The Legal News.

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## COUR SUPERIEURE—DISTRICT DE TERREBONNE.

STE. SCHOLASTIQUE, 20 octobre 1891.

*Coram* TASCHEREAU, J.

M. BERTRAND v. J. FILION.

*Consignation—Rétention des intérêts du prix de vente—Substitution—Révocabilité avant le Code—Substitution par acte à titre onéreux.*

JUGÉ:—1o. *Lorsque la défense ne fait mention d'aucune offre et consignation, le dépôt fait par le défendeur au greffe du tribunal d'une somme d'argent qui parait due par lui est irrégulier et ne peut être pris en considération;*

2o. *L'acquéreur ne peut, sous prétexte de crainte d'éviction, différer le paiement des intérets du prix de vente, ces intérêts représentant les fruits et revenus qu'il a lui-même perçus; il ne peut différer que le paiement du prix de vente même;*

3o. *Avant la mise en vigueur du Code Civil, une substitution contenue dans une donation entre-vifs était révocable par le donateur avec le seul concours du donataire grevé; on suivait dans ce pays les règles du droit romain à cet égard, et les ordonnances de* 1731 *et* 1747, *qui décrétaient l'irrévocabilité d'une telle substitution, n'ayant pas été enregistrées dans le Bas-Canada, n'y avaient pas force de loi;*

4o. *Une substitution ne peut être créée par un acte à titre onéreux, dont les charges excèdent la valeur des biens donnés.*

Le jugement suivant explique suffisamment les faits et la contestation liée en cette cause:

"La Cour, etc....

"Attendu que le demandeur demande jugement contre le défendeur: 1o. Pour la somme de $150, intérêts dûs et payables le 30 janvier 1891 sur la somme de $2,500, balance du prix de vente stipulé dans l'acte de vente du 30 janvier 1890, passé à Ste-Thérèse, devant Mtre Germain, notaire, par lequel le demandeur vendit au défendeur les immeubles y décrits, le dit défendeur étant convenu par le dit acte de payer les dits intérêts annuellement à la dite date du 31 janvier de chaque année; 2o. Pour la somme de $45, pour prix du loyer d'un terrain loué par le demandeur au défendeur pour l'année 1890, à Ste-Thérèse, le dit loyer étant dû et échu lors de l'institution de l'action;

"Attendu que le défendeur, en réponse à la dite réclamation d'intérêts, plaide que l'un des terrains à lui vendus par le demandeur, savoir, celui en deuxième lieu décrit dans l'acte de vente, n'était pas la propriété du demandeur ni de son auteur, dame Justine Hébert dit Lecompte, mais était, lors de la vente, et est encore, la propriété exclusive des enfants de feu Thomas Matte et de la dite dame Justine Hébert dit Lecompte, son épouse, en vertu d'une substitution créée par sieur Augustin Matte, dans la donation qu'il avait faite du dit terrain au dit Thomas Matte, le 5 octobre 1861 (A. Séguin, notaire); que la dite dame Justine Hébert dit Lecompte, l'auteur du demandeur, n'avait qu'un droit de jouissance sur le dit immeuble, dont la propriété appartenait et appartient à ses dits enfants; que le défendeur ignorait ces faits lorsqu'il a acheté; que les trois terrains à lui vendus par le demandeur ne forment maintenant qu'une seule propriété de cinquante-cinq arpents environ, et que celui en question constitue une portion de terrain si considérable, tant pour la qualité que pour la quantité, que le défendeur n'aurait pas acheté s'il eût connu le danger d'éviction auquel il s'exposait en acquérant le tout: que de plus il appert que les terrains vendus sont grevés d'hypothèques antérieures à la vente consentie par le demandeur au défendeur: Concluant, le dit défendeur, à l'annulation du dit acte de vente du 30 janvier 1890 et au renvoi de l'action, et subsidiairement à ce qu'il ne soit condamné à payer la dite somme de $150 que lorsque le demandeur aura fait radier les hypothèques susdites, aura fourni un titre valable au défendeur et lui aura fourni le cautionnement voulu par l'article 1535 du Code Civil; et que faute par le demandeur de fournir le dit cautionnement dans le délai à être fixé par la Cour, son action soit renvoyée avec dépens;

"Attendu que le dit défendeur, en réponse

à la réclamation de $45 pour loyer, admet devoir la dite somme, mais plaide qu'il a délai pour la payer jusqu'au 1er avril 1891, suivant convention intervenue entre les parties;

"Attendu que le demandeur réplique aux dites défenses en niant toutes les allégations d'icelles et en alléguant: que le défendeur, ayant toujours eu depuis la vente à lui consentie par le demandeur, la jouissance paisible et ayant retiré les fruits et revenus des immeubles vendus, ne peut, pour les raisons alléguées dans ses défenses, se refuser au paiement des intérêts qui lui sont réclamés; que la substitution mentionnée dans les défenses, n'existe pas en fait, et qu'eût-elle été créée, elle aurait été révoquée par le substituant lui-même avant sa mort, ainsi que constaté par les actes produits (26 mars 1870, convention entre Augustin Matte et Thomas Matte; 3 août 1880, vente par veuve Thomas Matte à Maurice Bertrand; 23 août 1880, quittance par veuve Thomas Matte et Augustin Matte et autres à Maurice Bertrand); que la dite dame Justine Hébert dit Lecompte et le dit Maurice Bertrand auraient payé les dettes du substituant et les hypothèques créées par lui, s'élevant à un montant dépassant la valeur de l'immeuble prétendu substitué, et qu'ainsi le droit à la prétendue substitution se trouverait plus qu'éteint et absorbé; que le défendeur connaissait tous ces faits lors de l'acquisition qu'il a faite et qu'il a acquis en connaissance de cause; que néanmoins le demandeur est et a toujours été prêt à donner au défendeur une garantie hypothécaire que ce dernier ne sera jamais troublé dans la paisible possession et jouissance de l'immeuble en question;

"Attendu que la contestation a été liée sur les dites plaidoiries, et que durant l'instance le défendeur a consigné en cour, sans amender ses défenses, sans la permission de la cour, et sans avis à la partie adverse, la somme de $45, réclamée par le demandeur pour loyer;

"Considérant, quant à cette réclamation pour loyer, que le défendeur n'a pas établi en preuve la convention de délai qu'il invoque, qu'au contraire il résulte de la preuve que lors de l'institution de l'action le dit loyer était dû et échu;

"Considérant que la consignation de deniers faite durant l'instance par le défendeur comme ci-dessus expliqué, est illégale et ne lui peut bénéficier;

"Considérant, quant à la réclamation d'intérêts, qu'il est maintenant établi par la jurisprudence que l'acquéreur ne peut, sous prétexte de crainte d'éviction, différer le paiement des intérêts dûs sur son prix d'acquisition, ces intérêts représentants les fruits et revenus qu'il a lui-même perçus, et qu'il n'a droit en ce cas de différer le paiement du prix de vente même. (*Hogan* v. *Bernier*, 21 Jurist, 101; *Parker* v. *Felton*, 21 Jurist, 253; *McDonald* v. *Goundry*, 22 Jurist, 221; *Grand Trunk Railway* v. *Currie*, 25 Jurist, 22, et autres causes y citées);

"Considérant que la prétendue substitution alléguée par le défendeur, ayant été créée avant la mise en vigueur du Code Civil, doit être réglée par la loi qui était en force avant la promulgation du dit code et qui permettait à celui qui avait créé, par acte de donation entrevifs, une substitution en faveur des enfants du donataire, de révoquer cette substitution avec le concours de ce dernier;

"Considérant que les ordonnances des rois de France de 1731 et 1747, relatives aux substitutions, ont, pour la première fois, dérogé au droit romain qui permettait la révocation en ce cas, mais que ces ordonnances n'ont jamais eu force de loi dans le Bas-Canada, *Caty* v. *Perrault*, (16 R. L. 148), où les dispositions du droit romain à cet égard ont toujours été observées jusqu'à la promulgation du code, comme elles l'étaient en France avant la date des dites ordonnances (Thévenot d'Essaules, *substitutions*, Nos. 1132 à 1141; Ricard, *substitutions*, Traité III, ch. 4, No. 137);

"Considérant que le dit Augustin Matte, avec le concours des donataires, a expressément révoqué, comme il en avait le droit, la prétendue substitution, ainsi qu'il est établi par les actes allégués et produits au dossier;

"Considérant qu'il appert que l'acte de donation qui aurait créé la dite substitution était un acte à titre onéreux, dont les charges excédaient la valeur des biens donnés; qu'un tel acte ne pouvait donner existence à une substitution ni imposer à l'acquéreur l'obli-

gation irrévocable de remettre à titre de substitution les biens à des tiers, une substitution ne pouvant être que la condition d'une libéralité et non d'une aliénation onéreuse, (*Beaulieu* v. *Hayward et Letellier*, oppt., 10 Q. L. R., p. 275;

"Considérant que le défendeur n'a pas établi en preuve qu'il y ait des hypothèques grevant les immeubles vendus, et qu'en conséquence il n'a aucun juste sujet de craindre d'être troublé soit par une action hypothécaire, soit par une action en revendication;

"Donne acte aux parties de la déclaration du demandeur qu'il a et a toujours été prêt, avant d'exiger du défendeur le paiement d'aucune partie du prix de vente, à lui donner une garantie hypothécaire qu'il ne sera point troublé dans la paisible possession et jouissance de l'immeuble prétendu substitué;

"Rejette les défenses, et condamne le défendeur à payer au demandeur la susdite somme de $195, avec intérêt à compter du 6 février dernier (1891), jour de l'assignation, et les dépens, distraits, etc."

*A. Pilon*, avocat du demandeur.

*F. X. Thibault*, avocat du défendeur.

(J. J. B.)

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## *JUDICIAL SALARIES.*

[Concluded, from p. 336.]

Hon. Mr. Almon—We are all pleased to see the unanimity with which members meet this question of increased remuneration of the judges. One hon. gentleman said that leading members of the bar would not take judgeships, because they were making much larger sums of money by their profession, and could not afford to accept an appointment at $6,000 or $8,000 a year. But have hon. gentlemen considered the number of leading members of the bar that have been detained in Parliament for five months for a thousand dollars indemnity? Now, these are the men, as remarked by an hon. gentleman opposite, from whom the judges are appointed. It is not the leading men of the bar that are appointed; they are more likely to be leading politicians. A judge requires to have a knowledge of law, of course, but he will also require to be a leading politician in his party. The principle was exemplified in the time of the Mackenzie Government. I appeal to my hon. colleague from Halifax to say if the three judges appointed at Halifax were not the three *ad hoc* judges who were appointed to decide some election petitions during the time of Mr. Mackenzie? Strange to say, they returned the candidates that supported the Government, and were immediately afterwards appointed to the bench. The hon. gentleman is therefore quite right in saying that judges are as frequently appointed because of their political bias as of their knowledge of legal lore. But why confine increase of salaries to judges? Are medical health officers to continue at the same salaries they are receiving, or are we to make fish of one profession and flesh of the other? Medical men, many of them, live from hand to mouth, and are continually exposing themselves and their families to infection from contagious diseases. I can name three myself who have died from diseases contracted while attending to quarantine duties. What is to become of the medical man who is ordered to board a ship that is infected with cholera, or some other infectious disease, that he is liable to take home with him to his family? I say, let us hear no more of lawyers and judges; let us think of the medical men.

Hon. Mr. Allan—I would like to make one protest against what has been said by two hon. gentlemen, as far as Ontario is concerned. I venture to say that the judges in Ontario have not been appointed for political reasons; and I venture to say that you will find very few judges in Ontario who were known as prominent politicians.

Hon. Mr. Almon—I mentioned the three appointments in Nova Scotia—the *ad hoc* judges at Halifax.

Hon. Mr. Poirier—I am also of the opinion that the judges of the land should be adequately paid. In New Brunswick the judges of the Supreme Court are not sufficiently paid. They draw $4,000 a year, I believe and the chief justice $5,000. I would not be opposed to an increase in their salaries, but I believe that the salary attached to the position of County Court judge is totally inadequate. The difference in jurisdiction is not very considerable. In criminal matters it is actually the same, except that the

County Court judges have no jurisdiction in capital cases—which are of rare occurrence. In civil matters and actions for debt their jurisdiction goes up to $400 and down to $200, which comprises most of the cases; therefore, they are really called upon to do as important work almost as the judges of the Supreme Court, while their salary is only $2,000, as compared with $4,000 of the judges of the Supreme Court. I believe that after a certain number of years' service their salary is increased to $2,400. There is too great a discrepancy in the salaries of these two classes of judges. I voice what I believe to be the opinion of the profession in my province; therefore, I respectfully call the attention of the Premier to this matter, so that if an arrangement is to be made the discrepancy between the salaries of the two classes of judges in New Brunswick should be made less than what it is now—that the salaries of the County Court judges should be increased. Two thousand dollars a year is not a sufficient salary for a man where the jurisdiction is so large and the responsibility so great. Two thousand a year is only the earnings of an ordinary lawyer; it is not sufficient for a judge of the County Court. Judges of our County Courts are men of talent, and many of them could with advantage sit on the Supreme Court bench. Most of them were necessarily good lawyers, and if their position has been a political recompense they have a good record at the bar as well.

Hon. Mr. Dever—The hon. gentleman does not mean that all the County Court judges in New Brunswick only receive a salary of $2,000?

Hon. Mr. Poirier—They are appointed, I believe, on a salary of $2,000, which is increased to $2,400 after three years' service. That may not be correct, but I think it is.

Hon. Mr. Abbott—The subject of this discussion is certainly well worthy of the time that has been taken up, and the Government is very sensible, and has been for some time, of its importance and of the necessity of dealing with it. It has already made a serious effort within the last two or three years to do so, unsuccessfully, in consequence of the great difference of opinion which appears to exist in the representative body as to the position the judges should hold with regard to salary. It appears to me that the discussion which has taken place here affords a very excellent object lesson as to the extent of these difficulties. While almost every hon. gentleman thinks the salary of the judges should be increased, the views as to the extent and nature of that increase are as numerous as the number of gentlemen who spoke on the subject. It is this kind of difference of opinion—and, in fact, there are many kinds of differences of opinion about this subject—which renders it so exceedingly difficult to deal with. In the House of Commons, where a measure was introduced for the purpose of increasing the salaries, the diversity of opinion was so strong, and finally the opposition was so strong, that it was found impossible to proceed with the Bill. Now, to-day my hon. friend on my left thinks evidently that the salaries are large enough, that there were as good judges in his province at $2,400 a year as there are now at $4,000 a year, and I think that is very probable. For I remember, at a shorter date probably than my hon. friend himself could remember, when a man could live in this country for one-half the amount he can live on now—when the fortunes which judges, in attempting to maintain their social rank, had to compete with were not one-tenth or one-hundredth part of what they are now. It is not so long ago when the sight of a millionaire would have attracted crowds in the street: now there is not a town in the country where you could not find men who are several times millionaires. The cost of living is greater. Men threaten a change of dynasty, or a reconstruction of society because they do not get the same price for eggs as that which they got last year. But eggs this year were three or four times as costly as they were in those years. And so with regard to other articles of food, and to clothing. It may be that in some respects the necessaries of life have not increased, but the requisites for maintaining one's social position have increased ten-fold, and it is impossible, as hon. gentlemen concur in saying, for the best men in the country to be induced to take positions on the bench at the rates which we now pay in the larger centres of business and trade. My hon. friend from Ottawa ap-

pears to compare to some extent the rate of payment which we give our judges with the salaries paid on the other side of the line. In some respects my hon. friend is quite right. The salaries paid there to judges of the courts in certain centres of business are three or four times as much, in some instances, as those paid to judges in some of the important centres of this country. But there are many reasons for that, not the least of which is the very high rate of living which is rendered necessary on the other side of the line in consequence of the enormous taxation. There, the cost of everything required for living is much greater than it is here; and the other reasons to which I have alluded prevail even more strongly there than here. There the fortunes are enormous, and in the competition for social position there, even with the liberal salaries allowed the judges, they are practically nowhere. However, in a moderate way there is no doubt whatever that an increase in the salaries of our judges is necessary. Whether it shall be particularly in favour of one class of judges or another class of judges, or what the amount of increase shall be, are questions which, of course, will have to be dealt with in detail. It is the intention of this Government next session to attempt to deal with the subject in a manner which they hope will be satisfactory to the country; but I must say this, that without some little compromise of views, and some little sacrifice of personal ideas about judges, we should have difficulty in passing the most admirable measure in the world even in this House, where the easiness of the circumstances of its members and their independent position renders them more unlikely to criticize a liberal payment to judges than perhaps members might do in another place. Such a measure as the Government, with the most careful consideration of the question, can prepare, they propose to bring down next session.

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## ENGLISH *CAUSES CÉLÈBRES.*

### The Matlock Will Case.

This suit related to the validity of certain alleged codicils to the will of one George Nuttall, who died at Matlock, in Derbyshire, on March 7, 1856. Nuttall, who was a land surveyor, had considerable property, both real and personal. He was a bachelor, had few relations, and was not on intimate terms with any of them except two cousins—of whom one, John Nuttall, was foreman to a London contractor, and the other, Catherine Marsden, had been his housekeeper for many years, and was living with him in that capacity at the time of his death. Nuttall had, however, some friendly neighbours, notably Job Knowles, a farmer, who rented a quarry from him; Mr. Adams, a surgeon; and John Else, the assistant-overseer of Matlock and also the bailiff of the County Court. Else was occasionally employed by Nuttall in collecting rents and copying accounts, and wrote a hand not unlike his, though distinguishable. The testator made his own will on September 15, 1854, leaving thereby the bulk of his real property to his cousin John, an annuity of 200*l.* together with all his furniture and other household effects to Catherine Marsden, and an interest in tithes worth 140*l.* a year to Else, and died, as we have said, on March 7, 1856. Between that date and the day of the funeral a duplicate of the will was found in which there was an interlineation written in a hand like that of the testator, but not so running and free. This interlineation gave Else an annuity of 100*l.*, and increased the annuity of Catherine Marsden from 200*l.* to 250*l.* On April 12, 1856, about a month after the testator's death, John Nuttall died also, leaving the property upon trust for his infant children. Then a remarkable series of events occurred. On April 21, 1856, Else found among some of the testator's papers, which had been taken to his house, a holograph codicil. This document purported to be attested by two labourers, Buxton and Gregory, and it was mainly in favour of Catherine Marsden and Else himself. Eight months later, on December 16, 1856, pinned on to one of the leaves of a little penny account-book belonging to Mr. Nuttall, Else found a second codicil of a similar tenor. But the crowning discovery was yet to come. On October 9, 1857, Else, who soon after the testator's death had taken up his residence at the testator's house, ordered a boy named Champion to clean the windows in the lumber-room. The boy being short and the window high, Else

laid hold of the sill to raise himself up so as to open the window. The sill gave way and disclosed a small hole in the wall, in which was a common jar of brown earthenware. The boy called his attention to the jar, and, on looking into it, he found a bag of sovereigns and a third codicil, dated January 12, 1856, attested by Knowles and Adams, and appointing Else as the testator's residuary legatee. The suspicions of John Nuttall's trustees were now thoroughly aroused. They disputed all three codicils, and in July, 1859, the Master of the Rolls directed an issue to try their validity before a jury. That issue was tried before Sir William Erle, then Lord Chief Justice, at Derby, in August, 1859, and the jury found that the codicils were valid. The Master of the Rolls granted a new trial, which took place before the Lord Chief Baron at the Derby Spring Assizes, 1860, and resulted in a directly contrary verdict being returned. The Master of the Rolls and the Lord Chief Baron were satisfied with their verdict and refused a new trial. On appeal to the Lords Justices, Lord Justice Knight Bruce was against a new trial, Lord Justice Turner in favour of it. The House of Lords adopted the opinion of the latter, and on February 22, 1864, the great Matlock will case (or *Cresswell* v. *Jackson*) came on for trial at the Guildhall before Sir Alexander Cockburn, the Lord Chief Justice, and a special jury of the city of London. Mr. Karslake, Q.C., Mr. Field, Q.C., and Mr. Hannen were for the plaintiffs; Mr. Sergeant Hayes, Mr. Sergeant Ballantine, and Mr. Wills were for the defendants. After an eight days' trial the jury found that all three codicils were a fabrication.

The Matlock will case is replete with interest. (1) The first point that strikes the legal reader is the admirable and determined advocacy of Mr. Karslake. His case was thoroughly bad. He could not venture to call Catherine Marsden as a witness. Gregory, Buxton, and Knowles gave him little help. Else contradicted his former evidence in several important particulars, and Chabot, the expert, of whom we shall have more to say immediately, convinced even the Lord Chief Justice that the codicils were forgeries. But Karslake stood manfully by his brief to the last. It reminds one of the gallantry and the resource displayed by 'the Corsican *parvenu*' in the campaign of 1814. (2) Again, the speech of Mr. Sergeant Hayes for the defence contains a passage of unique merit. It is that in which he describes the discovery of the third codicil. 'What could be more utterly incredible,' said the witty advocate, 'than the whole story? "What's that?" said Else. "What's that in the jar?" Why, a codicil to be sure! What else could it be? In a jar, in a hole in the wall, covered with cobwebs. What could it be but a codicil! This finder of codicils, who found nothing but codicils—what should it be but a codicil, and a codicil in his favour! In a hole in the wall! Why, it might not but for this miraculous discovery have ever been discovered at all! What a place for a man of business to put his last will in! But what would the jury say when he told them that he would prove that an iron vice weighing about 60 lb. was in the testator's lifetime screwed over the window-board under which the hole was found, so that the testator two months before his death, labouring under an abscess in his back (which he described in one of his letters as five inches long, three inches broad, and one-and-a-half inch deep), must have gone up to that loft, unscrewed the vice, lifted it up, made the hole in the wall, deposited the jar with the twenty sovereigns and the codicil, then covered it up, and screwed the vice over it again, and all this to prevent anyone from ever finding it? The hole in the wall! Why, imagination could hardly go beyond it! No more codicils had been found since, and one great blessing of these Chancery proceedings had been that they had stopped the finding of codicils. But for them a fourth codicil must have been found. It must have come. The second and third had each been found after nine months—the usual period of gestation—but, perhaps, as there was so little of the property still left to be disposed of, this might have been only a "seven months'" codicil. It was certainly difficult to conceive where it could have been found. One could hardly imagine any more obscure place for secreting another codicil. Perhaps, however, in Job Knowles's quarry, while his men were

blasting the rock . . . In some fissure Else might have seen an antediluvian toad sitting on something and said, "Bless me, what is that?" Why what could it be but a codicil?' (3) Equally admirable in its way was Sir Alexander Cockburn's charge to the jury, with which we have left ourselves no space to deal. (4) The most curious incident in the trial was the evidence of the expert Chabot, a Huguenot by descent and a lithographer by trade. Chabot raised the study of disputed handwritings from a discredited art to the dignity of a science. His life achievement was the conversion of the *Quarterly Review* to the conclusion that Sir Philip Francis was the author of 'Junius.' But in the *Matlock Will Case* he rendered important service to the cause of truth. He showed that Nuttall and Else had each characteristic *habits* of handwriting, and that, judged by these, the will was the work of Nuttall, while the codicils were forged by the rascal that found them.—*Law Journal*, (London).

## *SLANDER.*

Our reports for May contain two interesting cases on the subject of slander, both coming before the public with the *imprimatur* of the Court of Appeal upon them. In *Pittard* v. *Oliver*, 60 Law J. Rep. Q. B. 219; L. R. (1891) 1 Q. B. Div. 474, a guardian of the poor was charged with slandering the late clerk to the guardians in the presence of newspaper reporters, by describing him 'as a man who for years had been robbing public money,' and referring to his conduct as 'the defalcations of an unfaithful servant.' These words were used at a meeting of guardians on the question as to whether a sum should be paid to the plaintiff in settlement of his claim against the board. This claim was eventually sent to a referee in an action brought by the plaintiff against the guardians, who found in favour of the plaintiff for the whole amount claimed by him. Thereupon this action was brought, and the jury found 'that the words were spoken honestly, in the discharge of a public duty, without malice, but carelessly,' and gave the plaintiff a verdict for forty shillings damages. Upon further consideration, Mr. Justice Mathew held that the occasion on which the words were uttered was privileged, and gave judgment for the defendant. The plaintiff appealed. It was conceded that the occasion would have been privileged if there had been no reporters present, as it was the duty of the guardians to discuss the conduct of their servants. In Mr. Odger's 'Digest of the Law of Libel and Slander,' 2nd edit. p. 197, cases of qualified privilege are grouped under three heads: '(1) Where circumstances cast upon the defendant the duty of making a communication to a certain other person, to whom he makes such communication in the *bona fide* performance of such duty: (2) where the defendant has an interest in the subject-matter of the communication, and the person to whom he communicates it has a corresponding interest: (3) fair and impartial reports of the proceedings of any Court or of Parliament.' The guardian's words were well within either class (1) or class (2), as it was his duty to communicate the fact that the person whose claim they proposed thus to compromise had been cheating them, if he sincerely believed it, to his brother guardians, and he and they had a corresponding interest in the subject-matter of the communication. The privilege is said to be qualified by that learned author, as it may be taken away if the communication is uttered maliciously, and it has not, therefore, the absolute privilege of a judge of the High Court or a barrister. The simple question for the Court was as to the effect of reporters being present, seeing that the defendant had no moral obligation to make the communication to them, and had no common interest with them in the subject-matter of the communication. Lord Esher distinguished this case from the cases where the confidential privileges had been held lost by the mode in which the communication, otherwise privileged, had been made, namely, on a postcard or in a telegram, and decided that the guardian had not lost his privilege through the presence of the reporters. The rest of the Court came to the same decision, though Lord Justice Fry suggested that it would be well for guardians to hold discussions of this kind in private.

The second case is that of *Speight* v. *Gos-*

*nay*, 60 Law J. Rep. Q. B. 231, where the defendant uttered defamatory words about the plaintiff which were not actionable unless special damage was proved. The plaintiff's mother repeated them to the plaintiff, and she told them to a man to whom she was engaged, and who, she alleged, broke off the engagement in consequence. She then sought to make the defendant liable in damages for the slander which he had uttered. The curious point to observe is, that the plaintiff herself was part of the chain by which the slander got to her lover, and 'every repetition of a slander is a wilful publication of it, rendering the speaker liable to an action' (Odgers, p. 162). In *Parkins* v. *Scott*, 31 Law J. Rep. Exch. 331: 1 Hurl. & C. 153, Baron Bramwell said: 'Where one man makes a statement to another, and that other thinks fit to repeat it to a third, I do not think it reasonable to hold the first speaker responsible for the ultimate consequences of his speech. If I make a statement to a man, I know the consequences of making it to him when I make it; but if I do not desire, and do not authorize the man to whom I make it, to repeat it, but he does it, am I to be liable for the consequences of his so doing? The learned baron might have added an *à fortiori:* Am I to be liable when the slandered person herself brings about the catastrophe by repeating the defamation, when she might have kept silence on the subject? In that case a wife repeated to her husband some vile abuse which another woman had uttered to her, with the result that he would no longer live with her. The Exchequer Division, holding that there was no moral obligation on the wife's part to repeat it, held that the original slanderer was not liable. The Court of Appeal in the recent case came to a similar conclusion. 'Here the words,' said Lord Justice Lopes, 'were untrue, and the mother must have known that they were untrue, and there could not be any obligation either on the mother or the daughter to repeat them to Galloway' (the lover). His lordship also pointed out that there were four classes of cases where the original slanderer could be made liable for the repetition of the slander, viz.: (1) Where he authorized the repetition, (2) where he intended it, (3) where the repetition was the natural consequence of the uttering, and (4) where there was a moral obligation on the person to whom he uttered it to repeat it. This case fell within none of those classes.—*Law Journal* (*London.*)

## *GENERAL NOTES.*

FORGOTTEN DEPOSITS.—The Bank of England is the custodian of a large number of boxes deposited by customers for safety during the past two hundred years, and in not a few instances forgotten. Many of these consignments are not only of rare intrinsic and historical value, but of great romantic interest. For instance, some years ago the servants of the bank discovered in its vaults a chest which on being moved literally fell to pieces. On examining the contents, a quantity of massive plate of the period of Charles II. was discovered, along with a bundle of love letters indited during the period of the Restoration. The Directors of the bank caused search to be made in their books, the representative of the original depositor of the box was discovered, and the plate and love letters handed over —*Chambers' Journal.*

CIRCUMSTANTIAL EVIDENCE.—Mr. George Kebbel sends to the London *Times* the following story of circumstantial evidence, narrated to him by a client: He was, some years ago, a passenger to the Cape, and one day at dinner a fellow passenger produced a very old but valuable coin. It was handed round, and suddenly disappeared. Every effort to find it failing, it was suggested that all the passengers should turn out their pockets. They did so with the exception of my client, who declined, and for the remainder of the voyage was boycotted. Just as the vessel got into port the coin was found in a remote corner of the saloon. My client had an exactly similar coin in his pocket, and dared not say so at the time of the loss, because he knew his story would have been simply laughed at.

CONSULAR FEES.—The very high consular fees levied by some countries, and more especially by the Consulates of Transatlantic States, which have gradually become a very serious burden for persons engaged in trade with those countries, have recently, at the instance of a Bordeaux representative of a large British steamship company, induced the Chamber of Commerce at Bordeaux to urge upon the French Government the desirability of concluding an international convention amongst all civilized States, by which a maximum limit should be fixed, beyond which no Government should in future be allowed to charge fees for consular services rendered by its representatives residing in other countries. "There can be no doubt," says the British Consul at Bordeaux, "that a convention of this nature would be beneficial to trade in general, and that a reduction of the consular fees charged at present by many countries would be highly desirable. Many States at present levy such high fees for consular attestations on invoices and other documents connected with the importation of goods from foreign countries that these fees have become merely another form of import duties, though they do not appear in the Customs tariff of the States in question."