

## The Legal News.

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The knotty cabman's case (8 L. N. pp. 105, 122, 177)—*Regina v. Macdonald*—was re-heard before thirteen judges on Saturday, the 20th June, and the majority were of opinion that the conviction was right. The *Law Journal*, of London, inclines to the opinion of the dissentient judges, which certainly seems to be technically the more correct. Our contemporary observes:—"At common law there could be no larceny without trespass. A statute says that a bailee who fraudulently converts to his own use goods bailed to him may be convicted of larceny. An infant fraudulently converts to his own use goods of which, if he had not been an infant, he would be bailee. Is he guilty of larceny? The answer seems to be in the negative. There is no dilemma. He is not guilty at common law, because he has committed no trespass, and he is not guilty by statute, because he is not a bailee. His proper legal description is that of licensee, and if it had been decided that a licensee who does something inconsistent with the license becomes a trespasser and, if a fraudulent intent be added, a thief, the decision would have been intelligible. But the various *reductiones ad absurdum* put several times by the judges do not help to a conclusion. They would help if the law of larceny were based on reason, but it is not. It had its origin in days when most crimes were crimes of violence, and it has been toned down by the judges in days when it was a hanging matter. The suggestions made by the learned judges in the course of the argument were valuable to the Legislature, but did not elucidate the question in hand. Some positions of law, however, seem to have been assumed without warrant. It appears to have been supposed that if a chattel is lent to an ant, and he sells it, there would be no remedy unless he was guilty of larceny. He would, however, be guilty of a conversion, upon which he could be sued. The assemblage of a dozen judges

to decide a point of criminal law greatly imperils its proper decision. They are apt to treat the matter from the point of view of common sense and convenience rather than law, and support one another in so doing. They become less a forum than an assembly of gentlemen settling among themselves what is right and wrong."

The American Bar Association at the approaching meeting, which takes place at Saratoga on the 18th of August, propose to take up rather a formidable subject—the delays in the administration of justice. David Dudley Field, the chairman, has issued the following series of questions to be answered by members of the Association in the several States:—

- I. How many judges of courts of record are there in your State?
- II. How many lawyers are there?
- III. What is the average length of a defended lawsuit from its beginning in the court of first instance to its end in the court of last resort?
- IV. What is the average expense in costs and counsel fees of such a law-suit, to each party?
- V. How many appeals are allowed in the same suit?
- VI. How many volumes of reported cases are annually published, and how many decisions are reported in the last volume of each court?
- VII. What is the number of affirmances and reversals reported in this last volume?
- VIII. Is there delay or uncertainty in the judicial administration of your State, and if so, what in your opinion is the cause and what is the remedy?

### THE WORD "UNMARRIED."

A decision of some little practical importance to maids, wives and widows, and of considerable interest to draftsmen and others who may wish to write good and clear English, is to be found in the case of *In re Sergeant, Mertens v. Walley*, 54 Law J. Rep. Chanc. 159, reported in the February number of the *Law Journal Reports*. It involved the meaning of the word "unmarried," used in a bequest made to certain ladies, and coming into operation after the death of a tenant-for-life. Two questions were raised—first, whether the condition referred to was the condition held at the time of the death of the testator or at the death of the tenant-for life? and second, and more important, whether "unmarried" meant never having been married, or not being married? Upon

the second question purists in the use of English will probably find a way of cutting the knot. Their answer will be that it means neither. They will object, in the first place, to the use of the word "unmarried" at all; and in the second place, they will say that if it means anything it means divorced. The prefix used reverses the meaning of the word to which it is prefixed, and does not act as a simple negative. If "untied" means with the tie unravelled, "unmarried" means with the marriage dissolved. But the draftsmen of wills are not sticklers for good English. They have an English of their own, which in general is good enough for their purposes if it is not obscure. If they avoid the word "unmarried" it is for its obscurity, even in its conventional sense, and not for its radical deficiencies in etymology. In any case, the draftsman had used the word, and it remained for the Court to give a meaning to it.

Mr. Sergeant, by his will dated June 22, 1846, directed his trustees to invest certain moneys, and to pay the income to his wife for life, and after her death to divide two-thirds of the principal "equally among the surviving unmarried daughters" of three of his wife's sisters, whom he named. The testator died a few days afterwards, and his wife lived until July 20, 1883. At the time of her death there were living four daughters of her three sisters mentioned in her husband's will. The two first were not married at the death of their uncle, the testator, but were married, with husbands alive, at the death of their aunt. The next, Mrs. Walley, was not married at the death of her uncle, but before her aunt died had married and become a widow, and the remaining daughter had never been married at all. The history of the family, in fact, seems to have been arranged with a view to ring the changes on the several meanings of the word "unmarried." The first two ladies, of course, could not take any benefit unless the description referred to the time of the testator's death, at which time they were "unmarried" in both senses, although at the time of their aunt's death they were not "unmarried" in any sense, including the unconventional sense alluded to at the outset. So little

hopes had they of persuading the judge that the testator referred to that period of time, that they were not represented by counsel, and gave up their chance. The last of the daughters mentioned, who had never been married at all, did appear by counsel, who, of course, was "not heard," as his client answered all the possible meanings of the word, and was unmarried in both senses both at the death of her uncle and the death of her aunt. There remained the lady who had married and become a widow between the deaths of her uncle and her aunt. This lady was, of course, unmarried at the uncle's death, and her counsel suggested that this fact was enough. This, however, could hardly be, as "surviving" evidently meant surviving the aunt. He, therefore, fell back on the contention that "unmarried" meant, not "never having been married," but "without a husband." This view, also, Mr. Justice Pearson was unable to take. In a colorless will, said the learned judge, the word meant never having been married, although in certain cases the Court had, in order to prevent the intention of the testator being defeated, interpreted it to mean without a husband. He was unable, however, to see that it meant without a husband in this instance, and he added, "The reason why the unmarried daughters are selected and the married daughters left out, I think, is that when a lady who is a spinster marries, some provision is usually made for her, either by her own relatives or by her husband." In other words, the testator meant to confine his bequest to nieces who had never been advanced to matrimony at all, which was probably his intention, and, undoubtedly, in accordance with the conventional meaning of the word.

The advice deducible from the case to draftsmen about to use the word "unmarried," is not to use it all. The word is indefensible etymologically, and obscure even in its vulgar use. But what is the draftsman to use in its place. Those who are careless of style use the periphrasis "not having married," which is clear but clumsy. There seems no reason that the good old English word "spinster" should not be used, being as it is the legal title of a person who is

neither wife nor widow. If the testator's will had run "equally among the surviving spinster daughters of my sister-in-law," it could not have been suggested that widowed daughters were included. The past participle of the English language must, however, if used like an adjective, always lead to obscurity, and to use it with a negative prefix intended to have the effect of "not," simply is to be guilty of a solecism as well.—*Law Journal* (London).

### SUPERIOR COURT.

SHERBROOKE, May 5, 1885.

Before BROOKS, J.

LA BANQUE NATIONALE V. THE EASTERN  
TOWNSHIPS BANK.

*Cancellation of Mortgage on Insolvent's Property.*

PER CURIAM. This is an action to compel radiation of a pretended hypothec created by the registration of defendant's judgment against one W. W. Beckett for \$29,202.72, interest and costs, alleging that said W. W. Beckett is indebted to plaintiffs in the sum of \$33,000 for a note given them, and was so indebted in November last. That on the 19th November last (1884), being insolvent, he made a transfer of his property to one Darling for the benefit of his creditors; that they, plaintiffs, had then sued him, their action being returned on the 6th of December; that on the 11th of December defendants also sued him for their debt (\$29,200) and on the 12th of December obtained judgment upon their confession, and registered this judgment against the property mentioned in the return; that this was done to obtain an undue preference, and they seek its radiation on the ground that it gave no preferential hypothecary claim to defendants.

The defendants have not pleaded, but content themselves with stating at the argument that, under Art. 2023, C. C., if Beckett were insolvent no hypothec was acquired by the registration of their judgment, but that they, defendants, had a right to enregister; the plaintiffs cannot now ask its radiation; they are premature; they should have waited; and if defendants sought to obtain an advantage, then they must contest, and

defendants were not bound to radiate on a notarial demand.

Articles 2148 and 2149, C. C., do not apply. What is registration? It is a claim of hypothec. Articles 2026, C. C., *et seq.*, declare that legal hypothecs only affect properties mentioned in notice. (Notice in Consolidated Statutes, p. 388.) This notice must be given by defendants. That is, they ask that the property described may become bound and affected by the general hypothec under their judgment.

The facts are undisputed. Beckett was insolvent; he was sued by the plaintiffs for a large amount, some \$33,000. He made an assignment on November 19th, declaring himself insolvent. The defendants sued him on the 11th, and on the 12th, on his own confession, judgment was rendered and registered by defendant asking preference by judicial hypothec. The plaintiffs complain of this, and ask that the pretended hypothec should be radiated.

The codifiers have not changed the law from what it was under chapter 27 of the Consolidated Statutes. They say (page 62, vol. 3) that they have added a few articles and suggested a few amendments; that it was on this article only they deemed it necessary to offer any special remarks. They do not refer to this case, but to the Articles 2148-49 and section 42 of chapter 37 Consolidated Statutes of Lower Canada, and Article 2159 Code Napoléon.

By chapter 37, C. S. L. C., section 42, the right of action seems to be limited to the debtor, but our code says it may be urged by any party interested.

The defendants claim a mortgage. The plaintiffs say: "You have none, but your claim is prejudicial to us; cancel it." The defendants say they had a right to enregister. What does this mean? That they had a right to a mortgage on the realty. Is this true? It is not. Their claim is that of a mortgage created by them by registering a judicial hypothec which does not exist. They had no right to it. But they say: "You cannot now claim radiation." (See 31 Laurent, p. 149, sec. 174, pp. 154-5, sec. 179, pp. 157 and 182; *La Banque Jacques Cartier v. Ogilvie*, 19 L. C. J., p. 100, Court of Queen's Bench, 1874.)

The defendants say that registration was not effected without right or irregularly. It had no effect. Their claim as a judicial hypothec is unfounded. The demand of radiation was made and it was not consented to, and the plaintiffs are entitled to have it done.

Judgment for the plaintiffs declaring the pretended hypothec radiated, and that defendants should pay costs of certificate of registration and costs of protest, &c.

*Panneton & Mulvena*, for plaintiffs.  
*Hall, White & Cate*, for defendants.  
(L.E.P.)

#### PATENT OFFICE.

OTTAWA, February 15, 1877.

Before THE DEPUTY OF THE MINISTER OF AGRICULTURE.

BARTER V. SMITH.

[Concluded from page 215.]

The views taken here on the question at issue are fully sustained by the construction and interpretation put on similar or identical legal enactments in other countries. The jurisprudence established, and the doctrine laid down by Jurists and Patent Experts in countries where the Patent laws contain the same dispositions as ours about *manufacturing* and *importing*, appear, from extensive reading on the subject, unanimous. It will be sufficient to enter into a short exploration of this ground to prove the assertion of such common consent of nations in the matter.

In England the Patent laws do not contain the same prescription as our statute presents, and no *specific* provision is made to secure to the public the use of the invention, or to home labour the benefit of its working, but there exists in the present Letters Patent issued in England a proviso which shows, by analogy, what doctrine prevails on the general question of the obligations of the Patentee, when he is bound to furnish his invention, under pain of forfeiture.

Among the circumstances that cause English Letters Patent to "*cease, determine and become void*," is the following: If he, the Patentee, "shall not supply or cause to be supplied for our service all such articles of the said invention as he shall be required to supply by the officers or commissioners administering the Department of our ser-

"vice for the use of which the same shall be required, in such manner, at such times and at and upon such reasonable prices and terms as shall be settled for that purpose by the said officers . . . &c." This shows that it is not supposed that the legitimate obligation of the Patentee towards the customer is to keep open shops, to keep stock, but to supply the invention, only when requested to do so, by a formal demand accompanied with a settlement of the Royalty.

Similarly to the laws of England, the present Patent laws of the United States do not contain the condition of lapsing for reason of non-manufacturing or of importing: the absence of such dispositions from the Patent Acts of those two prominent manufacturing countries is, it must be conceded, antagonistic to the idea of Draconian interpretation of the said conditions where they do exist.

The obligation of manufacturing in the United States did exist for a certain time: it was introduced by a short Act in 1832; this Act was repealed by the Patent Act of 1836, but a provision of the kind was maintained in the last mentioned Statute. By the 15th section, the defendant in an action of damages, was permitted to plead the general issue: at the end of the enumeration of defects, we read:—" . . . or that the Patentee, if an alien at the time the Patent was granted, has failed and neglected, for the space of eighteen months from the date of the Patent, to put and continue on sale to the public, on reasonable terms, the invention or discovery for which the Patent issued; in either of which cases, judgment shall be rendered for the defendant with costs."

The provision of this clause was invoked in one case of an assigned alien's rights (*Tatham v. Lowber*).\* Messrs. Justices Nelson and Betts, State of New York, decided:—

"That even if the plaintiffs took their right with the condition attached to alien Patentees, yet they had satisfied the Statute: that they need not prove that they hawked the patented improvement to obtain a market for it, or that they endeavored to sell it to any person; but that it rested upon those who sought to defeat the

\* Blatchford C. C. Vol. II., pages 49 to 51.

"Patent to prove that the plaintiffs neglected or refused to sell the patented invention for reasonable prices when application was made to them to purchase."

The French legislation, as does the legislation of most countries, contains conditions similar to those of the 28th section of our "Patent Act of 1872."

The doctrine and jurisprudence adopted on the subject is amply summed up in the quotations of two eminent writers on Patents and Patent laws, which will follow, after citing the text of the law.

The French law reads thus:—Article 32. "Shall be deprived of all his rights; .....

"..... 2. The Patentee who shall not have worked his invention in France, within a delay of two years from the date of the signature, or who shall suspend his operations for two consecutive years unless he show cause for such inactivity. 3. The patentee who will have introduced into France articles manufactured in foreign countries similar to those guaranteed by his patent."

It must be remarked that the last proviso, at the end of paragraph 2, of the French law is similar in effect to the means adopted by our statute for making the non-manufacturing a condition of nullity to take effect only when rendered applicable by an administrative decision. The nullity enacted by the French law can be pleaded in Courts; the nullity enacted by our Act is conditional upon a decision of the Minister of Agriculture, who alone is to say whether the condition is to be enforced or not.

Renouard, after quoting Arago's speech, in the *Chambre des Députés*, (1844) against the stringency of the then proposed legislation, goes on to explain how it is to be understood:—

"The tribunals will appreciate, he says, according to circumstances, whether it has been worked or not; whether or not the working has been interrupted; if the reasons of not working are sufficiently justified." (\*)

This was said by a magistrate of the highest order and a specialist, in anticipation of the judicial decisions which afterwards con-

firmed his views of the matter; many years after, Bédarride, reviewing the jurisprudence established on the subject, recapitulates it, and exposes the doctrine in the following sentences:—

"The spirit of the law is therefore indubitable. It intends to punish only voluntary, premeditated, and calculated inactivity." (1)

It is to be remarked that Bédarride is not a loose but rather a strict interpreter of laws; he holds that the laws of France do not admit of prætorian interpretation, and are not to be mitigated by the Courts, no matter how severe and hard they may be. Bédarride again says:—

"The voidance of paragraph 2 of article 32, touches only voluntary inactivity. The law wishes to punish for inaction, the only one who has willingly remained idle. *It would have been really too unjust* to extend the penalty to the one who has abstained on account of circumstances independent of his will." (2)

As regards the importation, Bédarride says:

"The prohibition having for its unique object the protection of national labour, it would have been unreasonable to extend it to cases in which such protection could not be injured." (3)

"The judicial authority, exclusively inspired by this spirit, refused to apply the penalty of forfeiture, when the importation, although non-authorized, was not in its nature susceptible of damaging national labour." (4)

"It is proper to decide to-day, as it was decided by the courts of Douai and Paris in 1846 and 1855. Should not be considered as violation of the prohibition of the law, the importation of a few specimens of the articles or the importation of machines, having no other object in view than to find either associates or licences for the invention." (5)

It would only be a matter of time and labour to extract similar authorities and decisions from the records of other countries where the laws are either identical or similar to our

(1) Bédarride—Commentaires des lois sur les Brevets d'Invention. Marques de Fabrique et de Commerce, &c., &c. Paris, 1860—Volume I, page 448.

(2) Bédarride—Vol. I. p. 450.

(3) (4) (5) Bédarride—Vol. I, page 455—457—463.

(\*) Renouard—Traité des Brevets d'Invention, Paris, 1844—Page 243.

statute in this respect. All this shows, to borrow the very words of Renouard, "how the practice of nations solves, by common sense and experience, the questions raised by necessity....."

The question of doctrine having been thus established, it remains to examine the facts of the case to confront them with the meaning of the statute. The evidence adduced is ample to give any one a clear and unmistakable knowledge of the state of affairs.

As to manufacturing, it is proved that none of the respondent's inventions were put up in Canada within the time prescribed; but no proof is given that he has refused to furnish them to anyone at any time; on the contrary, it is shown in the clearest manner that he has not been requested by any one to be supplied with them, during the time of inactivity.

As to importation, it is proved that the machines imported at Thorold by Messieurs Howland and Spink, more than twelve months after the date of the patent, are of Smith's invention No. 2257; that Smith was neither the consignor nor the consignee, nor the owner thereof; that he did not actually import them but that he consented to the importation, which action amounts to causing them to be imported. It is clear that Smith's consent in this instance was not intended to defy the law, that it did not cause any appreciable injury to Canadian industry, but had for its object to bring the merits of his patents and process before the Canadian public, with the honest intention of manufacturing in Canada as his efforts to introduce his process in Lawson's mill proves.

The disputant, aiming at the process of milling patented under No. 2409, has tried to connect patent No. 2257 with patent No. 2409, as being necessarily dependent on each other in the way of cause and effect or rather object and means, but has failed in that, and by his evidence, has, in fact, proved the contrary of his proposition, in establishing that Smith's process does not require any special plant or machinery; but can be added to any mill by ordinary tools and workmanship and with ordinary materials, which is, besides, made plain by a careful study of the patents.

The disputant has also tried to prove un-

willingness on the part of the Patentee to furnish the Canadian market, at the same time that an active demand is alleged to have existed in Ontario for several years for such processes of milling as Smith's, an assertion which is poorly sustained by Barter's third declaration and his own Trade Circular (hereinbefore analysed), and by the fact that one of the witnesses who makes this assertion, Mr. Lawson, had no Middlings Purifiers of the sort in his own mill at Thorold, in May, 1876, when he refused the offer made by Smith to himself (Lawson) to have one put up for him, he having objected to the ordinary price charged for Royalty.

The disputant insisted on the point that the three petitions of the respondent (documents 4, 5 and 6 hereinbefore analysed,) are a virtual admission of his having failed to comply with the exigencies of the statute. It would be hardly fair to take even an unconditional admission of the sort, made under the circumstances and in error, as carrying with it the necessary destruction of the patent. The petitions referred to are not, however, an admission of that kind: the Patentee, after a statement of facts, says he "submits that his acts as aforesaid are a sufficient compliance with the terms of the said 28th section of the Patent Act of 1872"..... he has been unable, "for reasons aforesaid to comply literally with the terms of the said section," and he concludes by asking for a "declaration that the said patent has not become forfeited," and also for "an extension of time to commence the manufacture."

It is clear that the Patentee was conscious of having complied with the spirit of the law, but was apprehensive of the interpretation given to the words on account of threats. He asked for an extension of delay, a long time after the expiration of the statutory delay, which extension can, of course, be granted by the Commissioner only as a continuation (without interruption) of the respite of which it is the mere prolongation. When the statutory delay has expired, a patent then is either voided or in operation, according to the spirit of the law, and no other proceeding on the point in question can intervene, unless a dispute is raised.

These few remarks seem sufficient to show the real meaning of this incident, and to prove that the fact of the Patentee having presented the said petitions and the terms of these petitions cannot, in the least, affect his position.

The Counsel of the disputant has argued in favor of the conclusions of his dispute from an official answer given to a letter written to the Patent Office at his (the Counsel's) advice *pendente lite*. As this is a matter of constant occurrence, and as it gives the occasion of showing how different is necessarily an answer to a question put in the abstract from the decision of a case presented with all its bearings and particulars, it is of importance for the Patent Office and for the public to dispose of the argument.

The letter written contained the following question:—"Is it considered as 'construction' sufficient to hold the patent, if an article composed of various parts is imported in parts and put together and constructed in a Canadian manufactory?"

The letter in answer was as follows:—"You ask if the manufacturing clause of the Patent Act would be complied with by importing the whole of the parts of a machinery to be only put together in Canada? Evidently this would not be in compliance with the requirements of the law."

To such an interrogation no other than an answer based on the supposition of a breach of the law could be safely given. But if, departing from the abstraction of the above given question, the investigation were made as regards a certain patent, under specific circumstances, the conclusion might be widely different from the general answer. In fact, it is not difficult to imagine a case in which the importation of all and every one of the component parts of an invention, to be simply put together in Canada, would not be an importation in the meaning of Section 28 of the Patent Act, but, on the contrary, would be the only means of obeying the Statute as to manufacturing, and therefore to all intents and purposes, in full compliance with the spirit of the law and the nature of the contract: such would be, for example, the case of a Patent granted for a composition of matter, all the ingredients of which would

be products not to be found in the country; a compound of exotic gums and extracts, for instance, or a medicine composed of portions of tropical plants.

This is sufficient to illustrate the difference of cases, every one of which must stand on its own merits, viewed in the light of the facts confronted with the spirit of the law.

The conclusion is, that the respondent having refused to one the use of his inventions, and that the importation, assented to by him to be made, being inconsiderable, having inflicted no injury on Canadian manufactures and having been so countenanced, not in defiance of the law, but evidently as a means to create a demand for the said inventions, which the Patentee intended to manufacture and did, in fact, offer to manufacture in Canada, he has not forfeited his Patents.

Therefore, George Thomas Smith's Patents No. 2257, for a "Flour Dressing Machine," No. 2258 for a "Flour Dressing Machine" and No. 2409 for a "Process of Milling" have not become null and void under the provisions of Section 28 of "The Patent Act of 1872."

#### JURISPRUDENCE FRANÇAISE.

*Compensation—Société en nom collectif—Dette de la société—Créance d'un associé—Faillite de la société—Absence de réclamation directe contre l'associé.*

La compensation entre deux obligations, également liquides et exigibles, ne peut avoir lieu, de plein droit, qu'autant que le créancier de l'une des obligations est débiteur personnel et principal de l'autre obligation, et que, réciproquement, le créancier de cette dernière obligation est débiteur direct et personnel de la première.

Spécialement les associés en nom collectif, bien que tenus solidairement des obligations de la société, n'en sont tenus cependant que subsidiairement, à titre spécial, et en dehors des actions dont la société peut être elle-même principalement l'objet.

En conséquence, le créancier d'une société en nom collectif ne peut considérer comme compensée, de plein droit, sa créance sur la société avec la somme dont il peut être débiteur de l'un des associés, tant qu'il n'a pas élevé une réclamation directe et personnelle contre cet associé.

Il ne peut donc, en ce cas, et alors qu'il n'a formulé aucune réclamation contre les associés personnellement, utilement opposer, du chef de sa créance contre la société, l'exception de compensation à l'action du syndic de la faillite personnelle de l'un d'eux, tendant au paiement de la créance du failli. (20 av. 1885, *Cuss.*—*Gaz. Pal.*, 6 mai 1885).

1. *Testament olographe—Erreur de date—Rectification—Énonciations du testament insuffisantes*—2. *Fausseté de la date*—3. *Testament antérieur—Action en nullité du second testament*.

L'erreur de date, dans un testament olographe, alors d'ailleurs que les énonciations du dit testament ne permettent pas de la rectifier d'une façon certaine, équivaut à l'absence de date, et emporte nullité.

La fausseté de la date, alors même que l'écriture n'est pas méconnue, peut être justifiée, par la partie intéressée à faire prononcer la nullité du testament, par des preuves tirées des énonciations du testament lui-même, sans qu'il soit nécessaire de recourir à la voie exceptionnelle de l'inscription de faux.

Un testament olographe, nul pour erreur de date, ne peut valoir comme révocation d'un testament antérieur.—Le légataire universel, institué par un premier testament, est donc recevable à invoquer ce moyen de nullité contre un second testament, dont les dispositions auraient pour effet de faire disparaître ou de restreindre les effets de son institution.

(24 janv. 1885. *Cour d'Appel de Nancy. Gaz. Pal.*, 16 mai 1885).

#### RECENT U. S. DECISIONS.

*Logs and Lumber—Conversion—Measure of Damages—Mistake.*—Where logs are by mistake, and without any wilful or negligent trespass, cut from the land of another and hauled down and into a creek, several miles from the land, the measure of damages will be the value of the property on the land when cut, and not the value of the logs delivered in the creek. Supreme Court of Michigan, June 10, 1885.—*Ayres v. Hubbard*.

*Physician—Privilege.*—The New York statute making information acquired by the physician in his professional capacity privi-

leged and prohibiting its disclosure unless expressly waived by the patient, is founded on public policy, and its provisions can not be waived except as expressly provided. The prohibition remains in force after the death of the patient as well as during his life, and an executor or administrator is not a personal representative of the patient in such a sense as to authorize him to waive it. He represents simply in respect to rights of property. Court of Appeals, New York, April 14, 1885.—*Westover, Respt., v. Ætna Life Ins. Co.*, Applt.

#### GENERAL NOTES.

The death of Mr. Frederick A. Andrews, Q.C., occurred at Quebec, July 6. Mr. Andrews was a very old practitioner, and occupied an honorable position in the profession at the Ancient Capital. He was admitted to practice in 1825, and was the senior member of the firm of Andrews, Caron & Pentland. He was father of Judge Andrews who was appointed recently to the Superior Court bench. The deceased had attained the ripe age of 82.

Sir Hardinge Giffard is probably the first Lord Chancellor of modern times who made his reputation at the Court which now goes by the name of the Central Criminal Court, although many of his predecessors have distinguished themselves as advocates in criminal cases without, like him, having been constant attendants at the great Crown Court of the metropolis. The new Lord Chancellor bears the same name as the last Chancellor of William the Conqueror—a name borne also by four judges of the Plantagenet period (two of whom were Chancellors) and by the late Lord Justice Giffard.

When the Adams-Coleridge cases came before the Court of Appeal, the following memorandum of settlement was read by the Attorney-General:—"In relation to the causes of action in both actions, it should be left to (some person of eminence to be agreed upon) to determine whether compensation and of what amount should be paid to Mr. Adams. In addition to the above settlement, Mr. B. Coleridge, while unreservedly withdrawing the charges made in his letter of 11th December, 1883, states most positively that they were made on his part in perfect good faith on statements made to him, and Mr. Adams is happy frankly to accept such assurance. Lord Coleridge desires, and has long desired to say, that whatever construction may have been placed upon anything he has written or said, he thinks it due to Mr. Adams to withdraw any language which might be construed as casting imputations upon his character or motives. Lord Coleridge can not regard it as being necessary to say that he has never intended to cast any reflection upon the conduct of his daughter. It has been agreed that Miss Coleridge shall be replaced in the same pecuniary position as she would have been in if these misunderstandings had not arisen, Lord Coleridge being perfectly willing to make the suitable provision of £600 per annum by way of allowance to Miss Coleridge."