THE

LEGAL NEWS.

VOL. XVII. MARCH 15th, 1894. No. 6.

CURRENT TOPICS AND CASES.

Since the amendment of the Code of Procedure by 55 Vict. c. 49 (A.D. 1890), appeals are entered upon the roll for hearing as soon as the parties have filed their appearance. The law requires that each party shall file his factum within fifteen days after judgment upon the exceptions or demurrers if there are any to the proceedings, or within fifteen days after the expiration of the delay for filing appearance. But in practice this seems to be almost totally disregarded. Indeed, the fact that the case now gets a place upon the roll for hearing before any factum is filed by either side, seems to have made counsel more dilatory than ever in producing their factums. The result is that on the March roll at Montreal, out of 77 cases which appear there, only four are indicated as complete with the factum filed by both parties. There are 17 others in which one of the parties has filed his factum. Under the old system, therefore, of not putting cases on the printed list until one factum at least had been filed, the March roll would contain only 21 cases instead of 77. The court may find it desirable to regulate this matter in some way, as at present it is impossible to form any idea from the printed list as to the cases which are coming on for hearing.

It appears that a fair amount of new business was proceeded with between January and March, the roll for the latter month showing 21 new appeals. It is a curious fact that during this period the country cases outnumbered the city appeals, there being only ten appeals from the Montreal district and 11 from the outside districts. The country appeals have been becoming more numerous if not more important from year to year, and now out of a total of 77 cases on the March list the country cases number 27.

In *Rocheleau & Bessette* the Court of Appeal (Montreal, Feb. 27), unanimously affirmed the decision of the Court of Review reported in R. J. Q., 3 C. S. 320. The question was whether a judgment operates novation of the debt upon which it is based. Both courts held in the negative. A debt created in the United States does not cease to be a debt originating in a foreign country, when the debtor removes to this province and the creditor obtains judgment thereon here. Hence, under Art. 806 of the Code of Procedure, a writ of *capias* cannot issue for such debt. Nor can it issue for the interest and costs due under the judgment, these being accessories only, and following the nature of the original debt.

In *DeCow* v. *Lyons*, Taschereau, J., in the Superior Court, Montreal, Dec. 23rd, 1893, held that a statement made confidentially by a druggist to a customer concerning a physician—the statement being in answer to a question asked by the customer in the course of a private conversation—is privileged. The fact that the person to whom the statement was made repeats it to others does not affect the position of the person originally making it.

Mr. Justice Brooks, Judge of the Superior Court for the district of St. Francis, has obtained leave of absence. The learned judge succeeded to the vacancy at Sherbrooke caused by the transfer of Judge Marcus Doherty from Sherbrooke to Montreal in 1882. Few members of the bench have been worked harder than Judge Brooks during the past twelve years, and we join sincerely in the hope that the well earned rest may be beneficial to him.

EXCHEQUER COURT OF CANADA.

OTTAWA, February 19, 1894.

Present BURBIDGE, J.

JOHN DEKUYPER & SON v. VAN DULKEN, WIELAND & Co.

Trade Mark—Registered and unregistered mark—Jurisdiction of Court to restrain infringement—Exactness of description of device or mark—Use of same by trade before registration—Effect of—Rectification of register.

1. The Exchequer Court has no jurisdiction to restrain one person from selling his goods as those of another, or to give damages in such a case, or to prevent him from adopting the trade label or device of another, notwithstanding the fact that he may thereby deceive or mislead the public, unless the use of such label or device constitutes an infringement of a registered trade-mark.

2. In such a case the question is not whether there has been an infringement of a mark which the plaintiff has used in his business, but whether there has been an infringement of a mark as actually registered.

3. When any one comes to register a trade-mark as his own and to say to the rest of the world "here is something that you may not use," he ought to make clear to everyone what the thing is that may not be used.

4. In the certificate of registration the plaintiff's trade-mark was described as consisting of "the representation of an anchor, with the letters "J. D. K & Z," or the words "John DeKuyper & Son, Rotterdam, &c., as per the annexed drawings and application. In the application the trade-mark was claimed to consist

of a device or representation of an anchor inclined from right to left in combination with the letters "J. D. K & Z," or the words "John DeKuyper & Son, Rotterdam," which, it was stated, might be branded or stamped upon barrels, kegs, cases, boxes, capsules, casks, labels and other packages containing geneva sold by plaintiffs. It was also stated in the application that on bottles was to be affixed a printed label, a copy or *fac simile* of which was attached to the application, but there was no express claim of the label itself as a trade-mark. This label was white and in the shape of a heart, with an ornamental border of the same shape, and on the label was printed the device or representation of the anchor with the letters "J. D. K & Z," and the words "John DeKuyper & Son, Rotterdam," and also the words "Genuine Hollands Geneva" which it was admitted were common to the trade. The plaintiffs had for a number of years prior to registering their trade-mark used this white-heart-shaped label on bottles containing geneva sold by them in Canada, and they claimed that by such use and registration they had acquired the exclusive right to use the same.

Held:—That the shape of the label did not form an essential feature of the trade-mark as registered.

5. The defendants' trade-mark was, in the certificate of registration, described as consisting of an eagle having at the foot V. D. W. & Co., above the eagle being written the words "Finest Hollands Geneva"; on each side are the two faces of a medal, underneath on a scroll the name of the firm "VanDulkin, Wieland &c.," and the word "Schiedam," and lastly at the bottom the two faces of a third medal in the shape of a heart (le tout sur une étiquette en forme de cœur). The colour of the label was white.

Held:—That in view of the plaintiff's prior use of the white-heart-shaped label in Canada, and the allegation by the defendants, in their pleadings, that the use of a heart-shaped label was common to the trade prior to the plaintiff's registration of their trade-mark, that the defendants had no exclusive right to the use of the said label, and that the entry of registration of their trade-mark should be so rectified as to make it clear that the heart-shaped label forms no part of such trade-mark.

H. Abbott, Q. C., and *Campbell*, for plaintiffs.

A. Ferguson, Q. C., and *Duhamel, Q. C.*, for defendants.

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

LONDON, Feb. 23, 1894.

Present:—THE LORD CHANCELLOR, LORD WATSON, LORD MACNAGHTEN and SIR RICHARD COUCH.

THE ATTORNEY GENERAL OF ONTARIO v. THE ATTORNEY GENERAL FOR THE DOMINION OF CANADA.

Constitutional Law—R. S. O. ch. 124, *s.* 9—*Bankruptcy and Insolvency—B. N. A. Act, s.* 91—*Voluntary assignments.*

HELD:—*Section* 9 *of the Revised Statutes of Ontario, ch.* 124, *which enacts that "an assignment for the general benefit of creditors under this Act shall take precedence of all judgments and of all executions not completely executed by payment," relating as it does to assignments purely voluntary, does not infringe on the exclusive legislative authority conferred upon the Dominion Parliament in matters of bankruptcy and insolvency by s.* 91, *no.* 21 *of the B. N. A. Act, more particularly when there is no bankruptcy or insolvency legislation of the Dominion Parliament in existence.*

The LORD CHANCELLOR, in delivering the judgment of the Committee said:—

This appeal is presented by the Attorney-General of Ontario against a decision of the Court of Appeal of that province. The decision complained of was an answer given to a question referred to that court by the Lieutenant-Governor of the province in pursuance of an order-in-council. The question was as follows: "Had the legislature of Ontario jurisdiction to enact section 9 of the Revised Statutes of Ontario, chapter 124, and entitled 'An Act Respecting Assignments and Preferences by Insolvent Persons.'" The majority of the court answered this question in the negative, but one of the judges who formed the majority only concurred with his brethren, because he thought the case was governed by a previous decision of the same court; had he considered the matter *res integra*, he would have decided the other way. The court was thus equally divided in opinion. It is not contested that the enactment, the validity of which is in question, is within the legislative powers conferred on the provincial legislature by section 92 of the British North America act, 1867, which enables that legislature to make laws in relation to pro-

perty and civil rights in the province, unless it is withdrawn from their legislative competency by the provisions of section 91 of that act, which confers upon the Dominion Parliament the exclusive power of legislation with reference to bankruptcy and insolvency.

The point to be determined, therefore, is the meaning of those words in section 91 of the British North America act, 1867, and whether they render the enactment impeached *ultra vires* of the provincial legislature. That enactment is section 9 of the Revised Statutes of Ontario of 1887, c. 124, entitled: "An Act respecting Assignments and Preferences by Insolvent Persons." The section is as follows:—"An assignment for the general benefit of creditors under this act shall take precedence of all judgments and of all executions not completely executed by payment, subject to the lien, if any, of an execution creditor for his costs, where there is but one execution in the sheriff's hands, or to the lien, if any, of the creditor for his costs who has the first execution in the sheriff's hands." In order to understand the effect of the enactment it is necessary to have recourse to other sections of the act to see what is meant by the words "an assignment for the general benefit of creditors under this act." The first section enacts that if any person in insolvent circumstances, or knowing himself to be on the eve of insolvency, voluntarily confesses judgment or gives a warrant of attorney to confess judgment, with intent to defeat or delay his creditors or to give any creditor a preference over his other creditors, every such confession or warrant of attorney shall be void as against the creditors of the party giving it. The second section avoids as against the other creditors any gift or assignment of goods or other property made by a person at a time when he is in insolvent circumstances or knows that he is on the eve of insolvency, with intent to defeat, delay, or prejudice his creditors, or give any of them a preference. Then follows section 3, which is important. Its first sub-section provides that nothing in the preceding section shall apply to an assignment made to the sheriff of a county in which the debtor resides or carries on business, or to any assignee resident within the province with the consent of his creditors as thereinafter provided for the purpose of paying, rateably and proportionately, and without preference or priority, all the creditors of the debtor their just debts. The second sub-section enacts that every assignment for the general benefit of creditors

which is not void under section 2, but is not made to the sheriff nor to any other person with the prescribed consent of the creditors, shall be void as against a subsequent assignment which is in conformity with the act, and shall be subject in other respects to the provisions of the act until and unless a subsequent assignment is executed in accordance therewith. The fifth sub-section states the nature of the consent of the creditors which is requisite for assignment in the first instance to some person other than the sheriff. These are the only sections to which it is necessary to refer in order to explain the meaning of section 9.

Before discussing the effect of the enactments to which attention has been called, it will be convenient to glance at the course of legislation in relation to this and cognate matters both in this province and in the Dominion. The enactments of the first and second sections of the act of 1887 are to be found, in substance, in sections 18 and 19 of the act of the province of Canada passed in 1858 for the better prevention of fraud. There is a proviso to the latter section which excepts from its operation any assignment made for the purpose of paying all the creditors of the debtor rateably without preference. These provisions were repeated in the Revised Statutes of Ontario, 1887, c. 118. A slight amendment was made by the act of 1884, and it was as thus amended that they were re-enacted in 1887. At the time the statute of 1858 was passed there was no bankruptcy law in force in the province of Canada. In the year 1864 an act respecting insolvency was enacted. It applied in Lower Canada to traders only; in Upper Canada to all persons whether traders or non-traders. It provided that a debtor should be deemed insolvent and his estate should become subject to compulsory liquidation if he committed certain acts similar to those which had for a long period been made acts of bankruptcy in this country. Amongst these acts were the assignment or the procuring of his property to be seized in execution with intent to defeat or delay his creditors, and also a general assignment of his property for the benefit of his creditors otherwise than in manner provided by the statute. A person who was unable to meet his engagements might avoid compulsory liquidation by making an assignment of his estate in the manner provided by that act, but unless he made such an assignment within the time limited the liquidation became compulsory. This act was in operation at the time the British North America act came into force. In 1869 the Dom-

inion Parliament passed an Insolvency act, which proceeded on much the same lines as the provincial act of 1864, but applied to traders only. This act was repealed by a new Insolvency act of 1875, which, after being twice amended, was, together with the amending acts, repealed in 1880. In 1887, the same year in which the act under consideration was passed, the provincial legislature abolished priority among creditors by an execution in the High court and County courts, and provided for the distribution of any moneys levied on an execution rateably amongst all execution creditors and all other creditors who within a month delivered to the sheriff writs and certificates obtained in the manner provided by that act.

Their lordships proceed now to consider the nature of the enactment said to be *ultra vires*. It postpones judgments and executions not completely executed by payment to an assignment for the benefit of creditors under the act. Now, there can be no doubt that the effect given to judgments and executions and the manner and extent to which they may be made available for the recovery of debts are *prima facie* within the legislative powers of the provincial Parliament. Executions are a part of the machinery by which debts are recovered and are subject to regulation by that Parliament. A creditor has no inherent right to have his debt satisfied by means of a levy by the sheriff, or to any priority in respect of such levy. The execution is a mere creature of the law which may determine and regulate the rights to which it gives rise. The act of 1887, which abolished priority as amongst execution creditors, provided a simple means by which every creditor might obtain a share in the distribution of moneys levied under an execution by any particular creditor. The other act of the same year, containing the section which is impeached, goes a step further and gives to all creditors under an assignment for their general benefit a right to a rateable share of the assets of the debtor, including those which have been seized in execution. But it is argued that inasmuch as this assignment contemplates the insolvency of the debtor, and would only be made if he were insolvent, such a provision purports to deal with the insolvency and therefore is a matter exclusively within the jurisdiction of the Dominion Parliament. Now it is to be observed that an assignment for the general benefit of creditors has long been known to the jurisprudence of this country and also of Canada, and has its force and effect at common law

quite independently of any system of bankruptcy or insolvency, or any legislation relating thereto. So far from being regarded as an essential part of the bankruptcy law, such an assignment was made an act of bankruptcy on which an adjudication might be founded, and by the law of the province of Canada which prevailed at the time when the Dominion act was passed, it was one of the grounds for an adjudication of insolvency. It is to be observed that the word "bankruptcy" was apparently not used in Canadian legislation, but the insolvency law of the province of Canada was precisely analogous to what was known in England as the bankruptcy law. Moreover, the operation of an assignment for the benefit of creditors was precisely the same, whether the assignor was or was not in fact insolvent. It was open to any debtor who might deem his solvency doubtful, and who desired in that case that his creditors should be equitably dealt with, to make an assignment for their benefit. The validity of the assignment and its effect would in no way depend on the insolvency of the assignor, and their lordships think it clear that the 9th section would equally apply whether the assignor was or was not insolvent. Stress was laid on the fact that the enactment relates only to an assignment under the act containing the section, and that the act prescribes that the sheriff of the county is to be the assignee unless a majority of the creditors consent to some other assignee being named. This does not appear to their lordships to be material. If the enactment would have been *intra vires*, supposing section 9 had applied to all assignments without these restrictions, it seems difficult to contend that it became *ultra vires*, by reason of them. Moreover, it is to be observed that by sub-section 2 of section 3 assignments for the benefit of creditors not made to the sheriff or to other persons with the prescribed consent, although they are rendered void as against assignments so made, are nevertheless, unless and until so avoided, to be "subject in other respects to the provisions" of the act. At the time the British North America act was passed, bankruptcy and insolvency legislation existed and was based on very similar provisions both in Great Britain and in the province of Canada. Attention has already been drawn to the Canadian act. The English act then in force was that of 1861. That act applied to traders and non-traders alike. Prior to that date the operation of the bankruptcy acts had been confined to traders. The statutes relating to insolvent debtors,

other than traders, had been designed to provide for their release from custody on their making an assignment of the whole of their estate for the benefit of their creditors. It is not necessary to refer in detail to the provisions of the act of 1861. It is enough to say that it provided for a legal adjudication in bankruptcy, with the consequence that the bankrupt was divested of all his property, and its distribution amongst his creditors was provided for. It is not necessary, in their lordships' opinion, nor would it be expedient to attempt to define what is covered by the words "bankruptcy" and "insolvency" in section 91 of the British North America act. But it will be seen that it is a feature common to all the systems of bankruptcy and insolvency to which reference has been made, that the enactments are designed to secure that in the case of an insolvent person his assets shall be rateably distributed amongst his creditors, whether he is willing that they shall be so distributed or not. Although provision may be made for a voluntary assignment as an alternative, it is only as an alternative. In reply to a question put by their lordships the learned counsel for the respondent were unable to point to any scheme of bankruptcy or insolvency legislation which did not involve some power of compulsion by process of law to secure to the creditors the distribution amongst them of the insolvent debtor's estate.

In their lordships' opinion these considerations must be borne in mind when interpreting the words "bankruptcy" and "insolvency" in the British North America act. It appears to their lordships that such provisions as are found in the enactment in question, relating as they do to assignments purely voluntary, do not infringe on the exclusive legislative power conferred upon the Dominion Parliament. They would observe that a system of bankruptcy legislation may frequently require various ancillary provisions for the purpose of preventing the scheme of the act from being defeated. It may be necessary for this purpose to deal with the effect of executions and other matters which would otherwise be within the legislative competence of the provincial legislature. Their lordships do not doubt that it would be open to the Dominion Parliament to deal with such matters as part of a bankruptcy law, and the provincial legislature would doubtless be then precluded from interfering with this legislation, inasmuch as such interference would affect the bankruptcy law of the Dominion Parliament. But it does not follow that

such subjects, as might properly be treated as ancillary to such a law, and therefore within the powers of the Dominion Parliament, are excluded from the legislative authority of the provincial legislature when there is no bankruptcy or insolvency legislation of the Dominion Parliament in existence. Their lordships wi'l, therefore, humbly advise Her Majesty that the decision of the Court of Appeal ought to be reversed, and that the question ought to be answered in the affirmative. The parties will bear their own costs of this appeal.

Hon. Edward Blake, Q. C., *Mr. Haldane, Q. C.*, and *Mr. Bray*, for the appellant.

Sir Richard Webster, Q. C., and *Mr. Carson, Q. C.*, for the respondent.

TRADE-MARKS IN 1893.

The decisions of 1893 which centre on trade-marks and word-marks are thus summarized in *Industries and Iron* :—

The Singer Case.—By far the most important case of the year was that in which the Singer Company vindicated their right to the exclusive use of their own name. The action (although brought against an English distributing house) was directed against certain German manufacturers who so made use of the word "Singer's" and "Singer's system" as to induce purchasers to believe that the machines were manufactured by the Singer Company.

Barber v. *Manico* is a case where the plaintiff sued on a trade-mark relating to cutlery. The plaintiff failed on the trade-mark, but succeeded in obtaining an injunction against the defendant restraining the latter from passing off his goods as those of the plaintiff. The injunction was limited to Ireland.

WORD-MARKS.—The decisions have been fairly numerous as to word-marks, and leave the law in a state of chaos. We have had to point out more than once that the position of word-marks is in a most unsatisfactory condition. In order to understand the full effect of the following decisions it is well to bear in mind that word-marks are allowable in three cases: (1) If an old mark—*i. e.* in use before 1875, or (2) an invented word, or (3) a word having no reference to the character or quality of the goods and not being a geographical name.

Reading Biscuits.—Messrs. Huntley & Palmer obtained an injunction to restrain some intending competitors from using the name of the town Reading, so as to net the trade of Messrs. Huntley & Palmer. The word "Reading" was not registered as a mark.

John Bull was held by the Court of Appeal to be a good mark as applied to beer. (*Paine* v. *Daniell.*)

Fruit Salt.—Mr. Eno obtained an injunction against Messrs. Dunn & Co. to restrain the latter using the following expression: "Dunn's Fruit Salt and Potash Lozenges." (*Eno* v. *Dunn.*)

The Great Two D Brand.—This was a registered mark belonging to Messrs. Leahy. The latter complained of the use by Glover of "The G. and M. 2D. Cigars." The House of Lords held that there was no infringement, and held that the plaintiffs, Messrs. Leahy, could not claim an exclusive right to the expression "Two D." (*Leahy* v. *Glover.*)

Carnival held not to be a good mark on the ground that it was descriptive as applied to cigarettes. The mark was accordingly expunged. (Lloyd & Sons' Trade-Mark.)

Ancross.—This word was refused registration on the ground that it was calculated to deceive, an anchor being common to the trade for the class of goods for which the word "Ancross" was sought to be registered. (Thewlis & Blakey's Trade-Mark.)

Red Star Brand.—This mark was expunged from the register, as being likely to be mistaken for a trade-mark, being the device of a star. (La Société Anonyme des Verreries de l'Etoile Trade-Mark.)

Yorkshire Relish.—These words were registered as an old mark. The user proved before 1875 was that the term "Yorkshire Relish" was stencilled on packing cases. This was held not to be a use as a trade-mark, and the mark was accordingly removed from the register. (Powell's Trade-Mark.) This decision compels Messrs. Powell, Goodall & Co. to rely on their common law rights, and not to rely on the Trade-Mark Act at all. If this case stood alone, it would justify our contention that words as trade-marks are in a most unsatisfactory condition.

LIBELS ON TRADING COMPANIES.

A corporation, it has often been said, has neither a soul to be saved nor a body to be kicked, and one of the logical consequences

of its impersonal character is that it cannot recover those damages in respect of a defamatory statement which would be awarded to an individual as a *solatium* for his injured feelings; for a corporate body has no feelings capable of being injured. It also follows from the nature of a corporation that there are peculiar kinds of libel which cannot affect it. "A corporation," said Chief Baron Pollock, in *The Metropolitan Saloon Omnibus Company* v. *Hawkins*, 28 Law J. Rep. Exch. 201, "could not sue in respect of an imputation of murder, or incest, or adultery, because it could not commit those crimes. Nor could it sue in respect of a charge of corruption, for a corporation cannot be guilty of corruption." It was on this ground that a Divisional Court held three years ago that an action for libel was not maintainable which the Manchester Corporation had brought against a person who stated that bribery and corruption existed in some departments of the city council (*The Mayor, &c., of Manchester* v. *Williams*, 60 Law J. Rep. Q. B. 23). In respect, however, of a libel by which the property of a corporation is injured, the Court of Exchequer held, in *The Metropolitan Saloon Omnibus Company* v. *Hawkins* that an action lies at common law. Whether, also, a trading company can recover damages for a libel reflecting upon it in the conduct of its business without alleging and proving actual injury to its property or trade—*i. e.* whether it is sufficient that the libel should be one calculated to injure the company in its business—is an important question which was answered in the affirmative on November 28 by the Court of Appeal in *The South Hetton Colliery Company (Lim.)* v. *The North-Eastern News Association (Lim)*. The plaintiffs in that case were the proprietors of a colliery in Durham, and, as is usual in that county, provided free cottages for the miners in their employment as part of their wages. The defendants published an article in a local newspaper in which the plaintiffs' colliery village was described as being in a terribly insanitary condition. This article the plaintiffs alleged to be a reflection on them in the management of their business as colliery proprietors; they did not allege or attempt to prove that they had suffered damage, but the jury found that the article was defamatory and awarded £25 damages. In the Court of Appeal the defendants contended that as the gist of an action for defamation is the injury to character, a corporation, having no character in the ordinary sense of the term, cannot sue for a libel, though it may bring an action in the nature of an action on the case for a

false and malicious statement which has caused injury to its property or trade. It had to be conceded that partners in a business who have been libelled in respect of their trade can maintain a joint action without alleging special damage. There is ample authority on this point, and it has also been held that a joint stock insurance company which by its constitution was not a corporation, but a partnership, could bring an action for a libel reflecting on the company in the conduct of its business (*Williams* v. *Beaumont*, 10 Bing. 260). The defendants, therefore, attempted to distinguish the present action from a joint action by partners, on the ground that a trade libel on a partnership is necessarily a reflection on the capacity or integrity of the members, and thus affects their personal character; but an attack on a company contains no imputation on the individual shareholders, as, unlike partners, they can exercise no control on the conduct of the company's business. This ingenious distinction, however, did not commend itself to the Court. They said that the law of libel is the same for all plaintiffs, whether individuals, firms, or companies. The question is always whether what was said would have the effect of making people think of the plaintiffs with hatred, ridicule, or contempt. Some things could not possibly have this effect in the minds of reasonable persons when spoken of a corporation, and in respect of such things the corporation could not maintain an action. But a trading company has a trade character which may be injured or ruined, and therefore an action will lie for any libel reflecting on its conduct in its business; and the law of libel being the same for all plaintiffs, it follows that special damage need never be proved. The damages are at large, and the jury can award such as they think fit, having regard to all the circumstances.

There are several reasons for which this decision will commend itself to the good sense of the community. It may be of the utmost importance to a trading company that it should be able to counteract at once the effects of a libel reflecting on the conduct of its business. If it must wait until damage has accrued, the action may have to be deferred until irreparable mischief has resulted. Again, damage may ensue which it would be difficult or impossible to prove to be the consequence of the libel. The expansion of a business might, for instance, be checked or prevented, although the injury could, perhaps, not be proved by any evidence on which a jury could act. There is, moreover, a rea-

sonable presumption that an imputation of misconduct in business causes damage, and it is on this ground that, when the defamatory statement is verbal, an exception is made to the general rule that in actions of slander, as distinguished from actions of libel, it is necessary to prove damage.—*Law Journal* (*London*).

PRISONS AND CRIMINAL TREATMENT.

In a lecture at the London Institute, Mr. William Tallack, Secretary of the Howard Association, said the history of criminal treatment resembled a very long track, continued for most of its course through dense fogs and clouds, but with some bright rays shining upon it in the far away ages of the ancient Jews and the early Welsh and British, and again emerging into comparative light in our own times. In England, of all countries, an injured person had to incur much expense and trouble in order to prosecute those who had robbed or wronged him; and even when he had secured their imprisonment or fine, there was no thought of compensating him. At the very least, the law ought to undertake the trouble and all the cost of prosecutions, by some such arrangement as the appointment in every district of officers like the Scotch Procurators Fiscal. It was a national scandal that, for example, Mr. Labouchere's public-spirited endeavours to expose most mischievous villanies should cost him thousands of pounds as a private individual, instead of such matters being promptly taken up and carried through at the national cost. In the last century a boy named John Scott was charged with trespassing and stealing apples. The magistrates, instead of punishing him, ordered his father to make restitution to the injured party. This was done, but Mr. Scott took much better care of his son in future, and the lad ultimately became Lord Chancellor Eldon. Mr. Tallack thought that a vast amount of juvenile crime would be effectually and cheaply prevented if the responsibilities of many of the parents of the twenty thousand youths in Reformatory and Industrial Schools were more strictly enforced by compelling their payment, to a far great extent than at present, towards the support of these children, and as some compensation to the now injured taxpayer. After speaking of the terrible state of British prisons long after Howard's days, the lecturer said about the year 1830 several countries, more particularly the United States, had sought a remedy for these evils by the rigid solitary system.

They constructed underground cells and shut up unfortunate offenders in them, without light, without work, without books, and without instruction. Of course death and suicide resulted to many of the victims. And then a revulsion against all, even necessary, prison separation took place in the popular mind, which had continued in America to this day, and which was increased by Charles Dickens's absurd fictions in his "American Notes." The special prisoner for whom Dickens's "heart bled" (who had previously incited to a riot in an association prison) lived 42 years afterwards, surviving the novelist fourteen years, and finally he came back voluntarily to the same Philadelphia "separate" (not solitary) prison, begging to be allowed to finish his life there, as in an asylum, amongst his old friends, the officers. This strange request was granted. Belgium and Great Britain had adopted the "separate" as distinguished from the rigidly "solitary" system, at least in a great degree, and for most of the ordinary offenders, and with excellent results. Such separation was or always should be merely from evil companionship. Chaplains, schoolmasters, warders, magistrates, and others often visited the prisoner, whose hands were occupied with industry; he had exercise books, and could earn various privileges by good behaviour. Such separation facilitated reflection and religious instruction. It prevented riots and escapes. It baffled contagious epidemics. It afforded opportunities for modes of labour which (unlike the prison workshops with machinery) interfered as little as possible with outside industry. Although even the prisoner had an inalienable right of individual labour-competition to a moderate extent, and although this "separate system" was costly at first, it was ultimately most economical both by its diminution of crime, and by its enabling shorter sentences to be substituted, with more, both of reformation and deterrence, instead of long periods of associated criminal detention. It should not in general extend over more than a year or two at the utmost. But with these limits and common care excellent health was usually maintained. All first-committed prisoners should be placed in gaols containing no re-convicted criminals. More visitation of prisoners by suitable persons (especially of female prisoners by ladies) was desirable. All imprisonments of young children should be abolished. Every beggar and vagrant should be dealt with either for relief or detention. Procurators Fiscal, or district public prosecutors, should be appointed throughout England and Wales.