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CURRENT TOPICS AND CASES.

Article 1102 of the Code of Procedure would seem to be perfectly clear in its terms: "Judgments for sums not exceeding forty dollars can only be executed upon the movable property of the debtor, except etc." The French version, in the singular, is perhaps still clearer: "L'exécution des jugements pour *une* somme n'excédant pas quarante piastres etc." Nevertheless the article has caused some difficulty, and various interpretations have been put upon it. In *Jenckes Machine Co.* v. *Hood*, M. L. R., 7 S. C. 208, Justices Mathieu, Wurtele and Tellier, sitting in Review at Montreal, held that even where distraction of costs is not awarded by the judgment, they cannot be added to the principal, in order to form the sum of $40. The letter of the Code certainly supports this interpretation. In the district of Quebec it seems that the practice has been different, and that if interest and costs, added to the principal, form a total sum exceeding $40, execution against real estate may issue. *Moore* v. *Keane*, 6 Q. L. R. 378, is not quite in point, but in giving the judgment of the Court of Review Chief Justice Meredith pointed out that the general rule is that the whole of a man's property is subject to the payment of his debts, and the Courts have no right to extend the exception made to that rule by the legislature. In a recent case, *Gagnon* v.

Bedard, which came before Mr. Justice Routhier at Quebec, the learned judge held, on the 1st October last, that where the debt sued for is under $40, but with interest and costs added exceeds $40, execution against real property may issue. The codification commissioners will probably settle this point, and make the practice uniform.

The startling crimes charged recently in connection with life insurance suggest that the law regulating this subject is not sufficiently stringent. If there are companies reckless enough to insure enormous sums upon the lives of wives in favor of their husbands, or the like, the law should certainly be changed so as to prevent such an incitement to crime. In Massachusetts, we notice that a bill is before the legislature to prohibit insurance of young children in favor of their parents.

Judges sitting in criminal courts are sometimes inclined to express their approbation of a verdict. This occasionally leads to awkward incidents, as in a recent case of *Samuels* v. *Faber*, in England, in which a juryman rose and addressed the Lord Chief Justice as follows:—"I should like to ask, my lord, if the verdict meets with your approval." The Chief Justice replied that he was not bound to express his opinion of the verdict, but that he saw no reason to disagree with it. The juryman in question probably reasoned that if judges get into the habit of expressing approval their silence may be construed by the public as implying the reverse, which, however, would be a most unfortunate state of affairs.

Mr J. L. Archambault, Q. C., who has acted as Crown Prosecutor in the District of Montreal for several years, has in preparation a work on the criminal law, which will be published if the project meets with sufficient encouragement. The work is intended to serve as a

practical manual, containing notes collected in the course of his practice, and comprising all the information accessible on the subject treated. We trust the author will meet with sufficient encouragement to induce him to give the profession the benefit of his labors.

COURT OF APPEAL.

LONDON, Feb. 20, 1895.

Before Lord HALSBURY, and Lords Justices LINDLEY and SMITH.

TREGO v. HUNT (30 L. J. 163).

Partnership—Goodwill—Books of account—Right of partner to take extracts—Names and addresses of customers—Soliciting customers.

Appeal from the decision of STIRLING, J.

The plaintiff and defendant were partners under an agreement for seven years from January 1, 1889. The agreement provided that the goodwill was to be the sole property of the plaintiff, and that each partner was to have access to the books of account and liberty to take copies or extracts therefrom. The defendant extracted from the books a list of the names and addresses of the customers of the firm, with the intention, as he admitted, to use the list for the purpose of soliciting the customers after the expiration of the partnership. The plaintiff brought this action for an injunction to restrain the defendant from making extracts from the books except for the purpose of the partnership business.

Stirling, J., refused a motion for an injunction. The plaintiff appealed.

Their LORDSHIPS dismissed the appeal upon the ground that they were bound by the authority of *Pearson* v. *Pearson*, 54 Law J. Rep. Chanc. 32, to hold that the defendant would be entitled to solicit the customers of the firm after the expiration of the partnership, and that being so, it followed that he was entitled during the partnership to make extracts from the books to facilitate such solicitation.

LA SOCIÉTÉ EN COMMANDITE.

La société en commandite, que le projet de loi de M. Leng a pour objet d'introduire dans la législation anglaise, est d'origine fort ancienne, car cette espèce de société se rencontre déjà fréquemment au douzième siècle dans les pays des bords de la Méditerranée. La société en commandite s'est développée du *contrat de pacotille* ou de commande, qui était une convention par laquelle une personne confiait à un marchand qui se rendait aux foires, ou bien à un capitaine de navire, des marchandises, afin qu'il les vendit ou qu'il les échangeât contre d'autres marchandises. Les bénéfices éventuels étaient partagés suivant la convention, mais, en cas de pertes, le commanditaire (bailleur de fonds) ne pouvait perdre au delà de sa mise. Pendant le moyen âge cette forme d'association correspondait à un véritable besoin, en permettant aux commerçants de se procurer les fonds dont ils avaient besoin pour leurs affaires, fonds qu'ils ne pouvaient alors guère se procurer d'une autre manière. En effet, la majeure partie de la fortune mobilière était alors détenue par certaines classes de la société (nobles, ecclésiastiques, etc.), auxquelles les préjugés de l'époque ne permettaient pas de faire le commerce en personne ; en outre, les capitalistes du temps n'avaient pas même la ressource de prêter leur argent aux commerçants qui en avaient besoin, attendu que la défense canonique relative au prêt à intérêt y mettait obstacle. Toutes ces difficultés étaient évitées au moyen du contrat de commande, car le bailleur de fonds, ignoré des tiers, ne compromettait pas sa situation sociale, et il ne se mettait non plus en opposition avec la susdite défense canonique, attendu qu'il ne recevait pas d'intérêts fixes sur sa mise, mais bien une partie des bénéfices éventuels.

Si les préjugés sociaux contre le commerce se sont beaucoup affaiblis depuis lors—évidemment il en reste encore des traces—la possibilité de s'intéresser dans des entreprises commerciales, tout en limitant les risques à une somme déterminée, correspond encore actuellement à un véritable besoin, et l'on peut même dire qu'en conséquence du développement énorme de la fortune mobilière, ce besoin est devenu beaucoup plus considérable. S'il est vrai que la législation actuelle reconnaît plusieurs espèces de sociétés à responsabilité limitée, la société en commandite n'en continue pas moins à avoir sa raison d'être et à rendre des services économiques, ceci grâce à sa nature de société à responsabilité mixte. Avant de continuer il faut donner une définition de cette espèce de société.

La société en commandite est une société dans laquelle les dettes sociales sont garanties par la responsabilité salutaire et limitée d'un ou de plusieurs associés (appelés commandités), et par la responsabilité d'un ou plusieurs autres associés (appelés commanditaires), limitée à une somme déterminée.

En parlant de la société en commandite nous avons toujours eu en vue la société en commandite simple, dont le capital est divisé en parts, mais nous ne pouvons passer sous silence *la société en commandite par actions*, qui ne date que du Code de commerce français de 1807. Les rédacteurs de ce Code, ne s'étant pas rendu compte que la responsabilité personnelle des commandités n'est qu'illusoire dans des sociétés dont le capital-actions se chiffre souvent par millions, n'ont pas soumis la commandite par actions à une réglementation aussi sévère que la société anonyme, ce qui a donné lieu plus tard aux scandales bien connus. Profitant de l'expérience, la plupart des législations récentes soumettent la commandite par actions aux même dispositions que la société anonyme (forme de société avec laquelle elle offre beaucoup d'analogies), abstraction faite de quelques divergences d'importance secondaire, mais certains pays ont préféré interdire simplement la division en actions du capital des sociétés en commandite. Sans vouloir aller aussi loin, nous devons dire que la commandite par actions ne nous a jamais inspiré beaucoup de sympathie, car cette espèce de société nous paraît être mal équilibrée, à cause des difficultés auxquelles les rapports entre commandités et commanditaires donnent souvent lieu; aussi dans la grande majorité des cas préférons-nous à cette forme de société celle de la société anonyme.

Après cette parenthèse, consacrée à la commandite par actions, nous ne nous occuperons plus que de la société en commandite simple, la seule à laquelle le projet de M. Leng se réfère.

Antérieurement au Code de commerce français (1807), la société en commandite—très répandue; du reste—était regardée comme une convention interne entre les commandités et les commanditaires, et la raison sociale des premiers n'en contenait pas de trace. Le dit Code, au contraire, déclare que la société en commandite est régie sous une raison sociale, tout en défendant que le nom d'un commanditaire fasse partie de la dite raison. Cette défense, reproduite par toutes les législations qui ont réglementé la société en commandite, est conforme au principe (suivi, avec plus ou moins de rigueur, par toutes les législations

continentales) que la raison sociale ne doit pas contenir de noms de personnes qui ne répondent pas personnellement et solidairement des dettes sociales. Bien que ce système ne soit pas suivi en Angleterre, où l'on a préféré indiquer l'étendue de la responsabilité des associés d'une société commerciale au moyen de l'adjonction éventuelle du mot de 'limited,'le projet de M. Leng se conforme sous ce rapport à la législation continentale. La défense en question est sanctionnée par la prescription qu'en cas de contravention le commanditaire en faute est assimilé, quant à l'étendue de sa responsabilité envers les tiers, aux commandités.

Quand il y a dans une société en commandite plusieurs commandités, ils forment, en ce qui concerne leurs rapports entre eux, une société en nom collectif. La gestion des affaires sociales appartient naturellement aux associés personnellement responsables, mais, afin que les tiers ne puissent être trompés sur la qualité des commanditaires, les différentes législations les défendent expressément de s'immixer dans la gestion. Nous ne pouvous insister ici sur les nombreuses controverses auxquelles cette défense a donné lieu; contentons-nous donc de rappeler qu'on admet en général que cette défense ne se rapporte qu'aux actes de gestion qui mettent les commanditaires en rapports directs et personnels avec les tiers, tandis que le fait d'occuper dans la société un poste où il n'y a pas lieu à initiative personnelle (par exemmis ou caissier), ou bien celui de délibérer avec les commandités sur les affaires sociales, n'engage pas la responsabilité personnelle des commanditaires. On est également d'accord pour reconnaître aux commanditaires un droit étendu de surveillance sur les affaires sociales, mais les législations recommencent à être divisées en ce qui concerne la question de savoir si les commanditaires peuvent, sans faire acte d'immixtion dans la gestion, représenter la société comme fondés de pouvoirs ou en qualité de mandataires spéciaux, question que nous n'hésitons pas à résoudre affirmativement, attendu que le risque que des tiers soient ainsi trompés paraît minime. Rappelons, pour terminer, que la société en commandite contient beaucoup d'analogies avec l'association en participation, où le bailleur de fonds reçoit également une partie des bénéfices, tandis que son risque est limité à la perte de sa mise. Ce qui distingue cette forme d'association de la société en commandite c'est non seulement qu'elle reste entièrement ignorée des tiers, qu'il n'y a pas de raison sociale, mais aussi le fait que lorsque plusieurs bailleurs de fonds sont intéressés dans la même

entreprise ils restent étrangers les uns aux autres et ne forment pas de société entre eux, comme les différents associés d'une société en commandite.

Cet aperçu rapide sur la société en commandite n'est que trop incomplet, mais l'espace dont nous disposons ne nous permet pas de signaler tous les points intéressants de cette matière, beaucoup moins encore de nous y étendre longuement.—*Félix M. Bing, Genève, in Law Journal.*

IS A 'DECLARATION OF WAR' NECESSARY?

Like many other problems which are unsettled in the domain of international law, the final rules which shall govern the inception and maintenance of war have never been satisfactorily stated. Thus Phillimore says there is no declaration required, a point which Calvo disputes. Both are reinforced in their opinions by noted publicists, and both are clearly logical and convincing.

Reviewing the positions of each, it is wise to follow the queries which the English writer suggests as a gauge or test of the truth.

1. What was the practice of antiquity?
2. What is the expression of the books?
3. What is the practice of moderns?
4. What is the reason of the thing?

The answers to the first two propositions will not be conclusive. Undoubtedly with less enlightened peoples a declaration was unknown; just as certain it is that the Greeks and Romans recognised its utility. 'Hear, Jupiter! and thou, Juno, and ye also, Gods of the Sky, of the earth and of hell,' cried the *pater patratus*, as he hurled his javelin across the border of the enemy's territory. 'I swear before you that this people is unjust and refuses to fulfil its obligations.'

Such was the wonted challenge of the fecial priests at the frontier, and hostilities continued without this introduction were not characterised as 'war.'

The custom has its weight as practised by a nation which rose to a high degree of culture along the lines of ancient civilisation, but is far from rendering important assistance in settling the practicability or rightness of similar formalities at the present day. As for the books, it has been suggested already that they are widely divergent, the authority of Phillimore and his justly revered Lord Stowell, together with Bynkershoeck, Heineccius,

and many other moderns being against that of Gentilis, Grotius, Puppendorf, Heffter, Fiore and Wheaton.

All these discuss the practical historical instances as well as the reason of the thing, but their very want of uniformity in arriving at conclusions forces the inquirer to pursue his own course along the path they have already trod.

What is the custom of modern times, what is the tendency of enlightened nations? Toward a declaration of war, undoubtedly. There are numerous instances during the age of Gustavus Adolphus and Louis XIV. of war commenced without formal declaration, as note the case of Frederick the Great's invasion of Silesia in 1740; or the case of Great Britain in many instances. But against these it is well to mark the fact that both the recent Franco-Prussian and Russo-Turkish wars were initiated by proper and formal declarations. Also that there has been a growing tendency from the period of the war of the Spanish Succession, and the Seven Years War, to the Crimean War, to do away with the principles upon which the usually logical Phillimore insists, even while noticing the growth in sentiment toward a declaration.

International law is by no means a fixed quantity. It is constantly active, modifying and changing old rules here, and again adding to and completing others; precedents are valuable, but, as in private law, the latter in time, if equally well put, carry more weight. So in the field of the law of nations the course of a nationality of the present day in regard to the preliminaries of war are certain to carry more weight than the usage of a country which, in opposition to the views of its contemporary thinkers, may have opened hostilities without a declaration. The science which has to do with the question of war is new in its development. Indeed, its strides have been great since the Treaty of Paris, from which date Calvo marks a new understanding of this formal notice which bears some resemblance to a deputy's summons.

There is a long distance between the period when Bynkershoeck wrote, when war was generally commenced without the declaration called for by Grotius, Vattel, and Wheaton, and the nineteenth century—one age was crude and bloody, the other is approximately humane. Yet, strangely enough, the great English scholar before alluded to sides with the Dutch master in his argument adverse to a formal announcement of war declared, while impatiently impugning his sentiment regarding unnecessary

cruelty in war. In the opinion of many this is inconsistent, and to commence hostilities without a 'declaration' is something of the nature of permitting yourself to kill your enemy when unarmed, or to hire an assassin to do so. Good enough doctrines perhaps for the age of Philip of Spain are these, but bad for our times.

Passing on, therefore, with cursory notice of the fact that a declaration, while it is in itself necessary, may be sufficient if made by either party, and noting in this connection the case of the *Navade* decided in England, which seems to correctly direct the party assailed that he may properly retaliate when once advised of the commencement of hostilities, we come to the reason of the thing. It has been truly argued that certain offences against States properly call for a redress *a vi et armis*, also that force being used, it may properly be resisted, and all this without a declaration. That this is possible, ay, more, that it is natural to thus engage in feud and quarrel, is very true, but the same law which calls for a punishment and restitution in the case of its infraction, also seeks to bring its judgment on the head of the guilty alone. This it is impossible to do as between States, so inextricably are the interests of the citizen combined with those of the country to which he owes allegiance, until a certain formal notice has been given. For were it otherwise, the individual, who, it may be, is totally unaware of the conditions that have been brought about through the diplomacy of the Foreign Office, is made to suffer without knowing the why or the wherefore. Thus arises the first great reason for a declaration of war—viz. that without it neither enemies, friends, nor neutrals can be properly forewarned in spite of Press rumours and general excitement in the masses about them. An individual may be settled temporarily amid a strange people for the purpose of developing commercial relations between his native land and the country of his sojourn; his business is entirely dependent upon a state of peace. The news reaching such a one's ears that the port where he is located was besieged by the enemy's fleet, although no official notice had been given of such a possibility, would be sufficient to utterly destroy the business he had hoped to build up. Such an individual without friends or countrymen would be thrown into a predicament easily avoided if a declaration had been made. So, as to the friends and neutrals, the native is travelling afar, the neutral is planning some commercial enter-

prise that hostilities between neighbours must render ineffective; to each there is real tangible peril in an active warfare which has sprung up between combatants without warning or declaration. A suspension of actual hostilities would permit citizens of either nationality to return to their own flag, and it would permit neutrals to revise their plans and adjust matters in such a way as to avoid suffering from the quarrel of others.

Secondly, a declaration of war is of the greatest service to military men in actual army service. Even those most seriously questioning its advantages must confess that there is somewhere a line like that of Cæsar's Rubicon which divides the state of peace from that of war. Some overt act must be made to change the normal conditions under which man exists before the spectre of war arises. This may come about by the rapid mobilisation of troops, and throwing the same into the territory of the country with which there is a misunderstanding, besieging a city or town, violating such a treaty as provides for war in certain instances; in numerous ways, doubtless, but all of them more or less confused and unsatisfactory. Better a clear statement of fact, a rehearsal of injuries, though fancied, and a clear-cut declaration of issue joined, which is to be settled by force of arms, than any such substitute.

For with a knowledge that nothing offensive will be permitted until such a formality has been followed, the frontier officer may both refrain from entangling himself, and, what is of far more consequence in times when a hundred thousand lives may bear the penalty of a rash act, may desist from pursuing such a course as would irrevocably commit a nation to war. We have seen before that the citizen had reason to fear a conflict which is joined without warning. Is it less true of the soldier? From division commander to subaltern in charge of some Alpine eyrie overlooking the enemy's territory, we have reason to believe that the doctrine championed by Phillimore and his *confrères* must be viewed with disapprobation and disgust. Responsibility is good, and is eagerly accepted when a man knows where he stands in war time, but to be placed where one's action may be disavowed by Downing Street or the Wilhelmstrasse, that is a different matter; such responsibility is not courted.

Thirdly, serious as the situation may become to the officer upon whose judgment such important events may turn, how much

more serious is the outlook, as has been suggested before, if one views the status of affairs from the standpoint of a nation!

Although the conditions of army service in the United States are such as to often place along such a frontier as the Mexican boundary, for instance, able and veteran soldiers well capacitated to deal with events, it can by no means prove equally practical for the continental nations of Europe to secure the protection of their frontiers in a similar manner. For across the ocean the whole line which separates State from State is bristling with entrenched camps and fortresses of almost impregnable strength. Some points are more exposed than others, it is true, but the whole frontier is but a line of defence, and one cannot always be sure that even in the more notable parts the strongholds are held by men of the highest ability.

Thus, if war is to commence without a declaration, and is to take its inception from the moment when a contending State sees an opportunity for a telling blow, a question which might puzzle the most astute Cabinet in Europe may perhaps be presented to a very ordinary man for solution in a night. Certainly too large interests are at stake for the adoption of a doctrine which shall make such conditions possible. Not only life and treasure, but the very existence of nationalities depend thereupon, with results which may affect the destinies of continents and the whole current of the world's trade.

Fourthly, M. A. Pillet argues most reasonably that the very sense of loyalty between States should further call for a declaration of war. Others have maintained that there is no such loyalty upon which rights and duties depend. The learned professor shrewdly replies to such: 'After all, could there be such a thing as international relations without honour, could civilisation itself exist unless a general law of honesty governed humanity?' And he goes on to intimate that just as certain ruses are condemned by the laws of war—the use of poison, &c.—just so a war joined before an enemy has really sensed the intention of its rival, and while it remains totally unprepared, smacks somewhat of dishonourable method.

Certainly these various arguments when joined make out a strong case for a declaration of war. It is undoubtedly true that Phillimore and his school have innumerable cases to cite, from the wars of Elizabeth with Spain to the present century, in favour of the other theory, and that they can rightly also assert that no

sovereign human authority has finally and conclusively established the necessity of the formality for which we argue.

But of what other generally recognised doctrine of the law of nations is this true? The councils of Berlin and Paris have seemingly lent great authority to certain questions which England as persistently combated; but, after all, such councils are not the Court of last resort. That sense of the eternal justice of things implanted in man's heart by God, of which with his quickening conscience he seems to gain a clearer understanding from generation to generation, is certainly the only guide to the absolute truth and the finished and complete law which rests in the bosom of Deity.

This sense, this apprehension of the truth in the minor matter which has to do with the inception of war, seems at present to point to a clearly defined declaration which shall somewhat atone for what many are pleased to call the barbarities of warfare.—*D. C. Brewer in American Law Review.*

ISSUE OF SHARES AT A DISCOUNT.

Shares cannot be issued at a discount, nor can they be issued save subject to payment in cash, unless a contract be registered under section 25 of the Companies Act, 1867. The company, though solvent, may in a liquidation enforce calls on the shares notwithstanding its contract. So says the Court of Appeal, and so the law remains pending the delivery of the opinion of the House of Lords, which Lord Halsbury has invited the parties interested to obtain.

Clearly section 25 of the Companies Act, 1867, makes it requisite that the shares should be paid up in full and in cash, in the absence of a duly registered contract. But in the well-known case of *The Ooregum Gold Mining Company* v. *Roper* (decided by the House of Lords in 1892, 61 L. J. Rep. Chanc. 337; L. R. (1892) App. Cas. 125) Lord Herschell, whilst not in any way dissenting from the judgment of the House, said: "I should have thought, had the point been insisted upon, that it ought also to be declared that the company are not entitled to call upon such shareholders for any further payment beyond that agreed upon, except in the case of a winding-up, and then only so far as necessary for the discharge of the obligations of the company and the cost of the winding-up." The then Lord Chancellor (Lord Hals-

bury) expressly avoided alluding to the point raised by Lord Herschell. The view to which Lord Herschell inclined may be put thus: If shares not in fact fully paid up are issued by a company under an agreement that they shall be treated as fully paid up, while the Companies Act, 1867, makes registration of the contract under which they are issued a condition to freedom from calls, yet it would be inequitable for the company—as distinct from its creditors—to sue the holder who had entered into the contract with it. Of course *bona fide* transferees for value are not affected, they being fully protected (see *Burkinshaw* v. *Nicholls*, 48 Law J. Rep. Chanc. 179; L. R. 3 App. Cas. 1005). The language used by Lord Herschell in the *Ooregum Case* was considered in *In re The Pioneers of Mashonaland Syndicate* (1893), 62 Law J. Rep. Chanc. 507; L. R. 3 Chanc. 731. In that case a petition was presented against a company by a fully paid up shareholder, who alleged that the asset on a winding-up would provide a surplus after payment of the costs and debts, and that, therefore, he had an interest in obtaining an order sufficient to enable him to petition. His case was grounded on the fact that shares had been issued at a discount. The judge (Mr. Justice Williams) said that even in a winding-up the difference between the amount paid up and the nominal amount could not be recovered, except for the benefit of creditors. In fact, he held Lord Herschell's view to be a true statement of law. But neither side disputed this, nor was the point fully argued.

The exact question arose in a case decided recently by the Court of Appeal—viz., *In re The Railway Time-table Publishing Company*. The Court, supporting Mr. Justice Kekewich, decided, contrary to the dictum of Lord Herschell, and in accordance with *In re The Weymouth and Channel Islands Steam Packet Company* (1891), 60 Law J. Rep. Chanc. 93; L. R. 1 Chanc. 66, that by no process and under no circumstances could shares be issued at a discount, so as to render the holder not liable to pay the full nominal amount on a winding-up, whether the creditors have any interest or not. Lord Halsbury, strangely enough, acted a part similar to that which he played in the *Ooregum Case*. In that matter he expressly left open to himself the right to consider Lord Herschell's view when the point might arise. In the recent case, whilst deciding against the same view, he wished it to be understood that he did so as a member of the Court of Appeal, bound by certain decisions; and he reserved to himself

full liberty of action in the event of the difficulty arising in a case before the House of Lords.

In another case, in a similar matter (*In re Tattersalls, of New York*), Mr. Justice Kekewich said that he would allow the name of the holder to be removed from the register, assuming that the creditor would not be injured by such a course, and that the assets were sufficient to pay them without resort to the holder of the share.—*London Law Journal.*

A PERSONAL AFFRONT.

Many years ago a young man noted for industry and probity of character, who was six feet seven inches tall and large in proportion, who resided in an inland county in Virginia, and whose education was somewhat defective, determined to study law. He got three books, the chief one of which was "Stephen on Pleading," and after reading them for two months without any instructor, applied for and by some unaccountable means obtained a license. He had hardly opened his office before a merchant gave him six accounts upon which he was directed to bring suit. He had no forms except those set forth in an old edition of "Stephen on Pleading," which had been obsolete for more than half a century; he had never seen a declaration in his life, but he brought the suits. When the cases were called, six of the most enormous documents ever seen in any court-house were placed on the bar of the court; they were not folded in legal style, but were in six tremendous envelopes, addressed to the court, just as though they had been letters. They all commenced as follows: "Charles Creditor complains of David Debtor, who is in the custody of the marshal of the Marshalsea," and so on. Such declarations were never before seen in America. The counsel for the defendant was an old county court lawyer, not overburdened himself with legal knowledge, but he knew enough to know that these declarations were demurrable. When the first case was called he rose from his seat in the bar with some difficulty, as he was just recovering from a spell of illness, and said: "May it please the court: I tender a demurrer to the declaration, and ask the court to pass upon it. In a practice extending over forty years, I have never before seen such a declaration." And he held up the awful looking document, the sight of which caused a suppressed smile on the part of the audience. Now this giant young lawyer lived near the old one. There was an intense

rivalry between them, and the manner of the elder member of the bar was far from being pleasant or reassuring. The young man had never heard of a demurrer in his life, and he had not the faintest idea of what it was. In his distress he turned to the writer and asked him what to do. I promptly informed him that he should ask the court to give until the next morning to prepare his defence to the demurrer, which request the court granted. After the court had adjourned, the young man asked the writer if a demurrer could be considered a personal affront, and if so, he well knew what course to follow. The humor of the situation immediately seized upon and impressed the writer, and he invited the young man to his office, and informed him that a demurrer was a very distressing incident in legal proceedings; that it admitted all the allegations of the plaintiff, but at the same time stated that they were so chaffy, so light, and of such little weight, that they entitled the defendant to a judgment for costs; that in the colonial days of Virginia there was a well settled tradition that demurrers were considered personal affronts, and that it might be the case now, but I rather thought not; but I would advise him to consult an old and eminent member of the bar, since that time one of the governors of Virginia, and he could safely follow his advice. That counsel caught on to the joke and reaffirmed my advice. When the court opened next morning there was profound silence, when the young man straightened up to his full and enormous height, and in a stentorian but musical voice commenced as follows:—

"May it please the court: I am a young man without experience in my chosen profession, and with but little legal learning. It may be that the statement of the cause of action in this case is inartificial and improper, but I rely on the great Virginia statute of Jeoffails, which is the palladium of the legal rights of the Virginia citizen. That noble statute says, if the case, however badly stated, shows enough for the court to arrive at the true merits of the cause, it is sufficient. Sir, I rely on that noble and commanding statute, made, I am sure, for such cases as this, and to prevent injustice. As to the demurrer, I hurl back the insinuation contained in it, that I have stated my cause of action so badly that, admit all I have stated, there is no ground for the action, with scorn and contempt, and if need be with defiance. Sir, I rely on this court to carry out the great principles of eternal justice, and I hope it will rise equal to the occasion. I do not

care so much myself, sir, about the infernal demurrer, but the idea that the miserable attorney from the county of..... should attempt to bring into disrepute the honored name and the memory of the great Sir Henry John Stephen, and to strike at him through me, is more than I can bear."

"What do you mean, sir?" yelled the old attorney. "I will hold you to personal account. You talk, sir, about a demurrer being a personal affront; if I only had my usual wind, I would give you a foretaste of what you will often catch at this bar." At this stage of the proceedings a personal altercation was with difficulty averted. The roar of laughter was universal; even the dignified old judge could not repress a smile. He gave me quite a lecture privately for being the cause of such a scene. The demurrer was sustained; the young giant went West, attained a high eminence in his profession, and made a fortune.—*C. Patteson in "The Green Bag."*

GENERAL NOTES.

At the Boston Bar Dinner the Governor of Massachusetts quoted Hamlet, Act v., scene 1: 'Where be his quiddits now, his quillets, his cases, his tenures, and his tricks?' The Boston 'Herald' reports it: 'Where be now his cases, his ten years of contracts?'

Appointments.—Feb. 2, 1895. F. L. Haszard, Q. C., of Charlottetown, to be judge of the City Court of the city of Charlottetown, P. E. I.

Elevated Railways.—An elevated railroad company's stone abutment in a street, which nearly destroys access to abutting property, is held in the Maryland case of *Garrett* v. *Lake Roland Elevated R. Co.* 24 L. R. A. 396, not to constitute a "a taking" of the property of the abutting owner nor to constitute a nuisance, but under the statute of that State the owner is allowed his remedy for damages.

Telephone Wires.—Liability for damage caused by lightning conveyed over a telephone wire from a flagstaff on one building to another building is held in the Wisconsin case of *Jackson* v. *Wisconsin Telephone Co.*, 26 L. R. A. 101, to rest on the person who negligently connected the buildings with the wire; and the possibility that the lightning might be conducted 300 feet over such wire was held to be a question of fact for the jury.