The Legal News.

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CURIOUS PREAMBLES.

Preambles to statutes are much more common in England than in this country. They are so full and comprehensive that in them, to a large extent, can be read the local and domestic history of the English people. Some of them are very quaint and curious, and to a few of them we will call attention.

The preamble to a subsidy granted by Parliament to Henry VIII, in the 37th year of his reign, reads as follows:

"Whereas, We, the people of this realm, have, for the most part of us, so lived under his Majestie's sure protection, and yet so live, out of all fear and danger as if there were no warre at all, even as small fishes of the sea, in the most tempestuous and stormie weather, doe lie quietly under the rock or hookside, and are not moved with the surges of the water nor stirred out of their quiet place, however the wind bleweth," etc.

In the first year of the reign of Edward VI, a statute, repealing most of the said treasons and felonies enacted during the reign of Henry VIII, has this in the preamble: "That subjects should rather obey from the love of their princes than from dread of severe laws; that, as in tempest or winter, one course and government is convenient, and in calm or more warm weather a more liberal care or lighter garments both may and ought to be followed and used, so it is likewise necessary to alter the laws according to the times." A very plain hint that those who lived in the prior reign lived in tempestuous times.

In the reign of Henry VIII, a statute was passed regulating the practice of medicine with this preamble:

"For as much as the science and cunning of physick and surgery is daily within this realm exercised by a great multitude of ignorant persons, of whom the greater part have no insight in the same, nor in any other kind of learning; some also can no letters in the book; so far forth that common artificers, as smiths and weavers, and women boldly and accustomably take upon them great cures in which they partly use sorcery and witchcraft, partly apply such medicines to the disease as be very noxious and nothing meet, to the high displeasure of God, great infamy to the faculty, and the grievous damage and distruction of divers of the King's people."

A not inapt description of many who practice the healing art in these days.

In the second year of the reign of Richard II, there was the following preamble to a statute aimed at the bribery of justices:

"Whereas, Late in the time of the noble King Edward, grandfather of our Sovereign Lord, the King that now is, it was ordained that justices, as long as they should be in the office of justices, should not take fee or robe of any except of the King, and that they should not take gift nor reward by them, nor yet by other, privily or opertly of any man which should have any thing to do afore them in anywise, except meat and drink of small value."

Under this statute Lord Chief Justice Hale could have taken the venison if of small value, but railroad passes would be forbidden.

In the thirty-third year of the reign of Henry VI, there was this preamble to a statute regulating the number of attornies to be licensed in Norfolk, Suffolk, and Norwich:

"Whereas, Of time not long past, within the city of Norwich and the counties of Norfolk and Suffolk, there were no more but six or eight attornies at the most (coming) to the King's court, in which time great tranquillity reigned in the said city and counties, and little trouble or vexation was made by untrue or foreign suits; and now so it is in the said city and counties, there be fourscore attornies or more, the more part of them having no other thing to live upon, but only his gain by (the practice of) attorneyship, and also the more part of them not being of sufficient knowledge to be an attorney which (come) to every fair, market and other places where is any assembly of people exhorting, procuring, moving and inciting the people to attempt untrue and foreign suits for small trespasses, little offences and small sums of debt whose actions be triable and determinable in Court Barons; whereby proceed many suits, more of evil will and malice

than of the truth of the thing, to the manifold vexation and no little damage of the inhabitants of the said city and counties, and also to the perpetual (diminution) of all the Court Barons in the said counties, unless convenient remedy be provided in this behalf."

It is shocking to think that the increase of attorneys in any locality should increase strife and litigation! There must be some mistake in the facts. The noble Lords and sturdy squires evidently did not appreciate the disinterested solicitude which the numerous attorneys took in their matters.

In the third year of James I, there was this preamble to an act "to reform the multitude and misdemeanors of attornies and solicitors at law":

"In that through the abuse of sundry attornies and solicitors by charging their clients with excessive fees and other unnecessary demands, such as were not, ne ought by them to have been employed or demanded, whereby the subjects grew to be over much burthened, and the practice of the just and honest sergeant and counsellor at law greatly slandered; and for that to work the private gain of such attornies and solicitors, the client is oftentimes extraordinarily delayed."

This preamble serves as a landmark to show how much the attorneys of this day have improved upon their English ancestors.

In the thirty-first year of Elizabeth, there was the following preamble to "an act to avoid horse stealing":

"Whereas, Through most counties of this realm horse stealing is grown so common as neither in pastures or closes, nor hardly in stables, the same are to be in safety from stealing, which ensueth by the ready buying of the same by horse courrers and others in some open fairs or markets far distant from the owner, and with such speed as the owner cannot by pursuit possibly help the same; and sundry good ordinances have heretofore been made touching the manner of selling and tolling of horses, mares, geldings, and colts, in fairs and markets, which have not wrought so good effect for the repressing or avoiding of horse stealing as not expected."

There are various English statutes against stealing "horses, mares, geldings, and colts." Is not a mare or a gelding a horse? And it might be a curious inquiry to ascertain when a colt becomes a horse.

In the reign of Edward VI (2 and 3 Edw. VI, c. 19), an act was passed to enforce the observance of Lent. The eating of flesh on Fridays and Saturdays in Lent, on the Ember days, and on all days appointed as fasts, was forbidden. The act was passed in an era of intense religious interest, and yet it was not based upon religious grounds. Nothing is said in the preamble about subduing the appetites, mortifying the flesh or starving the old Adam out of our corrupt natures. But, strange to say, it was put solely on the ground "that such abstinence was good for health, and needful to encourage the fishermen!"—*Albany Law Journal.*

NOTES OF CASES.

COURT OF REVIEW.

MONTREAL, January 31, 1879.

MACKAY, TORRANCE, JETTÉ, JJ.

[From S. C. Montreal.

DAVID et al. v. DUDEVOIR.

Agreement to "maintain" fences.

MACKAY, J. The defendant was sued for pasture for two cows, which he was in default to furnish under the agreement. The amount was proved. Then there was a question of fences. He had undertaken to maintain and keep up (*maintenir*) the fences; but it turned out that the fences were totally wanting in some places. The Court was of opinion that the defendant could not be held chargeable for the cost of making new fences, and the judgment would, therefore, have to be reformed to the extent of making a deduction of $13.75 from the $106.75 allowed below.

Judgment:—"Considering the judgment of the Court below well founded, save only that plaintiffs overcharge the defendant for and on account of the item for fences; that as regards this item the lease obligation of defendant is to be interpreted in his favor, and that he was not by it bound to pay for new fences, yet has been condemned to pay in a degree for such; that upon what is proved, defendant must be charged only $7 on fencing; so that plaintiff's demand is to stand reduced by $13.75," &c.

Corbeil & Co. for plaintiffs.

O. Augé for defendant.

MACKAY, TORRANCE, JETTÉ, JJ.

[From S. C. St. Francis.

CHAGNON v. GIROUX, and GIROUX, opposant.

Procedure—Opposition by third party.

MACKAY, J. The judgment of the Court below, which found that the plaintiff had not made out his case, was correct, and the *tierce opposition* was properly maintained with costs. There was a point of law, as to whether the opposant had a right to come in by *tierce opposition*. The judgment on this point was correct. The Code of Procedure, Art. 510, says that any person interested where the judgment, in a case in which he was not a party, affects his rights, may come in by *tierce opposition*. Here the judgment declared a certain horse to be common to two persons, and as the opposant claimed to have a property therein, he had a right to come in.

Judgment confirmed.

L. C. Bélanger for opposant.

Doak & Co. for plaintiff contesting.

MACKAY, TORRANCE, JETTÉ, JJ.

[From C. C. Shefford.

BOUSQUET v. ROUSSEAU.

Purchase of land by minor—Plea of minority.

MACKAY, J. The defendant was sued for the price of a lot of land. He said he was a minor, and had no right to buy land. The Court was of opinion that a minor, even if he had not pleaded his minority, had a right to suggest the fact to the Court at any stage of the case, and get relief, as he was incapable of defending himself in a Court of Justice. Rousseau had no right to buy land even for the purpose of his business. The authorities from Merlin were conclusive. Judgment reversed, with costs against plaintiff.

Judgment :—"Considering that defendant, a minor sued alone, (though in a case like the present one), is incapable *seul* to *ester en justice pour se défendre*, and that defendant pleaded it well enough, and that in the judgment *a quo*, finding to the contrary, there is error;

"Considering this, of itself, to be fatal, this Court, declaring plaintiff's action badly brought, and the condemnation of defendant, though only for costs, illegal, doth reverse the same," &c.

T. Amyrault for plaintiff.

Girard & Girard for defendant.

MACKAY, TORRANCE, RAINVILLE, JJ.

[From S. C. St. Hyacinthe.

BOCAGE v. LARAMÉE dit HARNOIS.

Damages inflicted in repelling an assault—Excess of violence.

MACKAY, J. The plaintiff sued for damages suffered through the defendant having assaulted him. The sum of $500 was claimed. The plea was that the defendant was not guilty,—that it was plaintiff who commenced the fight. The Court found that the plaintiff did commence the fight, and his finger was bitten in the struggle. The doctor was called in some time afterwards, and it was necessary to cut off a joint of the finger. Since the institution of the action, the man had lost his arm, the gangrene having extended upwards. This circumstance, however, could not be taken into consideration in the present case. The plea of self-defence could not enable the defendant to go free, where the violence used to repel an assault was greatly in excess of that committed by the other side. The authorities were clear on that point. Here the defendant used unnecessary violence, and the Court reverses the judgment of the Court below, and judgment must go against him for $150 damages, and costs.

Judgment :—"Considering plaintiff's allegations proved sufficiently to entitle him to a judgment for $150 against defendant, partly for actual, and partly for nominal damages; it being found by the Court here that defendant did bite plaintiff as charged, and that in so doing defendant was guilty of an excess, for the consequences of which he must answer;

"Considering that plaintiff has proved outlays of over $40 in endeavoring to cure himself from the consequences of said bite, and has suffered so much personally from it up to institution of action as to be well entitled for damages in consequence, to the sum of $150, doth, revising said judgment, reverse and cass the same," &c.

Mercier & Desmarais, for plaintiff.

Fontaine & Co., for defendant.

MACKAY, PAPINEAU, JETTÉ, JJ.

[From S. C. Montreal.

LA BANQUE NATIONALE v. LA SOCIÉTÉ DE CONSTRUCTION DU CANADA; and LA BANQUE VILLE-MARIE, contesting collocation.

Registrar's Certificate under 699 *C. C. P.—Omission of hypothec.*

In this case the registrar's certificate was not complete, the registration division having been divided, and the certificate not being extended after the division. The report of distribution was reformed by the following judgment:—

"Considérant que le certificat du régistrateur sur lequel a été préparé le rapport de collocation, ne s'étend qu'à la date du premier Octobre 1877; et que s'il eut été fait jusqu'à la date de la vente du shérif, 15 Novembre 1877, conformément à l'art. 699 C.P.C. et aux articles 700 et 701, la créance et le jugement exécutoire de la Banque Ville-Marie auraient été sous les yeux du protonotaire lorsqu'il a préparé le projet d'ordre;

"Considérant que la dite Banque Ville-Marie, avec un titre exécutoire, n'avait pas besoin d'alléguer la déconfiture de la défenderesse, que le certificat étant incomplet, le projet d'ordre préparé ne rend pas justice à tous les intéressés;

"Considérant que les créanciers dont le régistrateur est tenu d'insérer les hypothèques dans son certificat, ne sont pas tenus de faire opposition afin de conserver sur les deniers, et que s'ils en produisent, ils ne peuvent en avoir les frais;

"Considérant que l'omission de la créance de la Banque Ville-Marie, étant plutôt la faute de l'officier public que celle de la Banque, celle-ci ne doit pas en souffrir; infirme et annule les dits jugements, et procédant à rendre celui qu'aurait dû rendre la dite cour en cette instance, maintient les contestations de la Banque Ville-Marie avec dépens tant de la cour de première instance que de cette cour de révision contre la masse restant à partager," &c.

F. X. Trudel, for contestants.

Geoffrion & Co., for plaintiffs.

SUPERIOR COURT.

MONTREAL, Feb. 1, 1879.

COYLE v. RICHARDSON et al.

Damages for illegal arrest against police officers acting in good faith.

TORRANCE, J. The defendants are members of the Montreal police force, one being superintendent. The action is for damages, an illegal arrest being charged, and that plaintiff was detained from Saturday night to Monday morning; that this was done without reason, and hence the claim for damages. The plea alleged that defendants got reliable information that plaintiff was near when the murder of Hackett was committed in the city of Montreal; that he was seen running away, and using words of encouragement to the mob, and that defendants acted in good faith in arresting him, with no other motive but that of fulfilling a public duty, and in order to promote the interests of justice. The facts of the case were that the Chief of police received an anonymous letter, informing him that Coyle was a person implicated in the murder, and that he should be looked after. The information turned out to be without foundation, and the defendants clearly were not justified in making this arrest. The Court, however, had to consider that a murder had been committed of a very deplorable character, and that investigations were expected, and though defendants were in error, yet Coyle was near the scene of the murder, and the defendants had some grounds for acting as they did. The damages, therefore, would be mitigated to the sum of $75, which defendants would be condemned jointly and severally to pay.

The judgment was as follows:—

"Considering that plaintiff is entitled to compensation for his unlawful arrest from the evening of the 21st July, 1877, to 23rd of the same month, a period of over forty hours;

"Considering, however, the fact that a murder had been committed, and the plaintiff had been seen near the scene thereof, about the time of said murder, and the defendants were in good faith in making the arrest of plaintiff, the Court doth (as a jury might) estimate the damage suffered by plaintiff by reason of such unlawful arrest, at the sum of $75." Costs to be taxed as in a case over $100.

Duhamel, Pagnuelo & Rainville for plaintiff.

R. Roy, Q. C., for the defendants.

[Enquête Sittings.]

COWIE v. TRUDEAU et al.

Corporation subpœnaed as witness—Rule.

JOHNSON, J. A subpœna has been served upon a corporation (The Banque Jacques Cartier) and they have not appeared, and I am

asked for a rule against them. The law confers on corporations the power to sue and to be sued, and, therefore, provides the means for their being treated as all other parties to suits, and for their answering, through the person they may appoint for that purpose, interrogatories previously signified to them; but the law has provided no means for their further testifying as witnesses in other cases subject to examination and cross-examination; and no instance has been cited for their having been ever compelled to give evidence; and the thing appears to me to be on principle impossible. A corporation cannot possibly depute any person to give their answers upon matters in cross-examination that they have had no previous communication of. A court will render no judgment that it cannot execute. If I granted a rule, how could I execute judgment for non-obedience?—how could I send a corporation to prison? The thing appears to me altogether impracticable, and I must refuse the rule.

Kerr & Carter for plaintiff.

Lacoste & Globensky for defendant.

RECENT ENGLISH DECISIONS.

Company.—1. The C. company was an insurance company with a nominal capital of £1,000,000, in £50 shares. Twelve thousand of these shares were subscribed for and £5 each paid up. Its deed of settlement contained no power enabling the company to transfer its business to another company. The N. insurance company had a nominal capital of £300,000, in £10 shares. Sec. 91 of its deed of settlement provided that the liability of shareholders in respect of any transaction should be limited to the amount payable by them in respect of their shares. There should be no personal liability, and this should be stated in all instruments creating any liability. Sec. 45 provided that an extraordinary general meeting might "take a transfer of, or purchase or acquire the business of, any other" company, on such terms as it should see fit. At an extraordinary general meeting of the N. company, the directors were authorized to take such steps towards amalgamating the C. company as they should see fit, in accordance with a scheme laid before the meeting by them. Two officers of the N. company were named trustees, who, with one named by the C. company, should hold the assets of the latter during the transfer. The shares of the C. company were to be bought at 25s., either cash or in shares of the N. company, at the option of the seller. A large number of shareholders transferred their shares to the trustees of the N. company, and subsequently the latter transferred them to the N. company by a deed made between those shareholders, the trustees of the N. company, and the N. company, reciting what had been done, the latter covenanting to hold those shareholders harmless in respect of the shares in all respects, provided, however, that only the subscribed capital of the N. company should be liable. This deed was never submitted to a general meeting of shareholders of the N. company. The C. shareholders did not give notice to their directors of such transfers, as required by the C. deed of settlement, and the transferees did not covenant to observe the stipulations of that deed, as was required therein. The N. company was entered as holder of the shares thus transferred, and the business was amalgamated. In 1872, the N. company went into liquidation, and subsequently the C. company was ordered to be wound up. It had been decided, in a previous suit, that neither the C. shareholders, who transferred their shares under the foregoing arrangement nor the trustees who acted as transferees and held the shares in trust for the N. company, and subsequently transferred them to it, were liable as contributories on C. shares. *Held*, that the N. company was not liable as contributory on the shares undertaken to be transferred to it, the latter transaction having been *ultra vires.—In re European Society Arbitration Acts. Ex parte Liquidators of the British Nation Life Assurance Association*, 8 Ch. D. 679.

2. In 1866, the M. railway company was incorporated by a special act incorporating the Companies Clauses Consolidation Act, 1845. The special act provided that the qualification for directors should be fifty paid-up shares; and T. and A. were appointed directors, until the first ordinary meeting of the company. No such meeting was ever held. T. sent his resignation to a meeting of the board of directors held in August, 1866, before he had acted in any way as director, and it was accepted,

and he ceased to have anything to do with the company in any way. No shares were ever allotted him, and no call was ever made upon him. One S. acted as director from T.'s resignation. A. acted as director until December, 1867, when he resigned. No shares were ever allotted him. From his resignation, one B. acted as director. No register of shareholders existed until 1869, and then one was informally drawn up. From that it appeared that all the shares had been allotted, but none to T. or A. Since 1869, the company became indebted to the D. company, and in 1876 the latter got judgment for a large sum. This judgment was not satisfied, and thereupon *scire facias* was issued against T. and A. as the holders of fifty shares each. *Held*, that there was an implied acceptance by the company of T.'s and A.'s surrender of their inchoate right to shares, and evidence enough of it, that the D. company's claim had accrued since such acceptance, and therefore as against it T. and A. were not estopped from denying their liability, and the *scire facias* must be dismissed. — *Kipling* v. *Todd. Same* v. *Allan*, 3 C. P. D. 350.

3. The articles of association of a registered company contained the following: "Art. 64. Upon all questions at every meeting a show of hands shall, in the first instance, be taken; and unless, before or immediately upon such show of hands, a poll be duly demanded, as hereinafter mentioned, such question shall be decided by the result of such show of hands. Art. 67. If a poll is demanded by shareholders qualified to vote, and holding in the aggregate 2,000 shares,.... it shall be taken,.... and the result of such poll shall be deemed to be the resolution of the company. Art. 75. Votes may be given either personally or by proxy. Art. 79. A proxy shall be.... in the following form: I.... appoint to be my proxy at the general meeting.... to vote for me and in my name." At a show of hands at a general meeting for a director, F. was declared by the chairman to have been chosen. A poll was then demanded by a shareholder holding twenty shares only, but having proxies for over 2,000. F. failed to get a majority, and another was declared elected. On *mandamus* by F., *held*, that he was entitled to the office, and should be installed.—*The Queen* v. *The Government Stock Investment Co.*, 3 Q. B. D. 442.

4. E. agreed to sell a mine in Cornwall to trustees for a company, to be paid in fully paid-up shares in the intended company. The company's office was in London, and on January 18, the contract with E., the memorandum and the articles of association were sent to Cornwall for registration, as required by the Companies Act. They arrived on the 19th, and the memorandum and articles were registered on that day, but the contract was not registered until the 26th. Meantime, the directors met on the 19th, supposing the papers had all been duly registered, and allotted the shares to E. and his nominees. Some transfers of shares were made before the 26th, and registered. When the company learned, on the 21st, that the contract had not been registered, all proceedings were stopped. No registers of shareholders and of transfers were in existence, and no certificates were issued until after the 26th, when they were issued as of the 19th. *Held*, that the shares were fully paid up, and were not to be considered issued until after the 26th.—*In re Ambrose Lake Tin & Copper Co. Clarke's Case*, 8 Ch. 635.

Consideration.—B. lent L. £1,328, to enable L. to settle betting debts already incurred, and took two promissory notes. L. went into bankruptcy. *Held*, that the claim could be proved, the debt not being for an "illegal consideration," by virtue of being for money "knowingly lent or advanced for gaming or betting," within the meaning of 5 and 6 Will. IV. c. 41, § 1.—*Ex parte Pyke. In re Lister*, 8 Ch. D. 754.

Corporation.—A corporation cannot recover a penalty, under a statute which provides that a penalty is recoverable "by the person or persons who shall inform and sue for the same."—*The Guardians of the Poor, &c.* v. *Franklin*, 3 C. P. D. 377.

Custom.—By agreement, dated Aug. 21, 1877, B. hired a piano of H. for £15 a year, payable monthly. At the end of three years, if the payments had been all made, the piano was to become the property of B. But if he failed to pay a monthly instalment, or if B. became bankrupt, or insolvent, or died within the three years, H. should have the right to take the property at once, without paying anything on account of what had been paid. Dec. 11, 1877, B. filed a petition in bankruptcy, and H.

removed the piano; but it was claimed by the trustee. There was no special mark on the piano indicating that it was B.'s. There was conclusive evidence of the existence of a custom to let pianos in this manner. *Held*, on the strength of the custom, that the piano was the property of H., and the trustee had no claim to it.—*In re Blanshard. Ex parte Hattersley*, 8 Ch. 601.

Devise.—P. devised freehold in D. upon trust, and bequeathed £3,000 to his trustees to purchase land in D. for the same trust. In a codicil, he revoked the devise of the freeholds, without more. *Held*, that the bequest of £3,000 for the purpose named was not affected by the codicil.—*Bridges* v. *Strachan*, 8 Ch. D. 558.

Fraud.—Contracts which may be impeached on the ground of fraud are not void, but voidable only at the option of the party who is or may be injured by the fraud, subject to the condition that the other party, if the contract be disaffirmed, can be remitted to his former state. Otherwise resort must be had to an action for damages. Divisibility of a contract for dissolution of partnership considered.—*Urquhart* v. *Macpherson*.—3 App. Cas. 831.

Freight.—R. was part owner, and also ship's husband, of the ship E.; and, August 30, he mortgaged his part to the plaintiffs, and gave them an order on the defendants, who were the charterers, for the freight due for the pending voyage. September 20, the plaintiffs, as mortgagees, and the other part-owners appointed H. ship's husband. The E. arrived at her destination October 11, and began to discharge October 14. October 16, defendants gave plaintiffs a check for £200. H. notified the defendants that he claimed the freight as registered managing owner, and thereupon payment on the check was stopped. *Held*, that E. had no power to assign the freight, and the plaintiffs could not recover.—*Beynon* v. *Godden*, 3 Ex. D. 263.

Husband and Wife.—1. The defendant and his wife separated by mutual consent, and agreed upon the sum which the wife should receive so long as the children taken by her were under twenty-one. She found the sum insufficient to support herself and them, and pledged the husband's credit for necessaries. *Held*, that the husband was not bound.—*Eastland* v. *Burchell*, 3 Q. B. D. 432.

2. A wilful wrongful refusal of marital intercourse on the part of the wife is not in itself sufficient ground for a declaration of nullity. The court proceeds on the ground of impotence, and if after a reasonable time the wife still resist all intercourse, the court will infer that impotence is the cause, and, if satisfied of *bona fides*, will decree nullity of the marriage.—*S.* v. *A.*, otherwise *S.*, 3 P. D. 72.

3. In a suit by the wife for restitution of conjugal rights, a compromise was agreed to. The petitioner then refused to sign the memorandum of the compromise, and had the suit set down for hearing. *Held*, that she must be held to the agreement which she had made.—*Stanes* v. *Stanes*, 3 P. D. 42.

Injunction.—Injunction to restrain a lessee from tearing down old buildings, and putting up new in their place, refused, on the ground that, if there was technical waste, it was meliorating waste.—*Doherty* v. *Allman*, 3 App. Cas. 709.

Innkeeper.—B. went to an inn as an ordinary guest in September, 1876, and in November following, a pair of horses, harness, and a wagon came to the inn as B.'s personal property, and not on livery. B. told the innkeeper he had bought them of the plaintiff. B. left in January, 1877, owing £109 for his own board and £22 10s. for the horses. It turned out that B. had bought the property from the plaintiff upon the terms that, if it was not paid for, it should be returned free of cost. B. never paid for it; and he was afterwards convicted of fraud in obtaining it. The innkeeper refused to surrender the property to the plaintiff on an offer of £20 for the board of the horses; but he sold the horses by auction for £73, and kept the harness and waggon, and claimed to apply the whole under his lien towards paying the whole claim held by him against B. *Held*, that his lien on the whole property was a general one for the whole debt of B., and not merely for the board of the horses; but that the lien on the horses was lost by the sale, and the innkeeper was guilty of a tortious conversion thereby, and the plaintiff could recover the price received.—*Mulliner* v. *Florence*, 3 Q. B. D. 484.

Insurance.—1. A policy on steam-pumps sent out from A. in the wrecking steamer S., to raise

the foundered steamer X., at D., ran thus: "At and from A. the X. steamer, ashore in the neighborhood of D., and whilst there engaged at the wreck, and until again returned to A., ... the risk beginning from the loading on board the S. upon the said ship and [or] wreck, including all risks of craft, and for boats to and from the vessel and whilst at the wreck, each being treated as separately insured." The wreck was raised; but on the way to B., whither by reason of bad weather it was found necessary to steer, it foundered with the pumps on board. *Held*, that the policy did not cover the loss.—*Wingate* v. *Foster*, 3 Q. B. D. 582.

2. The defendant was underwriter for £1,200 on plaintiff's ship, valued in the policy at £2,600. The cost of repairing certain damages by sea was, after deducting one-third new for old and some particular average charges, £3,178 11s. 7d., and the salvage and general average charges paid by the plaintiff were £515. The value of the ship when damaged was £998; after repairs, £7,000; which last sum was, even after deducting the cost of certain new work not charged against the underwriters, much more than the original value of the ship. The policy contained a suing and labouring clause. *Held*, that the defendant must pay the whole £1,200 on account of loss, and the expense of repairs, and also a proportion of the £515 under the suing and labouring clause.—*Lohre* v. *Aitchison*, 3 Q. B. D. 558; s. c. 2 Q. B. D. 501.

3. A ship arrived at R., April 25, in a seaworthy condition. She left there June 4, with a cargo, encountered heavy gales between the 9th and the 15th, and made so much water that it was thought best to put back to R. On the way she got aground, but was gotten off, and arrived at R. June 20. She was found very much strained and worm-eaten, and with her copper off badly; and July 15, she was pronounced unseaworthy. In an action on a policy of insurance, the question was whether she became unseaworthy after she left R., or became so while lying at R., between April 25 and June 4. The judge charged the jury that, though the *onus* of proving the unseaworthiness at the commencement of the voyage is generally on those asserting it; yet, when a ship becomes unseaworthy shortly after leaving port, the burden is changed, and the presumption is that she was unseaworthy at the start, and that the present was such a case. *Held*, a misdirection. *Watson* v. *Clark*, (1 Dow., 336, 344), construed.—*Pickup* v. *The Thames & Mersey Insurance Co.*, 3 Q. B. D. 594.

Landlord and Tenant.—In a lease for twenty-one years, the defendant, the lessee, covenanted to pay the rent without any deduction, except land tax and landlord's tax; also to pay and discharge all manner of "taxes, rates, charges, assessments, and impositions whatever (except as aforesaid), then, or at any time or times during the term to be charged, assessed, or imposed in the premises thereby demised, or in repect thereof, or of the said rent as aforesaid, by authority of Parliament, or otherwise howsoever." The officers under the Public Health Act, 1875, notified the lessor to abate a nuisance on the leased premises by building a drain and deodorizing a cesspool. The lessor called upon the lessee to do it, and he refused. Thereupon, in order to avoid summary proceedings, the lessor did the work, paying therefor £25. *Held*, that the lessee was not called upon, under his covenant, to pay the amount.—*Tidswell* v. *Whitworth*, (L. R. 2 C. P. 326) and *Thompson* v. *Lapworth*, (L. R. 3 C. P. 149) referred to.—*Rawlins* v. *Briggs*, 3. C. P. 368.

Legislation.—Where plenary powers of legislation exist as to particular subjects, they may be well exercised, either absolutely or conditionally. It may be declared that a statute shall apply, if and when a certain executive officer shall think best to order that it shall apply.—*The Queen* v. *Burah*, 3 App. Cases, 889.

Libel.—1. Three persons made an application to a magistrate for a summons against the plaintiff, in respect of a matter of wages. The proceedings were public, and the magistrate dismissed the application for want of jurisdiction. The defendants afterwards published a fair report of the proceedings in their respective newspapers, for which the plaintiff brought libel suits against them. *Held*, that the publication was privileged.—*Usill* v. *Hales*. *Same* v. *Brearley*. *Same* v. *Clarke*, 3 C. P. D. 319.

2. A court may enjoin the publication of what a jury has found to be a libel on the plaintiff, if the publication will injure the plaintiff's business; *aliter*, if a jury has not passed upon the question whether the publication is a libel.—*Saxby* v. *Easterbrook*, 3 C. P. D. 339.