

The Legal News.

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CLAIMS OF EXCLUSIVE RIGHT IN TITLES OF BOOKS.

The law of copyright and trade-marks has been the subject of many legal decisions. Nevertheless, questions of more or less novelty arise from time to time, as in the recent case of *Kelly v. Byles*, 40 L. T. Rep. (N.S.) 623, which was heard by Vice-Chancellor Bacon. In that case the plaintiff had been in the habit since 1852 of publishing numerous county and trade directories, which he had always called "Post-Office" directories, and was the registered proprietor, under the copyright act, of, amongst others, "The Post-Office Directory of the West Riding of Yorkshire." The defendants had, with the assistance of the postmaster at Bradford, compiled a directory for that town, which they proposed to call the "Post-Office Bradford Directory." In an action by the plaintiff to restrain the intended publication by the defendants of their directory with the words "Post-Office" forming part of the title, and from in any way representing their directory as a "Post-Office" directory, or from doing anything which might induce the public to believe that their directory was in any way connected with the plaintiff, Vice-Chancellor Bacon had to consider whether the taking of a part of the title of a registered copyright without fraud and without any circumstance from which an *animus furandi* could be inferred, was an infringement. For the plaintiff it was argued that an injunction will be granted where the title is threatened, and even though the title is innocently appropriated; that there is copyright in the name and title-page as well as in the letter-press; that apart from any question of copyright, the plaintiff was entitled to the exclusive use of the name he had adopted by his *quasi* trade-mark, and that where a person had acquired property in a name either in a book or as a trade-mark of the goods he sold, the important words or peculiar collocation of words could not be made use of by

any other person in such a way as to induce purchasers to believe that the spurious article they offered for sale was the article manufactured by the person who had so acquired a property in the name. On the other hand it was urged that, in order to establish his right to an injunction, the plaintiff had to establish four things: first, that he was the original inventor of the name: secondly, that the name is an arbitrary or fancy word: thirdly, that his user was exclusive; and, fourthly, that the defendant colorably imitated the name or trade-mark.

There is a distinction between the case of a newspaper and that of a book. The Court of Appeal decided in *Kelly v. Hutton*, 19 L. T. Rep. (N.S.) 228, that there is nothing analogous to copyright in the name of a newspaper, although the proprietor can prevent the adoption of the same name for a similar publication, and it is a chattel interest capable of assignment.

The argument that there is no copyright in a title was urged upon the authority of *The Correspondent Newspaper Company v. Saunders*, 11 Jur. (N.S.) 540. This was a motion for an injunction to restrain the publication of a periodical called *The Public Correspondent*, and also to restrain the use of the title "Correspondent" without the license of the plaintiffs. Vice-Chancellor Wood merely decided that no copyright is acquired under 5 & 6 Vict., ch. 45, by the registration of a book before its actual publication. This case, like the later decision in *Maxwell v. Hogg*, 16 L. T. Rep. (N.S.) 130, has no direct bearing upon the case before Vice-Chancellor Bacon. In the case before Vice-Chancellor Wood the question was thus stated: there being two persons equally honest, and one of them, *e. g.*, the plaintiff, having given notice that he was about to produce an article with a certain name, and the other, the defendant, contemplating the same thing, did the first, by bringing out his article a day or two sooner than the other, acquire a right by way of trade-mark? The defendants in perfect good faith, and not knowing of the dormant plaintiff company, brought out their advertisements, and the plaintiffs laid by for eight days and gave no notice to the defendants. Under these circumstances the Vice-Chancellor refused to grant an injunction until further evidence was

forthcoming. But in *Weldon v. Dicks*, 39 L. T. Rep. (N. S.) 467, the plaintiff was the owner of a copyright in a tale called "Triumphs and Temper." The defendant had also published a tale under the same title. The court decided that the plaintiff's title under the statute must prevail, although there was no doubt that the defendant had acted in perfect innocence and in utter ignorance that the plaintiff or any other person had ever published anything under the title which the defendant had adopted, and although there was no similarity whatever between the contents of the two works. Vice-Chancellor Bacon distinguished this case from that of *Kelly v. Byles*, where the title used by the plaintiff was "The Post-Office Directory of the West Riding of Yorkshire," whilst that adopted by the defendant was "Post-Office Bradford Directory."

In *Metzler v. Wood*, 38 L. T. Rep. (N.S.) 541, the plaintiffs were the proprietors and publishers of an elementary musical work entitled "Hemy's Royal Modern Tutor for the Pianoforte." The defendants employed Hemy, the editor of the plaintiff's work, to re-edit an old pianoforte tutor by Jousse, of which they brought out a new edition under the title of Hemy's New and Revised Edition of Jousse's Royal Standard Pianoforte Tutor; the word "Hemy" being in much larger type and more conspicuous on the title page than that of Jousse. It was argued that there was nothing fraudulent in the use of the name, and that it was impossible to confound the two works together. Vice-Chancellor Malins, however, came to a different conclusion, and this judgment was affirmed on appeal. In the opinion of the Court of Appeal the question was not whether the plaintiffs had exclusive right to the use of Hemy's name in connection with elementary musical publications for learners of the pianoforte, nor whether the plaintiffs had any reasonable right to the word "Royal" in any of such works, but the real question was whether the defendants had done anything in order to pass off their work as the work of the plaintiffs. The court held that the title-page of the defendants' work was a fraudulent imitation of that of the plaintiffs' work and calculated to deceive the public, and that the plaintiffs were entitled to an injunction.

The plaintiff in *Mack v. Petter*, L. R., 14 Eq.

431, was the publisher of a work which he claimed to have originated. It was called "The Birthday Scripture Text Book," and consisted of a printed diary, interleaved with a blank space opposite each day, with a text of Scripture appended. This was designed as a record of the birthdays of friends. After the publication of this book the defendants published and sold a work under the title of "The Children's Birthday Text Book," which was arranged upon precisely the same plan as that of the plaintiff's publication, the only difference, it was alleged, being in the selection of texts and verses. The preface, it was also alleged, was pirated from the plaintiff's book, which was so closely imitated as to induce incautious purchasers to believe that the two books were the same. For the defendants it was argued that there could be no copyright in the name of the book, and that there was no evidence that by the publication of the defendants' work the public had been misled. Lord Romilly, however, granted an injunction. Whilst admitting that the defendants would be at liberty to publish a Daily Text Book, and so far to adopt the scheme of the plaintiff's, he pointed out that it was the plaintiff's own idea to have a text book associated with a birthday, and so to adapt it to religious sentiments. The plaintiff was accordingly held to be entitled to a copyright in the use of the title "Birthday Text Book," whatever other words might be associated with it, and the defendants were restrained from the publication of their work, or of any work with such a title, or in such a form as to binding or general appearance, as to be a colorable imitation of that of the plaintiff.

The appellants in *Wotherspoon and another v. Currie*, 27 L. T. Rep. (N. S.) 393, had been for many years manufacturers of starch at a small hamlet in Scotland, called Glenfield, where there was a stream of water said to be particularly suited for use in the manufacture. Under the name of "Glenfield Starch" their goods acquired a great reputation. In 1868 the respondent set up starch works at Glenfield, and sold starch in packets labelled "Currie and Co., starch manufacturers, Glenfield." In color these labels resembled those of the appellants, but it appeared that this color was used by most manufacturers. There was evidence that

respondent's agent represented his starch as "Glenfield starch," and that he thereby got an increased sale for the article. Lord Justice James dissolved an injunction granted by Vice-Chancellor Malins restraining the respondent from using the word "Glenfield" on his labels, or from representing his starch as Glenfield starch. Hence the present appeal, which was successful. Lord Chancellor Hatherley having mentioned that the appellants were right in not relying on the shape or form of the packets, in which the respondent's starch was made up, went on to say: "There is one remark that I have made on many other occasions with regard to the similarity of packets used by different manufacturers in a particular trade. For instance, packets of needles are often done up in much the same way as the packets of starch in this case were, viz., in dark blue packets, with a green label." His Lordship then referred to a case of that description which had previously come before him, when he took occasion to remark "where there is so much general similarity it does become more necessary to take care that the mark which is to distinguish the article shall be really distinguishing, and that when you have got all the other combinations, so that persons do not look at the shape of the packet or at any other *indicia* than the particular distinguishing mark, those things should, by people who wish to deal honestly by each other, be kept very distinct." Lord Chelmsford was satisfied that the evidence brought the case within the principle that, where the trade-mark is not actually copied, fraud is a necessary element in the consideration of every question of this kind; the party accused of piracy must be proved to have done the act complained of with the fraudulent design of passing off his own goods as those of the party entitled to the exclusive use of the trade-mark. For the purpose of establishing a case of infringement it is necessary to show that there has been the use of a mark in all respects corresponding with that which another person has acquired an exclusive right to use, if the resemblance is such as not only to show an intention to deceive, but also such as to be likely to make unwary purchasers suppose that they are purchasing the article sold by the party to whom the right to use the trade-mark belongs. Lord Westbury stated the principle

upon which the jurisdiction is founded to be that of preventing a person from fraudulently availing himself of the trade-mark of another, which has already obtained currency and value in the market, by whatever means he may devise for the purpose, provided the means are devised in order to give him a colorable title to the use of the word, and provided it be shown from the manner in which he has employed those means that his object was from the beginning to invade the property of the other.

Vice-Chancellor Bacon, upon the conclusion of the arguments in *Kelly v. Byles*, admitted that the question raised in that case was a novel one, and suggested that the only question he had to decide was whether, by doing that which he had announced an intention of doing, the defendant would unlawfully injure the plaintiff's property, that property being the title and appellation of the plaintiff's work. "No case has been referred to," said his Lordship, "in which it has been suggested that the taking a part of the title of a registered copyright work without fraud and without anything from which the *animus furandi* can be inferred is an infringement of the present or of the preceding copyright acts." Another ground of relief remained to be considered, namely, the contention that, inasmuch as the plaintiff had assumed the title of his directory, it had become as much his property as if it were a trade-mark; that it was in fact the device or symbol by which he vended his wares, and that no other person could adopt or use it without doing that which was calculated to deceive the public, and to induce persons who desired to become purchasers of the book to be put off by having in its stead the defendant's sold to them. This contention was not admitted, and judgment was entered for the defendant.

The case is undoubtedly one in which some new features are introduced. Apparently, however, it is made to depend upon the principles illustrated by the propositions:

1. That the defendant had not been wanting in good faith.
2. That the mere taking a part of the title of a registered copyright without fraud is not an infringement of the copyright acts.
3. That the rule, that a manufacturer who has marked upon his wares any device for the purpose of distinguishing them from all others

of the same or like kind may restrain others from using the same or a similar device, applies only to wares which are so nearly identical that the one may be taken for the other, or where the resemblance is such that it is calculated to mislead or impose upon unwary purchasers.—*Law Times* (London).

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

MONTREAL, Feb. 4, 1879.

Sic A. A. DORION, C.J., MONK, RAMSAY, TESSIER & CROSS, JJ.

BORROWMAN et al. (claimants below), Appellants, and ANGUS et al. (contestants below), Respondents.

Insolvent—Privilege—Contract—Unpaid Vendor.

The appeal was from a judgment of the Superior Court sitting in insolvency, Torrance, J., maintaining the contestation by respondents of appellant's claim on the insolvent estate of Brown, McMinn & Co. The judgment appealed from was as follows:—

"The Court, etc....

"Considering that the said claimants had and have not any privilege or lien on the moneys presently in the hands of the assignee, and partially distributed by the amended dividend sheet prepared and filed in this matter on the 6th July, 1877, and that they were and are only entitled to be collocated *au marc la livre* in common with the other creditors of the said insolvents in respect of their said claim; doth in consequence adjudge that said claimants had and have not any privilege or lien on said moneys so in the hands of said assignee, and that the claim of claimants in so far as they claim to be paid said moneys by privilege, is unfounded, and doth reject the said claim, and order the said collocation of \$6,399 in said amended dividend sheet to be struck out."

RAMSAY, J. (*diss.*) The facts of this case are simple. The appellants borrowed from Brown, McMinn & Co. 25,000 bushels of corn to be returned in kind, and for security of this undertaking they deposited with Brown, McMinn & Co. \$17,560.80. On the 22nd July, 1874, appellants returned the corn to Brown, McMinn & Co., but without receiving back the deposit.

The identical corn was sold by Brown, McMinn & Co. to D. Butters & Co., and on the 24th July, Brown, McMinn & Co. assigned in insolvency, a sum of \$6,500 being then due on the said corn by D. Butters & Co. to Brown, McMinn & Co. Appellants claim to have this sum of \$6,500 paid to them by privilege.

There is no question as to facts.

Now, the unpaid vendor has a right to one of two things: 1st. to revendicate the thing; 2nd. a right of privilege on the price. In case of insolvents either of these privileges must be exercised within fifteen days after the sale (Art. 1998).

But the right to revendicate is subject to four conditions, to which it is unnecessary to advert, as the revendication is not sought (Art. 1999). Then the first part of Art. 2000 makes provision of resale during proceedings in revendication, or when the thing is seized at the suit of a third party, the original vendor being entitled to revendicate; then he is privileged as to the price in preference to all privileged creditors. The article then goes on to say: "If the thing be in the same condition," etc., "he has a like privilege upon the proceeds, except as regards the lessor or the pledgee." That is to say, that if the vendor's right to revendicate be determined by the failure of any or all of the four conditions, save the second, he has still a privilege on the price, except as regards the rights of the lessor or pledgee. This seems rather an arbitrary distinction between the two privileges. If the vendor has a right to the proceeds, saving the rights of the lessor or pledgee, one has some difficulty in seeing why he should not revendicate subject to their rights. But legislative wisdom has so willed it. Now what is being "still in the same condition?" Is a thing sold in the same condition? If we seek inspiration from the Code, we find it implied (Art. 1993, s.s. 3) that the thing does not cease to be in the same condition by its passing into the hands of a third party, "unless he has paid for it." We are, therefore, to conclude that within the meaning of Art. 2000, the thing sold, and unpaid for, still leaves a privilege to the original vendor, so long as it can be distinguished.

But this applies to a sale of the thing—it is the privilege of the vendor; and the appellants, it is said, are not vendors. We have then to

ask, are the appellants in the position of vendors? It seems to me that they are. The contract was to advance grain for a deposit of its value, which deposit was to be returned if a similar quantity of grain was returned to the holder. This transaction had, in reality, all the character of a double sale, and the return of the grain was neither more nor less than a *datio in solutum*. Now, it is a familiar saying that *datio in solutum est vendere*. And the reason is clear: the *datio in solutum* has all the essentials of a sale. There is *res, pretium, consensus*. We have all that here. I am, therefore, of opinion to reverse.

It may perhaps be said that this is the *prêt de consommation*. But this is not a unilateral contract, but really a double sale. But were it otherwise, this would be merely a subtlety disregarded by our law.

MONK, J. (also dissenting), concurred with Mr. Justice Ramsay.

Sir A. A. DORION, C.J., said that the best way to ascertain the nature of the contract was to look at the allegations of the parties. The claimants did not pretend that there was a sale: they alleged that they borrowed from Brown, McMinn & Co. 25,000 bushels of corn, and that, under the custom of trade between grain merchants in Montreal, they deposited the value of the grain so borrowed. They further alleged that they returned the corn, and ought to have got back the money deposited, but did not do so; and that Brown, McMinn & Co. sold the corn to D. Butters & Co., and the money now sought to be recovered was part of the money due for the corn. His Honor did not see any sale there by claimants. Suppose a man borrowed a horse, and made deposit of money as security, and afterwards returned the horse, would it be pretended that there was a sale, or privilege on the price of the horse, because the deposit was not returned? The corn became the corn of Brown, McMinn & Co. the moment it was returned to them; it was considered the identical article, but whether it was so or not did not make any difference. The obligation of Brown, McMinn & Co. then was to return the deposit. If it had not been money but bonds that had been deposited, the claimants could have said, these are our bonds. But they could not do that in the case of a sum

of money, because the money had disappeared. The articles cited from the Code did not apply. Cross, J., concurred.

Judgment confirmed.

Kerr & Carter for Appellants.

Bethune & Bethune for Respondent.

NATIONAL INSURANCE Co. (plffs. below), Appellants, and PAIGE (def. below), Respondent.

Declinatory Exception—Cause of Action—Subscription of stock.

The appeal was from a judgment of the Superior Court, Papineau, J., maintaining a declinatory exception and dismissing plaintiffs' action.

The plaintiffs sued for two calls, of ten per cent. each, on ten shares held by respondent in the capital stock of the company, appellants.

The respondent pleaded by declinatory exception, that he was wrongly sued in the District of Montreal, seeing that the right of action originated in the District of St. Francis, where respondent resides and was served.

It appeared that the respondent signed the stock subscription book in the District of St. Francis. The appellants argued that respondent did not become a shareholder by simply putting his signature on the stock book. As between him and the Company, no contract existed until the Company had, by their Board of Directors, at Montreal, approved of his subscription, and set apart his stock. It was in Montreal that the contract first took life.

The judgment appealed from, maintaining the declinatory exception, was in these terms:

"The Court, etc.

"Considering that there is no legal and sufficient proof that the acceptance of the subscriptions to the capital stock of the said plaintiffs should be made at Montreal, nor that it had been made, nor that a number of shares should be allotted to the subscribers to become shareholders, nor that any number of shares has ever been allotted to the defendant, on account of his subscription;

"Considering that it is proved on the contrary that in subscribing, he paid by his note, which he afterwards renewed, ten per cent. on the amount of his shares;

"Considering that a call on stock is not the cause of a right of action, but the determination

of the date of maturity of the payments to be made in virtue of the obligation contracted by defendant in making his subscription which appears to have been accepted *instante*;

"Considering for all these reasons that the proof made does not establish that the cause of action took its origin in the district of Montreal;

"Considering, moreover, that the defendant has not his domicile in the district of Montreal. and that the service of the defendant was not made in this district;

"Considering the said declinatory exception well founded, doth maintain it," etc.

Sir A. A. DORION, C. J. The appellants say that the stock was allotted by the directors here in Montreal. We think the whole cause of action did not arise here: part of the cause was the promise to pay which was given in the district of St. Francis.

Judgment confirmed.

Davidson & Monk for appellants.

Ives, Brown & Merry for respondents.

DONIHÉ (plff. below), Appellant, and MURPHY, (def. below), Respondent.

Sale of horse—Vice redhibitoire—Delay within which action must be instituted.

The appeal was from a judgment of the Circuit Court, Huntingdon, Belanger, J., dismissing the appellant's action.

On the 5th May, 1876, appellant bought a horse from respondent for \$100. On the 9th May, he took the horse home. On the 26th May, 17 days after, he brought the present action, alleging that the horse was a "cribber and wind sucker," and asking that the respondent should be ordered to return the money and pay damages.

The judgment appealed from was in these terms:

"The Court, etc.

"Considering that before putting in force of our Civil Code, the redhibitory and *quanti minoris* actions resulting from sales of horses in this Province, had to be instituted, according to the custom of Paris and the jurisprudence, within the delay of nine days from the delivery of the animal, such delay being then considered reasonable and sufficient;

"Considering that our Civil Code, by declaring that such actions must be instituted

with reasonable diligence, without fixing any specific delay within which they must be issued, is not to be presumed to have changed the delay of nine days provided for in and by the custom of Paris and adopted by the jurisprudence, and that there is no reason to suppose unless there is positive proof to the contrary, that such delay is no more reasonable or sufficient;

"Considering that the present action has been instituted long after the nine days following the delivery of the horse sold by defendant to plaintiff, viz.: not less than seventeen days after said delivery, and that plaintiff does not show any reasonable impossibility for him to institute his said action within the said delay of nine days, it being alleged by himself that he had discovered the pretended defect within two days after said delivery;

"Considering that under the circumstances the plaintiff ought to have instituted his said action within the said delay of nine days from said delivery of said horse, and that after said delay he was debarred from such right of action. doth dismiss said action with costs," etc.

Sir A. A. DORION, C. J. We think that in order to annul sales on account of latent defects, the action should be brought within a reasonable delay. We do not say that the expiration of nine days is fatal, but that the purchaser must use reasonable diligence, and that seventeen days was, under the circumstances, too long for the appellant to wait before bringing his action.

RAMSAY, J. Neither the case of *Lanthier & Champagne*, nor that of *Poupart & Veronneau*, lay down the nine days rule as explicitly as the Judge in the Court below has done. Nor am I prepared to say that in all cases I should be bound by the rule of nine days; but it is a matter of discretion for the Judge to say whether proper diligence has been used, and unless it appears that the discretion has been exercised in an objectionable manner, I would not interfere with the judgment. I don't think there is any reason for plaintiff not having proceeded within the nine days, and I would reject the appeal, amending the motive of judgment, so as not to be held to adopt the nine days rule in every case.

Judgment confirmed.

Archibald & McCormick for appellant.

Trenholme & Maclaren for respondent.

RECENT ENGLISH DECISIONS.

Debenture Stock.—Debenture stock (*i.e.* preferred stock) is a charge on the net profits and earnings of a trading corporation, and is no more land, tenement, or hereditament, or any interest in land, tenement, or hereditament, or charge or encumbrance affecting land, tenement, or hereditament, than the share stock in such corporation is, or a bond or other debt due from a man who has got real property in. *Semble* also the same as to debentures. *Ashton v. Langdale*, 4 DeG. & Sm. 402; and *Chandler v. Howell*, 4 Ch. D. 651, overruled.—*Attvee v. Howe*, 9 Ch. D. 337.

Domicile.—A Frenchman came to England in 1844, while still young, and lived there till his death in 1872. He was a shopman till 1851, when he formed a partnership with an Englishman, in the French form. He married an English Protestant in 1852, in a Protestant church, and without Catholic rites, though he was a Catholic. His wife died the next year. In 1853, he formed another partnership with an Englishman. In 1863, the partnership was renewed for ten years longer. In 1856, he married a Protestant whose father was French and mother English. They had three children, all brought up as Protestants, though the eldest, a son, was baptized in the Catholic form. For his second marriage, he got a certificate from the French consul. Beyond that, he took no step to have his marriages conform to French law. Before his first child was born, he made a will, invalid by French law, giving all his property to his wife. In 1872, he made another will, making use of provisions of English law and repugnant to French law. In the conduct of his business, the Paris branch was managed by an agent, and he only went there for visits of a few weeks at a time. There were in evidence some depositions of witnesses, that they had often heard him express an intention and a desire to return to France, and that in the Franco-German war he was patriotic and wished to join the French army. He refused to be naturalized, never leased a house for more than three years, and said there were many advantages in being an alien, among them freedom from serving on the jury. *Held*, chiefly on the strength of his marriages, that he had acquired an English domicile and abandoned his domicile of origin, and his estate was to be adminis-

tered without regard to the law of France.—*Doucet v. Geoghegan*, 9 Ch. D. 441.

Ecclesiastical Law.—1. The Court of Arches has no jurisdiction to suspend a clerk in orders, *ab officio et a beneficio*, for disobedience to a monition from that court, to abstain from certain illegal practices in the services of the church. Rule to Lord Penzance, official principal of the Arches Court, of Canterbury, and one Martin, to show cause why a writ should not issue to prohibit that court from enforcing such a decree of suspension against the Rev. Alexander H. Mackonochie, clerk. *Held*, by COCKBURN, C. J., and MELLOR, J. (LUSH, J., dissenting), that the writ should issue. (Cf. *Martin v. Mackonochie*, L. R. 3 P. C. 409, and *Hebbert v. Purchas*, L. R. 4 P. C. 301).—*Martin v. Mackonochie*, 3 Q. B. D. 730.

2. In a criminal suit under the Church Discipline Act (3 and 4 Vict. c. 86), the Arches Court had suspended the delinquent clerk *ab officio et a beneficio*, for six months, for certain illegal practices in the church service, and a motion was made to enforce the suspension, on the ground that the clerk had repeated the offence; and while the case was pending, the Queen's Bench, in *Martin v. Mackonochie* (3 Q. B. D. 730), decided that such suspension was beyond the jurisdiction of the Arches Court. *Held*, that though the Arches Court protested against that decision, it would "hold its hand" and "decline to proceed to compulsory measures at present." (Cf. *Combe v. Edwards*, L. R. 4 A. & E. 390; 2 P. D. 354).—*Combe v. Edwards*, 3 P. D. 103.

Evidence.—1. S., with two friends, F. & D., went to the L. railway station to see a friend off for D., on the up-train from K. to D., at 11.30 p.m. As the train for D. was coming up, S. crossed the road to the ticket-office for his friend's ticket. When he had got it, and started to return, the D. train had come in, and was stationary on the up-track. He crossed again, this time below the train, at the L. end, so that, when he was behind it, he could not see either track at the D. end of the station. As he stepped from behind the D. train, upon the down-track, an express train for K. struck and killed him. F. and D. and the friend, who remained on the side opposite the ticket-office, swore they heard no whistle, though they were very near, and D. said he saw the train and

heard it rumble, but heard no whistle. Employees of the road said they heard the whistle, and the engineer of the express train said he whistled as usual, according to a rule of the road. There was a notice-board at the point where S. crossed, warning the public not to cross there, and the railway had power to prohibit crossing there. But it appeared that the public disregarded the notice, and the railway never enforced the rule, but acquiesced in the violation of it. *Held*, that, on this state of facts, the case was properly left to the jury. The jury, not the court, is to pass on contradictory and conflicting evidence. Lords HATHERLEY, COLERIDGE, and BLACKBURN dissented, on the ground that, in the most favorable view of the evidence, there was not enough uncontradicted to entitle the plaintiff to a verdict, and, in such a case, it was for the court to decide, and direct a verdict for defendant or a nonsuit.—*The Dublin, Wicklow & Wexford Railway Co. v. Slattery*, 3 App. Cas. 1155.

2. The owners of the ship G. brought an action against the ship H. for damages from collision. The mate of the H. made an entry, in the log, of the circumstances of the collision, at the time, and her master made a deposition, when he reached port, before the receiver of wrecks, as provided by the Merchant Shipping Act, 1854 (17 and 18 Vict. c. 104, § 448). Both the mate and the master had since died. *Held*, that the log-book and the deposition, were both inadmissible in evidence.—*The Henry Coxon*, 3 P. D. 156.

Felony.—A clerk of a bank absconded, March 16, and, on looking over his accounts, it was thought he was a defaulter to the extent of £100, or thereabouts. Subsequently, on March 24, he wrote the bank, confessing to having taken about £8,000. Orders for his arrest were given March 26, and, two days later, a warrant was issued, and committed to a detective, on the exertions of the bank. The detective found the culprit had left England. On March 19 and 22, the relatives of the clerk had interviews with the bankers, and one partner said, "My advice is, that he should get out of the country to America or elsewhere;" and again, on the suggestion of the wife, that the clerk return and throw himself on the mercy of the bank, the partner said, "No, if he did that, we should be obliged to prose-

cute him; if he were abroad, I don't suppose we should trouble further for him." After that, one of the relatives met the culprit in England, and since then he could not be found. On bankruptcy proceedings against the estate of the culprit, the bank was not allowed to prove its claim of £8,000, on the ground that it had compounded the felony. *Held*, by BACON, C. J., that the claim could be proven.—*Ex parte Turquand. In re Shepherd*, 9 Ch. D. 704.

Feudal Tenure.—In Lower Canada, where the Crown took lands held in feudal tenure according to the law of France, all the feudal rights of the *seigneur* were extinguished, except a right of indemnity, amounting, until 1667, in the case of lands held by *roturiers*, to one-fifth the value.—*Les Sœurs Dames Hospitalières de St. Joseph de L'Hôtel Dieu de Montreal v. Middlemiss*, 3 App. Cas. 1102.

Fixtures.—Testator gave his wife all his "household furniture," &c., "within my dwelling-house at the time of my decease." He lived in a leasehold house, containing tenant's fixtures, as gas-brackets, &c., put up by himself as tenant. *Held*, that these could not pass.—*Finney v. Grice*, 10 Ch. D. 13.

Fraudulent Conveyance.—K., the insolvent, assigned all his property to trustees, by a deed purporting to be by K. of the first part, the trustees of the second part, and the assenting creditors of the third part. The trustees were to carry on K.'s business, and pay all costs and charges and preferred claims, and make a dividend to all the creditors who gave notice. If a dividend, so assigned to a creditor, was not called for within a certain time, the trustees were to pay it over to K. Proof of debts, to the satisfaction of the trustees, was required. The assenting creditors were to indemnify the trustees for all loss or damage to which they should become liable. Subsequently, the defendants, who were not parties to the above arrangement, got a judgment against K., and levied on a writ of *fi. fa.* on property in the hands of the above trustees. The debtor had procured the above arrangement by assignment, fearing attachments by the defendants, among other creditors. *Held*, that the transaction was fraudulent and void, under 13 Eliz. c. 5., and the defendants' levy was good.—*Spencer v. Slater*, 4 Q. B. D. 13.