for sick allowances from the various lodges of the society, and also the return sheets of the expenses of the numerous lodges.

On the 24th January last, on the application of the defendant, Kay, J., ordered the affidavit to be taken off the file as being oppressive and irrelevant, and by its prolixity an abuse of the practice of the court, and ordered the plaintiffs to pay the costs occasioned by it, including the £19 2s. paid by the plaintiffs, and the costs of the application. From this order the plaintiffs appealed.

In the course of the argument it was stated that when a document is ordered to be taken off the file, the practice is not to return it to the party who has placed it there, but to destroy it by burning.

The following is a report of the argument and judgment in appeal:—

Hastings, Q.C., and *Colquhoun* for the appellants.—The only objection to this affidavit is its length; there is nothing scandalous in it. The court will not consider the relevancy of the documents scheduled in the affidavit on this motion. It is contrary to the practice of the court to take an affidavit off the file for prolixity, the penalty imposed being the disallowance of costs: In *Walker* v. *Poole*, 21 Ch. Div. 835, Kay, J., made an order similar to this, but that case is not binding on this court. If this affidavit is ordered to be taken off the file it will be destroyed and the plaintiffs will have to prepare a fresh one, which would cause delay and expense to both parties. [Cotton, L.J., referred to *Drake* v. *Symes*, 2 De G. F. & J. 81.]

Pearson, Q.C., and *Des Graz* for the defendant.—The court has an inherent jurisdiction to order any document which is vexatious or oppressive to be taken off the file. This is a gross abuse of the practice of the court, the object being to cause unnecessary costs to the defendant. The only way the defendant could recover the costs he has been put to was to make this motion: *Taylor* v. *Batten*, 4 Q. B. Div. 85; *Bewicke* v. *Graham*, 7 Q. B. Div. 4.

Cotton, L. J.—This is an appeal from an order of Kay, J. ordering an affidavit of documents filed by the plaintiffs to be taken off the file, and that the plaintiffs should pay the costs occasioned by it. The plaintiffs have appealed from this order and they have argued that the court ought not to order the affidavit to be taken off the file, and that such a course would be contrary to the practice of the court. They contend that, if a document is alleged to be irrelevant or improper, the right order is to refer it to the taxing master, and if it is found to be so, to make the party filing it pay the costs. It is further contended that this affidavit is not irrelevant or unnecessarily prolix. In my opinion the appellants' contention cannot be maintained. It is better not to give an opinion at the present time whether the documents referred to in the affidavit are relevant, but whether they are so or not, I am of opinion that they are set out at unnecessary and improper length. They ought to have been set out in bundles and schedules, and numbered in such a way that the defendant might have asked for those which he wanted to see, specifying them by their numbers. The conclusion I have come to is, that the affidavit is unnecessarily and oppressively long. The question is, however, what order ought to be made. We are of opinion that a different order to that made by Kay, J. would be better. This would not be at variance with the principle on which he acted. I agree that, although the rules contain no provision for taking a document off the files for prolixity, yet it is the duty of the court to see that its files are not made the instruments of oppression, and that without any provisions in the rules, the court has the power, and it is its duty, to order oppressive documents to be taken off the file, even though this should result in their being burned. But in the present case the defend-

ant has got a copy of the affidavit in question, and if it is taken off the file and destroyed the plaintiffs will have to prepare another, and the defendant will have to wait while they do so. While, therefore, I quite affirm the principle on which the learned judge acted, I think it will be better to order the plaintiffs to pay to the defendant the amount of the cost, 19*l.* 2s. less 2*l.*, which would have been the cost of an affidavit of proper length. The plaintiffs must pay the costs which they have been ordered to pay in the court below, and the costs of this appeal. And at no further stage of the action will the plaintiffs be allowed any costs of this affidavit. There is another point to which I wish to allude. By order LXV., r. 11, the court has power to call upon a solicitor to show cause why costs which have been improperly incurred should not be disallowed, and to order the solicitor to pay to his client any costs which may have been improperly incurred if he has been ordered to pay them to the opposite party. At present the court will make no such order in this case. This will be a matter between the plaintiffs and their own solicitor.

Bowen, L. J.—I am of the same opinion. I think the order as modified in the way mentioned by Cotton, L. J., will meet the purposes of justice in this case without throwing doubt upon the larger jurisdiction of the court to take off its files documents which have been placed there for purposes, not of justice, but of injustice. It is not denied that the court has such jurisdiction, though it may not have been the practice of the court, since the Judicature Act, to take documents off the file merely for prolixity. Yet it is a power which could be exercised if necessary. Every court must have the power to protect its own records from being abused. I prefer not to define what constitutes oppression or vexation. It is better to determine in each case whether the circumstances are such as to come within a perfectly intelligible expression.

Fry, L. J.—I am of the same opinion. I am not inclined to express any opinion whether the documents set out in the affidavit are relevant or not. But assuming that they are, it is perfectly plain to my mind that they might have been set out in a way which could not have been oppressive. There is a prolixity in this affidavit of which no account can be given, except a desire to cause vexation and costs to the defendant. I agree with the proposed order.

THE "MIGNONETTE" CASE.

At the Exeter Assizes, November 3, Baron Huddleston, in charging the grand jury, referred at length to the charge against Dudley and Stephens, captain and mate of the Mignonette, of murdering the boy Parker when at sea in an open boat. After detailing the circumstances of the case, the learned judge said:—

It seems clear that the taking away of the boy's life was carefully considered, and amounted to a case of deliberate homicide. I must tell you what I consider to be the law as applicable to this case. It is a matter that has undergone considerable discussion, and it has been said that it comes within a class of cases where the killing of another is excusable on the ground of necessity. I can find no authority for that proposition in the recognized treatises on the criminal law, and I know of no such law as the law of England. Baron Puffendorf, in his 'Law of Nature and Nations,' mentions a case (Bk. II. ch. 6, p. 205, third edition, by Kennet, A. D. 1717) where seven Englishmen, tossed in the main ocean without meat or drink, killed one of their number on whom the lot fell, and who had, as he says, the courage not to be dissatisfied, assuaging in some measure with his body their intolerable and almost famished condition, whom, when they at last came to shore, the judges absolved of the crime of murder. Although he says the men were English sailors, he does not say where the case was tried, nor of what nation were the judges. Ziegler upon Grotius, giving this relation, is of opinion that 'the men were all guilty of a great sin for conspiring against the life of one of the company, and (if it should happen) every one against his own.' I can find no reliable report of this case, and, for reasons which I shall refer to presently, I cannot consider it an authority binding on me. There is an American case, *The United States* v. *Holmes*, March, 1842, which is re-

ported in 1 Wallace Jun. 1, in which sailors threw passengers overboard to lighten a boat, and it was held that the sailors ought to have been thrown overboard first, unless they were required to work the boat, and that at all events the particular persons to be sacrificed ought to have been decided on by ballot, by which, I suppose, they meant by lot. I cannot subscribe to the authority of this case. Besides, it would be inapplicable to the present, because here the notion of deciding by lot was rejected. The learned American judge, in giving his reasons, said: 'That the selected should be by lot, as it would be an appeal to Providence to choose the victims.' Such a reason would seem almost to verge upon the blasphemous. I cannot but consider that the taking of human life by appealing to the doctrine of chance would really seem to increase the deliberation with which the act had been committed. That American case, however, was a charge, not of murder, but of manslaughter, on the ground of the failure, on the part of the prisoners, to discharge the statutory duty of preserving the life of a passenger. The question has been considered by the Criminal Code Bill Commissioners in their report, in which, discussing this doctrine, they say:—

'Casuists have for centuries amused themselves, and may amuse themselves for centuries to come, by speculation as to the moral duty of two persons in the water struggling for the possession of a plank capable of supporting only one. If ever a case should occur for decision in a Court of justice, which is improbable, it may be found that the particular circumstances render it easy of solution. We are certainly not prepared to suggest that necessity should in every case be a justification; we are equally unprepared to suggest that necessity should in no case be a defence. We judge it better to leave such questions to be dealt with when, if ever, they arise in practice by applying the principles of law to the circumstances of the particular case.'

And my brother Stephen, in his 'History of Criminal Law,' observes that this doctrine is one of the curiosities of the law, and so far as he is aware is a subject on which the law of England is so vague that, if cases raising the question should ever occur, the judges would practically be able to lay down any rule which they considered expedient. I do not derive mnch assistance from either of the cases, or from the report of the Criminal Code Commissioners, and I am therefore obliged to tell you what, in my judgment, after careful consideration, I deem to be the law of England. Deliberate homicide can be justifiable or excusable only under certain well-recognized heads—cases where men are put to death by order of a legally constituted tribunal in pursuance of a legal sentence; cases where the killing is in advancement of public justice, as, for instance, criminals escaping from justice, resisting their lawful apprehension, and other such cases enumerated by Blackstone, vol. iv. 48. So also where homicide is committed for the prevention of any forcible and atrocious crime; again, where men, in the discharge of their duty to their country and in the service of their queen, kill any of the enemies of their queen and country; and, lastly, where an individual, acting in lawful defence of himself or his property, or in the reasonable apprehension of danger to his life, kills another. It is obvious that this case falls under none of these heads. The illustration found in the writers upon civil law, which is alluded to in 'Cicero de Officiis,' and mentioned by Lord Bacon in his 'Elements of the Law,' and which is quoted in some legal works as the ground of the doctrine of necessity, is placed by Blackstone under the latter head—of self-defence. He says: 'Where two persons being shipwrecked, and getting on the same plank, but finding it not able to save them both, one of them thrusts the other from it, whereby he is drowned, he who thus preserves his own life at the expense of another man's is excusable from unavoidable necessity and the principle of self-defence, since their both remaining on the same weak plank is a mutual though innocent attempt upon and endangering of each other's life.' But Sir William Blackstone, in another part of the same volume, points out that under no circumstance can an innocent man be slain for the purpose of saving the life of another who is not his assailant; and he says, there-

fore, though a man be violently assaulted, and hath no possible means of escaping death but by killing an innocent person, this fear and force shall not acquit him of murder, for he ought rather to die himself than escape by the murder of an innocent; but 'in such a case he is permitted to kill the assailant, for there the law of nature, and self-defence, its primary canon, have made him his own protector.' Bishop, in his 'Criminal Law,' a high American authority, supports this view, and it is the more important, as he refers to the American case to which I have before alluded. It is impossible to say that the act of Dudley and Stephens was an act of self-defence. Parker, at the bottom of the boat, was not endangering their lives by any act of his; the boat could hold them all, and the motive for killing him was not for the purpose of lightening the boat, but for the purpose of eating him, which they could do when dead, but not while living. What really imperilled their lives was not the presence of Parker, but the absence of food and drink. It could not be doubted for a moment that if Parker was possessed of a weapon of defence—say a revolver—he would have been perfectly justified in taking the life of the captain, who was on the point of killing him, which shows clearly that the act of the captain was unjustifiable. It may be said that the selection of the boy—as indeed, Dudley seems to have said—was better, because his stake in society, having no children at all, was less than theirs; but if such reasoning is to be allowed for a moment, Cicero's test is that under such circumstances of emergency the man who is to be sacrificed is to be the man who would be the least likely to do benefit to the republic, in which case Parker, as a young man, might be likely to live longer and be of more service to the republic than the others. Such reasoning must be always more ingenious than true. Nor can it be urged for a moment that the state of Parker's health, which is alleged to have been failing in consequence of his drinking the salt water, would justify it. No person is permitted, according to the law of this country, to accelerate the death of another. Besides, if once this doctrine of necessity is to be admitted, why was Parker selected rather than any of the other three? One would have imagined that his state of health and the misery in which he was at the time would have obtained for him more consideration at their hands. However, it is idle to lose one's self in speculations of this description. I am bound to tell you that if you are satisfied that the boy's death was caused or accelerated by the act of Dudley, or Dudley and Stephens, this is a case of deliberate homicide, neither justifiable nor excusable, and the crime is murder, and you, therefore, ought to find a true bill for murder against one or both of the prisoners. You will perhaps be good enough to say whether, with reference to the mate Stephens, there is evidence which will satisfy you that he was abetting or aiding or sanctioning the conduct of Dudley. If so you will find a true bill against him. In his statutory examination on oath he says that the master (Dudley) selected Parker as being the weakest, that he agreed to this, and that the master accordingly killed the lad. Unless you disbelieve him, therefore, you will find a true bill against him as well as Dudley. I may say that Captain Dudley seems to have made no secret of what has taken place, and to have voluntarily furnished all the evidence against himself, although it is quite true that the course taken by the magistrates, very properly, in making Brooks a witness, supplies also evidence for the prosecution. The case having taken place on the high seas, and being a case of British subjects, is one which, by statute, is triable here. No person who has read the details of this painful case but must be filled with the deepest compassion for the unhappy men who were placed in this frightful position. I have only in this preliminary stage to tell you what the law is, but if you should feel yourselves bound to find the bill, I shall then take care that the matter shall be placed in a form for further consideration if it becomes necessary. I think I am bound to do this after the reports of the cases I have mentioned in Puffendorf and in the American reports, and the report of the Criminal Law Commissioners. The matter may then be carefully argued, and if there is any such

doctrine as that suggested, the prisoners will have the benefit of it. If there is not, it will enable them, under the peculiar circumstances of this melancholy case, to appeal to the mercy of the Crown, in which, by the constitution of this country (as a great lawyer points out), is vested the power of pardoning particular objects of compassion and softening the law in cases of peculiar hardship.

The grand jury eventually returned a true bill for wilful murder against Dudley and Stephens.

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

MONTREAL, Nov. 19, 1884.

Coram DORION, C.J., MONK, RAMSAY, TESSIER, and CROSS, JJ.

HOGAN (deft. below), Appellant, and THE CITY OF MONTREAL (plff. below), Respondent.*

Assessment, City of Montreal—Promise of Sale.

The appellant had a promise of sale of certain real estate in the City of Montreal, at the time the annual assessment became payable (26 Sept., 1876), but did not obtain possession until some time afterwards. He had possession as proprietor during the latter half of the year for which the tax was imposed.

Held, 1. That he had not such a right in the property under the *promesse de vente*, unaccompanied by tradition, as to render him liable to assessment thereon.

2. That the assessment is indivisible, and falls entirely upon the person who is proprietor at the time the assessment becomes payable, and therefore a person who becomes proprietor after that date is liable for no portion of the assessment for the current year.

Judgment of Superior Court reversed.

Judah & Branchaud for the Appellant.

R. Roy, Q.C., and *Ethier*, for the Respondent.

* To appear in the Montreal Law Reports, 1 Q.B.

COUR DE REVISION.

MONTRÉAL, 31 oct. 1884.

Coram DOHERTY, PAPINEAU, GILL, JJ.

FILIATRAULT v. ELIE. *

Révision quant aux frais—Enquête inutile.

Jugé :—Que lorsqu'une des parties succombe sur tous les faits qui ont fait la matière de l'enquête, quoiqu'elle puisse réussir d'ailleurs à obtenir jugement, les frais d'enquête doivent être mis à sa charge.

Pagnuelo & Lanctot pour le demandeur.

Geoffrion, Rinfret & Dorion pour le défendr.

COUR SUPÉRIEURE.

MONTREAL, 27 oct. 1884.

Coram JETTÉ, J.

BURNSTEIN v. DAVIS.*

Dommages—Lettre privée—Communication privilégiée.

Jugé :—Qu'une lettre privée écrite à un particulier et qui lui est envoyée sans lui donner aucune publicité, est une communication privilégiée qui ne peut donner droit à une action en dommages.

L'action était renvoyée.

Abbott, Tait & Abbotts pour le demandeur.

Walker & Bowie pour le défendeur.

COUR SUPÉRIEURE.

[Sous l'Acte des Elections contestées de Québec, 1875.]

MONTRÉAL, 7 août 1883.

Coram LORANGER, J.

LAVOIE v. GABOURY.*

38 *Vict.* (1875), *ch.* 8, *secs.* 42 *et* 55—*Délai—Réponse à la petition—Cautionnement—Contre pétition.*

Jugé : 1o. Que lorsque la loi permet de faire une procédure jusqu'à l'expiration d'un nombre donné de jours, le délai accordé doit être franc, et il n'est censé expiré que le lendemain de son échéance.

2o. Qu'un défendeur sous l'Acte des Elections contestées de Québec, section 55, peut être admis à produire une contre pétition sans donner un cautionnement ou faire un dépôt.

O. Boisvert pour le pétitionnaire.

A. Lacoste, Q.C., conseil.

Trudel, Charbonneau, Trudel & Lamothe pour le défendeur.

* To appear in the Montreal Law Reports, 1 S. C.

QUEEN'S BENCH DIVISION (ENGLAND).

Before COLERIDGE, C. J., and WILLIAMS, J.

SANDERS v. TEAPE and SWAN.

Animal—Negligence—Injury caused by dog—Liability of owner, and of person in charge of dog.

The plaintiff, a laborer, was digging a hole in the garden of a house adjoining that of the defendant, T. There was a small wall, only three feet high, between these gardens. This wall belonged to the defendant, T. The plaintiff was engaged in doing some work at the bottom of the hole. Three dogs belonging to the defendant, T., had been taken out by the other defendant, S., and as the defendant S. was returning, the dogs ran through a gate into a garden adjoining the one where the plaintiff was at work. As the dogs were running about in playfulness, one of them, a large Newfoundland dog, jumped over the wall, and jumped or fell into the hole where the plaintiff was working at the time in a stooping posture. The dog fell on the nape of the plaintiff's neck, causing injuries through which he was unable to work for some time after. The defendant, T., had offered the plaintiff a couple of sovereigns as compensation, which was refused.

In an action for these injuries against the defendant T., as the owner of the dog, and against the defendant, S., as having the dogs in charge, *Held*, that, inasmuch as the dogs were not shown to be mischievous to the knowledge of the owner, the plaintiff had no cause of action against either of the defendants, either as for trespass or as for any breach of duty.

The appeal was from a decision of the Bloomsbury County Court holding that there was no evidence to go to the jury in support of the plaintiff's case.

LORD COLERIDGE, C.J. It seems to me to be clear that the learned County Court judge was quite right, and it must be manifest upon ordinary principles of common sense that he was so. An action under the circumstances of this case is quite preposterous. It was an action against a person who kept a dog, because the dog, jumping about playfully, jumped over a low wall and into a hole where the plaintiff happened to be at work. On referring to the authorities, it is manifest that such an action could not be maintained. In *Mason* v. *Keeling*, I Ld. Raym. 606, the well known case in the time of Lord Raymond and Lord Holt, it was held that an action would not lie against a man for mischief done by his dog, unless he knew that he had done mischief before, or was of a mischievous nature; and the same principle has also been laid down by Parke, B., in our own time. In *Brown* v. *Giles*, 1 C. & P. 118, it was held that a dog, jumping into a field without the consent of its master, is not a trespass for which an action will lie. In *Beckwith* v. *Shordike*, 4 Bur., 2093, it was held that an involuntary trespass may be justified, but not a voluntary one, and though the verdict there was for the plaintiff, this arose from the jury finding that the trespass was an intentional trespass and not a mere involuntary accident. The result of all these cases is, that if a dog, going about, commits an injury or does any mischief, the owner of the dog will be liable only if the dog was of a mischievous nature and he was aware of that fact; but if there be no evidence of that, then no action will lie. Here there is no suggestion of any proof of the mischievous nature of the dog. The only thing suggested as a *scienter* is, that the owner of the dog offered the plaintiff a couple of sovereigns as a compensation; but this was entirely from his own good nature, and not because he was liable in point of law. I am of opinion, therefore, that the plaintiff has shown no cause of action, and that this appeal should be dismissed.

WILLIAMS, J. I am of the same opinion. If a man keeps horses and other animals, he is bound to keep them on his ground; and if he does not, he may be liable to an action of trespass. There is an exception to this when they are on a public highway, as they have a right to be there, and then the owner is bound to use ordinary care. But in the case of dogs, pigeons and the like, the case is different; if a dog, not being exceptionally mischievous, acting in playfulness, goes over another man's land, there is no trespass, and the owner of the dog would not be liable. Here, so far as the defendants are concerned, the occurrence was purely accidental and involuntary, and no action lies against them in respect thereof, either as for a trespass or for any breach of duty.

Appeal dismissed.

RECENT U. S. DECISIONS.

Fire Insurance—Oral Application—Conditions of Policy—Silence as to Incumbrances—Notice and proof of loss—Statement changed by agent.—Where insurance is applied for orally, and the applicant is unaware of any provision in the policy regarding incumbrances, and is not guilty of any misleading

conduct, his bare silence cannot be deemed a misrepresentation; and if the agent in such case did not read the policy to the applicant, or call his attention to the clause relating to incumbrances, the existence of a mortgage would be no impediment to a recovery from the insurance company.

When an insurance policy contains clauses requiring notice to be given, preliminary proof of loss to be furnished, and submission to an examination, in order to sue upon the policy, the insured party does not lose his right to sue, where, upon such examination being made, and the statement reduced to writing, he refuses to sign because of other statements added by the agent, and the company afterward refuse to allow him to sign, though he offers to sign the whole statement prepared by the agent. *O'Brien* v. *Ohio Ins. Co.* Sup. Ct. of Mich. Dec. 1883 —Amer. Law Record, 152).

Fire Insurance — Transfer — Forfeiture.—1. The written assent of a fire insurance company to a transfer of a policy does not operate as a waiver of a prior forfeiture of the policy by a breach of one of its conditions, although the agents of the company were fully aware of the breach at the time.

2. The assent to a transfer of the policy is a mere assent to the substitution of the assignee to the rights of the assignor, and in no wise increases them. So if the assignor had no right in the policy by reason of a forfeiture at the time of the assignment, the assent to the transfer revived nothing and gave no rights to the assignee. *Ins. Co.* v. *Garland.* (Sup. Ct. of Ill., Jan. 1884—13 Amer. Law Record, 255).

GENERAL NOTES.

The admirers of 'Sir Roger,' Orton, or however he may be called (says the *Law Journal*), who may consider him a fit representative of themselves in Parliament should not be discouraged by the statement which has been made that he, like Davitt and O'Donovan Rossa, is disqualified. These gentlemen, it is true, were ticket-of-leave men, and were not allowed to sit in the House of Commons, and 'Sir Roger' is a ticket-of-leave man, but there the likeness ends. They had been convicted of felony, but he has only been convicted of perjury; and the House of Commons draws the line at felons, but admits perjurers. There is no law to prevent a ticket-of-leave man being returned to Parliament, if any constituency should take a fancy to that class of representative, and would overlook the fact that at any moment the Home Secretary may revoke the licence and consign their member to prison.

The doctrine of the English Courts first established in the Singer Sewing Machine case, to the effect that where a patented machine becomes known to the public by a distinctive name during the existence of the patent, any one at the expiration of the patent may make and vend such machines, and use such name, and no one, by incorporating such name into his trade mark, can take away from the public the right of so using it, has been recently reviewed and followed by the Ohio Supreme Court Commission in *Brill* v. *The Singer Manuf'g Co.* (Ohio Sup. Ct. Com., June 3d, 1884), and it was held that where machines, during the time they are protected by a patent, become known and identified in the trade by their shape, external appearance or ornamentation, the patentee, after the expiration of the patent, cannot prevent others from using the same modes of identification in machines of the same kind manufactured and sold by them.—*Daily Register*.

The case of the three Greeks charged at the Thames Police Court with having in their possession certain statuary, said to be the property of the King of the Hellenes as treasure-trove, raises questions of law of some interest. The men cannot be tried in England for stealing the statues, because the English criminal courts have no jurisdiction to try a foreigner for an offence committed abroad. They cannot be sent back to Greece to be tried, for the simple reason that this country has no extradition treaty with Greece. The only offence which there is any pretence for saying that they have committed in England is that of receiving goods knowing them to have been stolen; but in the eye of the English law the statues cannot be considered as stolen. In order to convict a man as a receiver, a theft by some one must be capable of being proved in an English court, which for the reason given is impossible. The law which governs the taking of the statuary in Greece is the law of Greece, and no such mongrel offence is known to the English law as that of receiving goods in England knowing them to have been stolen according to Greek law. The right of property in the statues stands on a different footing. If the statues were wrongfully taken in Greece they are wrongfully held in England, and the King of the Hellenes may prove his case in a civil conrt.—*Law Journal.*

It is announced that the Queen has been pleased to confer upon the Right Honourable Sir John Macdonald the distinction of Knight Grand Cross of the Order of the Bath, in recognition of his eminent services to Canada and the empire. The *Gazette* (Montreal) says: The occasion selected for the bestowal of this mark of great honour is most fitting, the fortieth anniversary of Sir John's entrance into public life. The dignity is an exalted one. The Order of the Bath is one of the most ancient and honourable in heraldry, and though it fell into disuse for a time in the seventeenth century, it was revived by George I in 1725, and is now the second order in rank in England, the first being the Garter. By the statutes then framed for the government of the order, it was declared that besides the sovereign, a prince of the blood, and a great master, there should be thirty-five knights. The order was exclusively a military one down to 1847, when it was placed on its present footing by the admission of civil knights, commanders and companions. The order is divided into three classes, and it is to the first of these, that of the grand cross, that Sir John Macdonald has been raised, he having previously been decorated with the second class, that of Knight Commander. The civil list of the first class is limited to twenty-five, and Sir John's promotion leaves still one vacancy in the number. Among those upon whom the honour has been conferred in recent years are such distinguished men as Lord Dufferin, Sir Edward Thornton, Sir Bartle Frere, the Earl of Lytton, Sir Stafford Northcote, Lord John Manners, Sir Robert Peel, the Marquis of Hertford, Earl Sydney, and Viscount Halifax.