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INJUNCTION BY TELEGRAPH.

An interesting case, illustrating the authority accorded to telegrams, came before the Master of the Rolls on the 16th July. In *Tonkinson* v. *Cartledge*, a motion was made to commit for contempt the defendant as well as her solicitor and an auctioneer for disregarding an injunction. Certain effects which had been seized under a distress for rent were about to be sold at 2 p.m. on the 2nd July, at Newcastle-under-Lyme. An *ex parte* order of injunction was obtained that day in London, and between eleven and twelve o'clock notice of the injunction was telegraphed to the auctioneer and the defendant's solicitor. The auctioneer, after consulting with the defendant and the solicitor, continued the sale, and the motion was based on this contempt. The auctioneer made an affidavit that he believed the telegram to be a forgery. This, on the authority of *Ex parte Langley*, L. R., 13 Ch. D. 110, was held just sufficient to absolve him from costs (the motion was not pressed except as to costs). But as to the solicitor, the Master of the Rolls certainly thought that he had acted with imprudence. It was his plain duty, if he had any doubt as to the authenticity of the telegram, to have telegraphed to the plaintiff's solicitors, and to have asked them whether it was genuine or not. There was ample time before the sale to have done this, but he did nothing until next day, when the sale was over. The next day he did write to the plaintiff's solicitors, with whom he evidently was acquainted, and asked them whether the telegram was genuine or not, and at once received the answer that it was. He was, therefore, condemned in costs, as well as his client who took the risk of allowing the sale to go on, though she did not even swear in her affidavit that she believed the telegram to be a forgery.

TITLES.

The *Albany Law Journal*, referring to the case of *Bradley* v. *Logan* (p. 200 of this volume), in which the title of "Esquire" was considered, cites Abbott's Law Dictionary: "It is familiarly employed in the United States, but is a title of courtesy merely"; and Webster to the effect that it is "a general title of respect in addressing letters." Our contemporary appends an extract from a recent issue of the *Solicitors' Journal* (London), showing that the English judges are not quite in harmony about their titles. "A few days ago a Queen's counsel, while moving in a case in the Exchequer Division, addressed one of the learned judges as 'Sir Fitzjames Stephen,' whereupon his lordship corrected the title to Mr. Justice Stephen. Counsel, in apologizing for the error, mentioned that he had been led into it by the fact that another learned judge wished to be styled Sir Henry Hawkins; and he might have added that yet another learned judge appears to desire to drop the 'Mr.,' and to share with a once eminent financier and many foreign potentates the title of 'Baron.' To any other learned judge who may be in search of some designation distinguishing him from his brethren we would respectfully commend the title by which the court is frequently addressed in petitions drafted by native pleaders in India—'The Presence.'"

While upon this subject, we should like to hear some authority for the title which is constantly given to our Quebec judges on the records of the Superior Court and of the Court of Queen's Bench, namely: "The Honorable Mr. Justice." Several of the learned judges have in time past held office as Ministers of the Crown, and thereby became entitled to the designation of Honorable; but the title is now commonly given to all judges without distinction.

RIGHTS OF MORTGAGEE.

The U. S. contemporary quoted above refers also to the Montreal case of *Black & The National Insurance Co.* (3 Legal News, p. 29; 24 L. C J. 65), in which the question was whether the rights of a mortgagee, to whom a policy of insurance had been made payable, could be defeated by the subsequent acts of the mortgagor, and the majority of the Court of Appeal held that they could not be so defeated. Our contemporary says of this decision that it "seems opposed to the present doctrine in our State

(New York), *Grosvenor* v. *Atlantic Fire Ins. Co.*, 17 N. Y. 391; and in Pennsylvania, *State Mutual Ins. Co.* v. *Roberts*, 31 Penn. St. 438. See also the United States cases referred to on p. 129 of this volume.

COMMUNICATIONS.

THE COURT OF QUEEN'S BENCH.

To the Editor of the LEGAL NEWS.

SIR,—I understand the great objection made to the plan I proposed for hearings in appeal is the suggestion that the Court shall be held by four judges. As the law stands four is the quorum of the Court, and it is only in case of an even division that it becomes necessary to call in a fifth judge. It will naturally be said that although the quorum is four, the Court always, or almost always, sits with five judges. The question therefore comes to be this—Is there any advantage in this number? I fancy that in stating that a Court gains no increase of authority by number, when it is composed of more than three or four judges, I shall not be advancing an opinion likely to meet with much opposition. The House of Lords is now held by three law lords, and the Privy Council, ordinarily, by four councillors. In a word the unanimous decision of four judges is quite as satisfactory as the unanimous decision of five. Then, if there is dissent, and the judgment is to be reversed, it will be so by three judges at least against one. If the Court is equally divided, then the judgment of the Court below should be affirmed. I know many people object to this. But why? If the question is so involved as to have divided the judges in appeal, the presumption in favour of the former judgment remains. Therefore on strict principle the judgment in first instance should stand. This was Sir L. Lafontaine's opinion, and when the judicial organization was altered in 1849, he constituted the Court of Queen's Bench with only four judges. Although I don't think the argument sound, I can conceive it being said, that by this division the litigant is deprived of his appeal; but surely there can be no room for any grievance when the decision of which the party is deprived is only that of an intermediate Court. Above the Court of Queen's Bench there are now two jurisdictions.

It is not, however, an essential part of my system that in case of equal division the judgment of the Court below shall be confirmed. If the absolute *arrêt* of the Court of Queen's Bench be a special hobby of many influential persons, I am willing they should be allowed to rock it, if they will only contribute their little sum of influence to give the Court time to hear the cases on the roll and opportunity to decide them coherently.

T. K. RAMSAY.

ST. HUGUES, 13th August, 1880.

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

[Crown side.]

DIST. OF OTTAWA, July Term, 1880.

BOURGEOIS, J.

REGINA v. BERTHE.
" v. Rev. E. FAURE.
" v. LANGLOIS.
" v. DOYLE.

Indictment—Setting fire maliciously to manufactured lumber—32-33 Vic., c. 22, s. 11.

The prisoner Berthé was indicted for having, "at the township of Wright, feloniously, unlawfully, and maliciously set fire to a certain "quantity of manufactured lumber, to wit, three "thousand shingles and nineteen piles of "boards," and the indictments against the other prisoners, after setting forth that Berthé had set fire to the lumber in question, charged them with having aided and abetted Berthé in so doing.

Aylen and *Foran*, for Berthé, upon his arraignment, moved to quash the indictment, on the ground that it did not allege that the setting fire was done "so as to injure or to destroy" the lumber in question;—32-33 V., c. 22, s. 11 (Ca.)

Fleming, for the Crown, and *Gordon*, for the private prosecution, urged that if the indictment were insufficient under s. 11, it was valid under s. 21, which makes the setting fire to "any stack of corn . . . . any steer or pile of wood or bark" a felony.

The defence replied that s. 21 applied only to firewood or wood in an unmanufactured condition.

BOURGEOIS, J. I have given much thought to the points raised by the defence. The indict-

ment is assailed on several grounds, but more especially because it is not averred that the setting of the fire injured or destroyed the lumber. A party charged with a statutory offence has a right to see that every ingredient of the offence is stated. No matter how grievous the charge, no one should be held to answer an indictment which sets forth no crime. It has been urged that the accused should be put upon his trial, and be left his recourse in error; but this would be most unfair, and where there is a material irregularity, the Court will even stop the trial after evidence has been put in. The charge cannot evidently be sustained under sec. 11. It was suggested by the Crown that it might be upheld under sec. 12, and this shows the unfairness of the pretensions of the prosecution. How can the accused know what to plead when the accuser is ignorant or doubtful of the charge he intends to prefer? No *attempt* is set out, so that sec. 12 cannot be relied on. The argument that the prisoner may be held under sec. 21 is plausible. The perusal of that section, however, shows that it cannot be held to apply to manufactured lumber. "Wood" does not mean "manufactured lumber" any more than "wool" means "cloth." There is a special section enacted to cover crimes committed upon the manufactured article; why then should sec. 21 be held to apply to the raw material and to the manufactured article likewise? Another point raised by the defence is equally decisive. If sec. 21 could avail, the indictment should have used the words of the statute. A pile of boards may or may not be a pile of boards of wood. An innuendo cannot extend the meaning of the terms which precede it;—2 Saunders on Pleading, 922; Archbold, 830. The forms given at the end of the Procedure Act of 1869 are most misleading, and their defects are well shown by Judge Taschereau in his second volume. The indictment is therefore quashed.

The prisoner was discharged upon motion to that effect.

The indictments against the three accessories were likewise quashed without argument, and they were discharged.

J. R. Fleming for the Crown.

A. Gordon for the private prosecution.

John Aylen, *J. P. Foran* } for the prisoners.

SUPERIOR COURT.

[In Chambers.]

MONTREAL, Aug. 12, 1880.

Ex parte JOSEPH SENECAL, petitioner for writ of Habeas Corpus.

Magistrate—Erroneous designation.

The petitioner had been imprisoned under a conviction of date 17th July, 1880, for assaulting a constable in the performance of his duty. He was brought before Thomas S. Judah, Esquire, described in the complaint and conviction as Magistrate of Police for the District of Montreal.

T. C. Delorimier, for petitioner, cited 32-33 Vic. (Canada), cap. 32, s.s. 1, 2, 17.

Mousseau, Q.C., for the Crown, cited 33 Vic. (Quebec), c. 12, and admitted that there had been an error in the description of the magistrate.

TORRANCE, J. There is admitted to have been a mistake in the designation given the magistrate in the information and conviction. He was appointed under 33 Vic., c. 12 (Quebec), and undoubtedly had jurisdiction to try the offence. But he was not a police magistrate for Montreal. He was a justice of the peace, with the enlarged jurisdiction given by the Quebec statute. The Canada statute, s. 30, says that no conviction, sentence or proceeding under this Act shall be quashed for want of form. Is the question here merely one of want of form? It is an elementary rule that jurisdiction must always appear on the face of proceedings before magistrates;—Paley, Convictions, p. 182, and foot note (z). Here the only jurisdiction shown on the face of the proceedings is the jurisdiction of the police magistrate, and the sitting magistrate was not a police magistrate. My conclusion is to order the writ to issue.

The prisoner was then brought up before the Judge and discharged.

Mousseau, Q.C., for the Crown.

Delorimier & Co. for the prisoner.

COURT OF REVIEW.

MONTREAL, June 25, 1872.*

MACKAY, TORRANCE, BEAUDRY, JJ.

SABINE v. KRANS.

An omission in a deed by error or oversight does not constitute a ground for an action in improbation.

* The note of this case (not previously reported) is inserted here, as the decision has been cited in a case pending.

On the 10th January, 1867, the plaintiff sold the defendant, by deed of that date passed before Dickenson, notary, a lot of land in the district of Bedford, on the north side of Pike River. About a year afterwards he discovered for the first time, as he alleged in his declaration, that the deed omitted to contain a reservation of a mill site which he stated he had not intended to sell, and he accordingly instituted this action directly in improbation, praying to be allowed to inscribe *en faux* against the deed in question, and that it be declared "false, "erroneous and null, save and except as modi- "fied and restricted and qualified, by the "insertion after the description of the lands "therein mentioned, of a clause containing a "reservation of 'the mill site in question and,' "that the said clause be adjudged to form a "part of the said deed, and the defendant "ordered to correct the deed, and in default of "his doing so that the judgment do stand in "lieu of such correction."

His declaration was demurred to, and a plea of general denial also filed. The parties went to proof before arguing the demurrer, and the evidence adduced was of a contradictory character as to there being any error in the deed, but the judgment was pronounced solely upon the legal question, and the action dismissed as unfounded in law.

Plaintiff's authorities:—Art. 1211, Civil Code; Lacombe, Recueil, *vo.* Faux, p. 224; Pigeau, Pro. Civ., vol. 1, p. 365.

Defendant's authorities:—Art. 1211, 991, and 992 of the Civil Code; Pigeau, Pro. Civ., vol. 1, p. 217; Ferrière, Dict. *vo.* Ins. de faux, vol. 2, pp. 48, 50; Revue Légale, vol. 1, p. 197, Noble v. Labraie; 5 Jurist, p. 124, Shaw v. Sykes; 5 Jurist, p. 77, Pariseau v. Peltier; 5 Jurist, p. 141, Ross v. Palsgrave; 6 Jurist, p. 243, Perry v. Milne.

The plaintiff's action was dismissed by the Superior Court at Bedford (Ramsay, J.) on the 22nd April, 1871, and this judgment was unanimously confirmed by the Court of Review.

James O'Halloran, for plaintiff.

G. C. V. Buchanan, for defendant in Superior Court.

Abbott, Tait & Wotherspoon, for defendant in Review.

(L.W.)

PURCHASES BY WIFE ON HUSBAND'S CREDIT.

ENGLISH COURT OF APPEAL, MARCH 24, 1880.

DEBENHAM v. MELLOR. (42 L. T. Rep., N. S., 577.)

The presumption that a wife living with her husband is authorized to pledge his credit for articles suitable to her station is a presumption of fact and may be rebutted by evidence.

M., while living with his wife, made her an allowance, and forbade her exceeding it or buying goods on his credit. D., in ignorance of this, supplied M.'s wife with articles of dress suitable to her station, upon credit.

Held (affirming the judgment of Bowen, J.), that M. was not liable to D. in an action for the price of the goods.

This was an appeal from the judgment of Bowen, J., at the trial The action was brought against the manager of an hotel at Bradford, to recover 42*l.*, the price of various articles of dress supplied by Messrs. Debenham & Freebody, the plaintiffs, who were linen-drapers, to the defendant's wife. The goods were supplied to the wife whilst living with her husband, and were admitted to be necessaries, in the sense that they were suitable to the position in life of the parties. Shortly before the goods were ordered, the defendant forbade his wife to exceed her allowance or to buy goods on his credit. Bowen, J., at the trial, told the jury that, where a husband and wife were living amicably together, the goods supplied being reasonable goods, *prima facie* she would have authority to pledge his credit; but if, in fact, it turns out that the husband has withdrawn such authority, then the *prima facie* presumption is rebutted; and further, that it was not necessary that the tradesman should know that the wife had been forbidden to pledge her husband's credit, if she had been so forbidden in fact; and he left to the jury the following question: "At the time these goods were ordered, had Mr. Mellor withdrawn from his wife authority to bind his credit and forbidden her to do so?" This question the jury answered in the affirmative, and the learned judge thereupon gave judgment for the defendant.

The plaintiffs now appealed.

Benjamin, Q. C., and *A. L. Smith*, for the appellants. The principle of the law is, that the marriage creates an agency in the wife to

pledge the husband's credit for all necessaries for the house or family. The question is, whether it is sufficient to rebut the presumption for the husband merely to say to the wife, "I forbid you to pledge my credit." A tradesman, if he knows that a wife is living with her husband, may assume that she has the authority that a wife in all conditions of life ordinarily has to order food or clothes for her husband or herself. The husband may go to the tradesman and give him notice that he (the husband) will not be bound, and then he will not be. But the revocation of the authority of an agent will not do, unless that revocation is made known to the persons with whom the agent is dealing. [Thesiger, L. J. — Is the husband liable where he makes the wife a sufficient allowance?] Yes. Society is formed upon the basis that the wife is to deal with household affairs, the husband with outdoor business, and it is for that reason that this presumption of law exists. It is to be assumed that this wife had authority to pledge her husband's credit; the question is, is the mere fact that the husband told the wife that she had no longer authority, no notice of that being given to the tradesman, sufficient to bind such tradesman? *Jolly* v. *Rees*, 15 C. B. (N. S.) 628; 33 L. J. 177, C. P.; 10 L. T. Rep. (N. S.) 298, will be relied upon by the other side. But there the tradesmen in the place knew that the husband's authority was withdrawn, because he himself goes to the shops and orders the things for the house. Then the wife writes to a tradesman in a distant place and he chooses to send the goods. That case is distinguishable, therefore, from this. But no doubt Erle, C. J., in giving the judgment of the majority of the court, laid down principles which are opposed to the contention of the appellant here. These principles, however, are not in accordance with the weight of authority. In *Etherington* v. *Parrott*, 1 Salk. 118; Lord Raym. 1006, the plaintiff was nonsuited upon the ground that the defendant, the last time he paid the plaintiff, warned the plaintiff's servant not to trust his wife any more, and to give his master notice of it. But Lord Holt said: "While they cohabit, the husband shall answer all contracts of hers for necessaries, for his assent shall be presumed to all necessary contracts upon account of the cohabiting, unless the contrary appear; but if the contrary appear, as by the warning in this case, there is no room for such a presumption." In *Waithman and another* v. *Wakefield*, 1 Camp. 120, Lord Ellenborough says: "Where a husband is living in the same house with his wife, he is liable to any extent for goods which he permits her to receive there; she is considered as his agent, and the law implies a promise on his part to pay the value. If they are not cohabiting, then he is in general only liable for such necessaries as from his situation in life it is his duty to supply to her. * * * However, it is the duty of tradesmen to make inquiries before trusting a married woman who is a stranger to them; and the plaintiffs do not seem to have taken the pains they were bound to do, to ascertain the defendant's responsibility." In *Montague* v. *Benedict*, 3 B. & C. 631; 2 Sm. L. C. (7th ed.) 467, Littledale, J., says: "There are many cases in which the assent of the husband may be presumed. In Comyn's Digest, tit. 'Baron and Feme' (2), it is laid down that if the wife trades in goods, and buys for her trade when she cohabits with her husband, his assent is to be presumed; and if a wife buy necessary apparel for herself, the assent of the husband shall generally be intended." The assent of the husband will be presumed during cohabitation to his wife's ordering what is necessary for the purposes of the family and household. In *Seaton* v. *Benedict*, 5 Bing. 28; 2 Sm. L. C. (7th ed.) 475, Best, C. J., says: "A husband is only liable for debts contracted by his wife on the assumption that she acts as his agent. If he omits to furnish her with necessaries, he makes her impliedly his agent to purchase them." If that is so, a secret revocation will not do. The ordinary law of agency will apply. In *Johnston* v. *Sumner*, 3 Hurl. & N. 261; 27 L. J. 341, Ex., the Court of Exchequer say: "The principle is merely that of agency. * * * If a man and his wife live together, it matters not what private agreement they may make, the wife has all the usual authority of a wife." [Thesiger, L. J., cites *Reid* v. *Teakle*, 13 C. B. 627.] In *Dyer* v. *East*, 1 Mod. 9, Kelynge, C. J., says: "The husband must pay for the wife's apparel, unless she elope, and he give notice not to trust her." In *Tod* v. *Stokes*, 12 Mod. 244, Holt, C. J., held that the reason why the husband shall pay debts contracted by

the wife is upon the credit the law gives her by implication, in respect of cohabitation, and is like credit given to a servant. The wife here was an agent *de facto*. They also cited *Manby and another* v. *Scott*, 1 Lev. 4; 1 Sider. 109; 1 Mod. 124; Bac. Abr., tit. "Baron and Feme;" 2 Sm. L. C. 445.

Willis, Q. C., and *McColl*, for the defendant.

BRAMWELL, L. J. The question here is, whether the defendant is bound to pay for goods supplied to his wife without his authority or knowledge. The goods were articles of dress, and were necessaries in the sense of being suitable for the wife in her station, but not in the sense of her standing in need of them, for she had either a sufficient supply already or sufficient funds from her husband to supply herself with them. The action used to be one of *assumpsit*, and it was necessary to show, if possible, that the wife was the agent of her husband, and therefore a case of this kind always presents a technical appearance in arguments. There are cases in which the wife as an agent has authority to bind her husband; for instance, if he conducts himself so that she is obliged to leave him, or if he turns her out of doors, he is bound to maintain her, and she can pledge his credit for necessaries; and I can understand that there may be other cases, where the husband and wife are cohabiting, and persons in the same class in society, and living in the same neighborhood are accustomed to have certain articles on credit, or by weekly bills, as for instance in the case of butcher's meat. In such cases it seems to me that the wife would have a presumed authority to pledge the husband's credit, and the husband would have to negative it. This would apply, not only to a wife, but also to a sister or a housekeeper, or any other person who might be in the position of managing the establishment. That consideration was the foundation of the judgment in *Ruddock* v. *Marsh*, 1 H. & N. 601. But that is not the case here; it cannot be pretended that there is any practice which is binding in this case; the court cannot take judicial notice of a practice to pledge a husband's credit for dresses, and I should hope that no such practice does exist in fact. The question here is whether the wife has authority to pledge her husband's credit; it is not the same as authority to spend ready money, for if she did spend ready money the husband could not refuse to accept the article which she had bought. The question here is, whether the wife can pledge her husband's credit and make him liable. Why should she against her husband's orders? If he desires that she should have authority, he can give it. Then take the case of the tradesman, he is not bound to give credit; or he may say to the wife, before he trusts her, "Have you your husband's authority?" and he has this security, that if she falsely says she has, she would be liable to an indictment for obtaining goods by false pretences. I do not say there would be any great probability of a conviction. Or he may say, "I must have the husband's assurance that the wife has authority." It may be said that by doing so the tradesman would offend his customers; that may be a good reason why he should not ask the question, but it is no reason why we should make the husband pay. I am of opinion that there is no reason of convenience or usage for the law being as the plaintiffs would have it, and there is no authority for that view. I think the law is the other way, and that the judgment ought to be affirmed. As to the question of expediency, it would be most mischievous to enable a foolish woman and a tradesman to combine to make the husband liable.

BAGGALLAY, L. J. I have had an opportunity of considering the judgment which Thesiger, L. J., is about to deliver, and I entirely agree with it; at the same time I do not dissent from the observations of Bramwell, L. J.

THESIGER, L. J. The state of facts upon which the judgment of the court is to proceed I take to be as follows: A husband and wife living together; the husband able and willing to supply the wife with necessaries or the means of obtaining them; an agreement between them, not made public in any way, that the wife shall not pledge her husband's credit; a tradesman, without notice of that agreement, and without having had any previous dealings with the wife, supplying her upon the credit of the husband, but without his knowledge or assent, with articles of female attire suitable to her station in life; an action brought against the husband for the price of such articles. The question for us is, whether the action is maintainable. I agree with the other members of

the court, and with Bowen, J., that it is not. The appellants' counsel have brought under our notice a considerable number of authorities with the view of establishing that the law as laid down in *Jolly* v. *Rees* is erroneous. I think that the authorities have a contrary effect. They establish beyond controversy that the liability of a husband for debts incurred by his wife during cohabitation is based upon the ordinary principles of agency. It follows that he is only liable when he has expressly or impliedly, by prior mandate or subsequent ratification, authorized her to pledge his credit, or has so conducted himself as to make it inequitable for him to deny, or to estop him from denying her authority. In the present case express authority is out of the question, and there is no evidence that the defendant ever assented in any way to the act of his wife in pledging his credit to the plaintiffs. But it is said that there is a presumption that a wife living with her husband is authorized to pledge her husband's credit for necessaries: that the goods supplied by the plaintiffs were, as it is admitted they were, necessaries; and that, as a consequence, an implied authority is established. This contention is founded upon an erroneous view of what is meant by the term "presumption," in cases where it has been used with reference to a wife's authority to pledge her husband's credit for necessaries. There is a presumption that she has such authority in the sense that a tradesman supplying her with necessaries upon her husband's credit, and suing him, makes out a *prima facie* case against him, upon proof of that fact and of the cohabitation. But this is a mere presumption of fact, founded upon the supposition that wives cohabiting with their husbands ordinarily have authority to manage in their own way certain departments of the household expenditure, and to pledge their husband's credit in respect of matters coming within those departments. Such a presumption or *prima facie* case is rebuttable, and is rebutted when it is proved in the particular case, as here, that the wife had not that authority. If it were not so, the principles of agency upon which, *ex hypothesi*, the liability of the husband is founded, would be of practically no effect. Feeling this difficulty, the appellants' counsel shift their ground, and contend, that although under the circumstances of this case, the wife may have had no authority in fact or in law to pledge her husband's credit, yet the defendant must be taken to have held out his wife as having authority to pledge his credit to all persons supplying her with necessaries, without notice that she had not authority in fact, and consequently is estopped as between him and the plaintiffs from denying her authority. This contention appears to me to have no better ground of support than the one with which I have just dealt. If a tradesman has had dealings with the wife upon the credit of the husband, and the husband has paid him without demur in respect of such dealings, the tradesman has a right to assume, in the absence of notice to the contrary, that the authority of the wife which the husband has recognized continues. The husband's quiescence is in such a case tantamount to acquiescence and forbids his denying an authority which his own conduct has invited the tradesman to assume, just as it would forbid his denying the authority of a servant who had been in the habit of ordering goods for him from the tradesman, and whose authority he had secretly revoked. But what, in the case of a tradesman dealing with his wife for the first time, has the husband done or omitted to do which renders it inequitable for him to deny his wife's authority? For the tradesman, it is said that the mere relationship of husband and wife entitles him to assume, in the absence of notice to the contrary, that the wife has authority to pledge her husband's credit for necessaries. But this is a fallacy. The tradesman must be taken to know the law; he knows (for the present argument proceeds upon that supposition) that the wife has no authority, in fact or in law, to pledge the husband's credit, even for necessaries, unless he gives it her, and that what the husband expressly or impliedly gives he may take away. How then can the tradesman dealing with the wife for the first time, and without any communication with or knowledge on the part of the husband, say that he is induced or invited, either by law or the husband, or by both combined, to deal with the wife upon the faith and in the belief of her being in fact authorized to pledge her husband's credit? If he be so induced or invited, it can only be upon the footing of the law making a husband absolutely liable for necessaries purchased by his wife to any person dealing with her,

although for the first time, without notice that her authority is limited; but if the law does so make him liable, there is no need for any estoppel, and we are driven back upon the exploded notion that the husband's liability is founded upon some law other than that which governs in general the relations of principal and agent. It is urged that it is hard to throw upon a tradesman the burden of inquiring into the fact of a wife's authority to buy necessaries upon her husband's credit. I assent to the answer that while the tradesman has at least the power to inquire or to forbear from giving credit, it is still harder and is contrary, if not to public policy, yet to general principles of justice, to cast upon the husband the burden of debts which he has no power to control at all except by a public advertisement that his wife is not to be trusted, and in respect to which, even after such advertisement, he may be made liable to a tradesman who is able to swear that he never saw it. It appears to me that the decision of the majority of the judges in the case of *Jolly* v. *Rees* has put the law as regards this matter upon a proper footing, and that there is no ground for disturbi g the judgment in this case which the defendant has obtained.

Appeal dismissed with costs.

RECENT U. S. DECISIONS.

Bailment — Valuables left with bathing-house manager.—Where a bathing-house manager, to induce the public to patronize him, agrees to furnish a safe place for the valuables of bathers, he is a bailee for hire, and is responsible for the loss of such valuables, unless he can show that the loss was occasioned by force of circumstances beyond his control, and upon this point the burden of proof is upon him. The fact that the key of the box where the valuables were deposited was given to their owner, does not relieve him from his liability.—*Levy* v. *Appleby*, Marine Ct. N. Y., Ch. Leg. N., June 12, p. 331.

Bankruptcy—Liability of a bankrupt as a stockholder—Composition.—Proceedings to obtain a discharge in bankruptcy must be strictly construed. The bankrupt must comply substantially with all the conditions requisite and precedent to obtain his discharge. In order that a contingent liability—such as liability as a stockholder—may be discharged by composition proceedings, the bankrupt must include such contingent liability in his statement of debts, and the creditors holding such contingent claim must have notice that a discharge from such liability is sought.—*Flower* v. *Greenbaum*, U S. Cir. Ct. North. Dist. Ill., Ch. Leg. N., June 12, p. 329.

Trade-mark—Sale of factory conveys exclusive use of all brands.—The purchaser of a factory which made a certain defined article, which was known by a particular brand, the sale conveying the use of all the brands, takes the exclusive use of all such trade-marks. Trade-marks affixed to certain articles manufactured at a particular factory will pass with the factory when it is transferred by contract, or by operation of law.—*Kidd* v. *Johnson*, U. S. Sup. Ct. Rep., June 9, p. 729.

GENERAL NOTES.

—In the course of an argument recently, a barrister remarked: "What does Kitty say?" "Who's Kitty?" said the magistrate, "your wife?" "Sir, I mean Kitty, the celebrated lawyer." "Oh," said the magistrate, "I suspect you mean Mr. Chitty, the author of the great work on pleading." "I do, sir: but Chitty is an Italian name, and ought to be pronounced Kitty."

—It seems not unlawful to assault a ghost. We learn this from a Newburyport newspaper. The facts in the case appear to be as follows: One morning a company of young men thought it would be a good joke to throw a stone into the chamber window of one of the citizens of the town of West Newbury. A member of the family, however, overheard the young fellows plotting mischief, and hurrying home, informed the old gentleman of the plan, and he, quickly donning a portion of his undergarments only, hastened to put himself in ambush. When the young rioters came along he sprang out, and all ran but one, who stood up and knocked the old gentleman down twice. Whereupon a warrant for assault was issued, and when brought into court the defendant pleaded that "he thought it was a ghost, and he wasn't going to run from it." Accordingly his honor discharged him.—*Albany L. J.*