The Legal News.

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DISSENTIENT OPINIONS.

Last week, referring to the suggestion of a contemporary, that dissentient opinions in the Supreme Court should be suppressed, we remarked that such a course seemed to us objectionable as being deceptive in itself, as unfair to dissentient Judges, and calculated to retard the progress of the science of jurisprudence. That it would be a deception admits, we think, of no doubt. What would be the object of suppressing the dissent if not to present the appearance of unanimity? And if the Court be made to appear unanimous when it is not so, somebody must be deceived or misled by the artifice. Now, however good the end in view, we cannot think it should be attained by misrepresentation. The day for such pious frauds is past. But it may be said, there is no deception because the judgment is not represented to be more than the judgment of a majority. If so, that numerous class of judgments in which the Court is actually unanimous loses in force just as much as the non-unanimous judgments gain through the failure to state exactly how the Court stands. The force of important enunciations of principle may be weakened by the whisper or the surmise that the principles laid down by the Court are the views of a bare majority. The Court will often be supposed to be at variance when it is perfectly agreed, and Judges who fail to state their opinions from the bench at the time the judgments are delivered may improperly be counted as dissentients.

This leads us to the second ground of objection above stated—that the suppression of dissent is unfair to the Judges themselves. The minority may be condemned by such a rule to remain silent while a doctrine of which they are convinced that time will demonstrate the unsoundness, is proclaimed from the bench by their colleagues, and no disclaimer will be possible. How often in the past has an erroneous principle obtained judicial sanction for a time until the strong light of criticism and debate has exhibited its weakness and led to its rejection? Surely the minority in such a case would be justified in taking some means to let the world know that they are not to be held responsible for the error. Number does not always constitute strength, and the minority may be men of extraordinary powers, while the majority are quite the reverse. Even where the decision turns on a question of evidence, an injustice may result from the suppression of dissent. For example, the decision of the majority may attach a serious imputation of fraud to an individual. Is not the latter entitled to the benefit of the statement that certain members of the Court did not share in a view which dishonors him? In an election case, the judgment of the majority may disqualify a member of Parliament. Are the minority to refrain from expressing their disbelief of the evidence on which the majority have based so serious a condemnation?

The third ground of objection, that the suppression of dissent would retard the progress of the science of jurisprudence, appears to us to be equally clear. If the dissentient opinions are unsound, it is better, nevertheless, to put them on record. Their unsoundness will become more and more apparent, the longer they are scrutinized and canvassed. On the other hand, if the dissentient opinions are the sounder of the two, their suppression can only have the effect of giving to error the mantle of increased authority. It will be more difficult to correct the error; but *magna est veritas*—in the end the truth will get the upper hand, however obstinately the vicious precedent may fight for existence and respect. We cannot find any words in which to describe this disintegrating process so apt as those employed by a Westminster Reviewer some years ago, in referring to the obstruction to justice caused by a bad decision. "Judges," says this writer, "are not infallible, and though actuated by the purest intentions, they sometimes decide wrongly. Such decisions are, nevertheless, available for citation, like all other precedents. Now, when an erroneous decision in the past comes to be pressed upon a Judge in the present, one of two things must happen—either precedent must be followed, or it must be disregarded. The traditions of the profession point in one direction, while the instinct of justice exercises its influence in the opposite. The result is oftentimes a com-

promise. The decision is in effect disregarded, but its authority is saved by recourse being had to some shadowy and fictitious distinction. This practice was recently satirized by a living Judge, who, on a case which we will call "Brown v. Robinson being cited in argument, informed the bar that he should not feel himself bound by that case unless a suit were before him in which the facts were precisely similar; 'indeed,' added his lordship, 'unless the plaintiff's name were Brown, and the defendant's Robinson!'

The suppression of dissentient opinions would greatly aggravate the mischievous consequences of an erroneous precedent. However unsound a decision might be shown to be, it would be hard to get over it unless legislative action was invoked; and the growth of the science of jurisprudence would be stunted correspondingly.

If Judges are to be present at the rendering of the judgment, and to refrain from indicating their dissent from the views which may be expressed, the decisions of the highest tribunal will tend to resolve themselves into a mere vote of yea or nay upon the judgments submitted to them. As soon as the fact has become known during the deliberation that a majority of the Court are inclined one way or the other in any particular case, the other members of the Court will have small encouragement to undertake an arduous examination of the questions involved, knowing, as they do, that it is labor in vain, as they will be debarred from stating the conclusions at which they may arrive.

To conclude: instead of adopting a cast-iron rule, is it not preferable to leave it to the discretion and wisdom of the Judges themselves to decide when they shall yield their individual opinion and refrain from entering a dissent? Who so well qualified as they to appreciate the importance of certainty in the law, and the advantage, where it can be done without the sacrifice of strong convictions, of presenting a harmonious judgment? For our part, with a vivid realization of the mischief caused by crude or hasty dissents, we are still disposed to favor a straightforward policy, be the consequences what they may.

REPORTS AND NOTES OF CASES.

COURT OF QUEEN'S BENCH.

Quebec, December 7, 1877.

Present: DORION, C. J., MONK, RAMSAY, TESSIER and CROSS, JJ.

SHORTIS et al., Appellants, and NORMAND, Respondent.

Collocation—Preference—Appeal.

On the 28th of August, 1875, the Sheriff of Three Rivers returned before the Court the monies he had levied by the sale of real estate belonging to one Coté, an insolvent. The respondent, who was assignee to the estate of Coté, filed a claim on the 20th of January, 1876, for $171.57, due Claire, who had been interim assignee, and $211.35 due to himself for fees, commission and disbursements in relation to the estate. On this claim the respondent was collocated for $308.80 by report of 23rd of February, 1876. The appellants, who are hypothecary creditors, appealed from the judgment homologating the report of collocation which they had not contested in the Court below.

Held, 1. As in *Eastern Townships Bank* v. *Pacaud*, that appellants, whose mortgages were mentioned in the Registrar's certificate, were entitled to appeal from the judgment homologating the report of collocation, although they had not contested the report in the Court below.—(Art. 761 and 1118 C. C. P.)

2. That respondent's claim, having been filed after the expiration of the delay for filing opposition without leave of the Court, was improperly filed, and the respondent should not have been collocated.

3. That as no vouchers were produced by the respondent to show that he was the assignee to the estate of Coté, or that Claire had acted as interim assignee and transferred his claim to the respondent, or been paid by him, there was no *prima facie* case made out to entitle the respondent to be collocated.

4. That the motion to reject the appeal on the ground of acquiescence, was not supported by the affidavits; and the motion to reject part of the factum and exhibits filed being unnecessary, both motions were rejected without costs.

SUPERIOR COURT IN REVIEW.

Montreal, Jan. 31, 1878.

JOHNSON, DUNKIN, RAINVILLE, JJ.

SOULIÈRE v. HERON.

[From S. C., Montreal.

Retraxit—Costs.

JOHNSON, J. This case ought never to have been brought before this Court. The main issue was as to the right of the landlord to take a *saisie conservatoire* for rent, and the judgment maintaining the seizure is right. The amount actually due at the time the seizure was taken was very small, and judgment was rendered for $20 too much, for which a retraxit has since been filed; and we think this discontinuance ought to be allowed. The judgment is therefore modified to that extent; but it is evident that that was not in contestation by the parties, and was not the reason for this inscription, so that the defendant will pay the costs here. The Court of Review will not give costs to parties coming here to rectify a trifling error which had already been rectified by retraxit.

Judgment modified, without costs.

L. N. Demers for plaintiff.

Cruickshank for defendant.

JOHNSON, DUNKIN, RAINVILLE, JJ.

WHITE et al. v. WELLS.

[From S. C., Montreal.

Partnership—Dissolution.

JOHNSON, J. The judgment in this case held the defendant liable as one of the firm of Foster, Wells & Shackell. The note represented a liability of the firm, and Foster, who signed it, had authority to do so. The dissolution of the firm did not bind the plaintiffs. The plea of the defendant, which was that the note was given without his knowledge, in the name of a terminated copartnership, after the registration of its dissolution, is not proved according to the requirements of law, under Articles 1834 and 1900 C.C. The dissolution itself conveyed to Foster the power to sign, and those who conveyed it, being members of the firm, must be held to have knowledge of its business.

It was contended that a note of the defendant's firm had not been credited, but that is not in the issue of record.

Judgment confirmed.

Lunn & Davidson for plaintiffs.

Macmaster & Co. for defendants.

SUPERIOR COURT.

Montreal, Jan. 31, 1878.

JOHNSON, J.

OWENS et al. v. UNION BANK.

Maritime Lien—Outfitter—Furnishing the Ship on her Last Voyage.

Held, that the privilege under C.C. Art. 2383 upon vessels for furnishing the ship "on her last voyage," does not apply to supplies furnished during the whole season of navigation, though the vessel be one making short trips on inland waters.

JOHNSON, J. The plaintiffs furnished to the Ottawa & Rideau Forwarding Company, in the season of 1876, a quantity of cordwood, which was used that year on two of the Company's steamers plying between Ottawa and Grenville, and was delivered to them at Cameron's wharf, in the county of Prescott, in Ontario. The Company became insolvent in August, 1876, and the defendants, as registered mortgagees, took possession of the vessels under the powers conferred by the mortgages. The vessels were registered: one at the port of Ottawa and the other at the port of Morrisburg, both in the Province of Ontario. The plaintiffs assert a privilege on the two steamers for the payment of the price of the wood. There were several points raised at the argument; but I shall not now discuss any of them. I do not even discuss the question of privilege with reference to the reasonableness of applying it under any circumstances to vessels making short trips on inland waters. Much might be said, no doubt, as to the privileges of an outfitter for the last voyage—for instance, of the ferry-boat from the Market wharf to St. Lambert; but however that may be, it appears to me improper to extend the privilege to repairs or supplies of ships on their last voyage to a whole season of navigation. I therefore take the case simply on the point of a series of trips during the whole summer season, not constituting a last voyage of a ship in the sense of the law; and I do this on the positive authority of decided cases.—See Parsons on Shipping, vol. 2, p. 143, and the cases there cited. On this ground, the plaintiff's action is dismissed with costs.

Doutre & Co. for plaintiff.

Cramp for defendant.

COMMUNICATIONS.

QUEBEC JURISPRUDENCE.

To the Editor of THE LEGAL NEWS:

SIR—In your article on "Dissentient Opinions," in the last number of the LEGAL NEWS, you quote from an Ontario publication an article in which it speaks in rather unflattering terms of the decisions of the Courts of this Province. I do not intend any reply to this article in the sense of defending the decisions of our Courts. You yourself have sufficiently done so already, and I think with you, that the profession in Ontario is not in a position to throw stones or other missiles about. If the decisions of the Quebec Courts are little quoted in Ontario, the decisions of the Ontario Courts are as little quoted here. Of the Ontario digest, which has been for some time past in course of publication, there are, as far as I can discover, but one or two copies in the city, while but very few of the fraternity here are apparently aware of its existence. So much for Ontario decisions.

But while I conceive the Ontario people are not in a position to cast aspersions themselves, is there no truth in what they say, or if there is, should we be too proud to confess it?

You point to Sir James Stuart and others as samples of our judiciary, but is it not a little like pointing to Washington as a sample of American statesmen?

Let us profit by the ungracious remark of our Toronto friend and look for a moment on this side of the curtain also.

It is granted that the decisions of our Courts are not infallible. The decisions of no Courts are. It is granted that our jurisprudence is not perfect. None is. Is it then as near perfect as we can make it, or is it possible to advance it a step further towards that star-like goal, perfection? If I venture to say we can, I think that must be granted also.

We have a Code of Civil Law of which we are justly proud. It is all the Code Napoléon is, by which the people of France have been governed for the last half century, and perhaps a little more.

And, notwithstanding this, I have very little hesitation in saying that the decisions of our Courts have a larger degree of uncertainty about them than those of the Courts of any country with which we are at all familiar. And why? Because the judges in our Courts have not sufficient unanimity—or unity, perhaps, would express it better—in their bearing towards the jurisprudence of the Province as a whole; but treat each case separately and individually, and sometimes with very little regard for the opinions of each other. Each judge thinks his own opinion quite as good as that of any other judge, or bench of judges, or number of judges expressed at different times, and "rather better." To illustrate, if I am not misinformed, a well known judge of the Superior Court here, has more than once, when authorities and precedents have been quoted to him, declared that he cared nothing about them; that he considered his own opinion quite as good as that of the authority quoted to him. And so indeed it may be; but if every judge acts entirely upon his own opinion, sometimes very hastily formed, and attaches no weight to the opinions of others, who have been called upon to decide the same points in previous cases, what must be the result? Just what we see it in our courts every day. Unless the law is expressed in black and white in the Code, a lawsuit is the merest game of chance. You might as well—and, indeed, for the client very much better—flip up a shilling and abide by the result, as appeal to the courts. And even when the law is expressed in black and white, it is by no means uncommon to see a judge exhausting his ingenuity to evade the plain meaning of it, in an endeavor to make it square with some preconceived opinion, or, worse still, some hidden motive or feeling existing in his breast in regard to the matter in hand. I might, and so might any practitioner in the Province for the matter of that, cite scores of points of law and practice—points which are, in some instances at least, recurring every day—which have been tossing about for years past, like chips upon a wave, blown hither and thither by the breath of every succeeding decision, and finding no rest, to the disgust of clients and the no small anxiety of attorneys.

The direct cause of this I have shown, but there are remoter causes behind, which I may endeavor at least to conjecture at in a future communication, if you can find room for this.

Yours, S.

CURRENT EVENTS.

ENGLAND.

THE UNITED STATES AS A PLAINTIFF IN ENGLISH COURTS.—The *Solicitors' Journal* says that some curious reasons seem to have been given for rejecting the proposal, which has been recently revived at Washington, that measures should be taken for the recovery by the United States from the Bank of England of balances remaining to the credit of the Southern Confederacy at the time of its collapse. The grounds of objection are stated to be, first, that the United States Minister is not willing to ask any favor of the British Government, such as the right to sue in the English courts, and next, that when inquiries were made into the matter during the administration of General Grant the "representatives of the British Government" expressed themselves as perfectly willing to recognize the United States as the successor of the defunct Confederacy, and to turn over to it all balances formerly belonging to the Confederacy held in Great Britain, provided the United States would assume its liabilities to British subjects. The first objection seems absurd. No "favour" of the British Government is needed to enable the United States to sue in our courts. As a matter of fact, the United States itself has been more than once admitted to sue as a matter of right; and in numerous cases, such as *The King of the Two Sicilies* v. *Wilcox*, 1 Sim. (N.S.) 301, where the plaintiff recovered ships bought by a revolutionary government out of his own despoiled treasury; and *Emperor of Austria* v. *Day*, 9 W.R. 712, where the plaintiff prevented the issue of bank notes by M. Kossuth, foreign states have had justice done them in our courts without fear or favor. As to the second objection we do not see what our Government has to do in the matter; and we imagine the reference intended must be not to any declaration of the "representatives of the British Government," but to the doctrine laid down in the case of *United States of America* v. *McRae*, 17 W. R. 764, L. R., 8 Eq. 69, in which Lord Justice James, then Vice-Chancellor, expressly distinguished between property coming to the restored Government of the United States as successor of the confederacy, and property coming to it by virtue of its right as a restored government. It was there held, dismissing a bill for an account against an agent for the Confederate Government, that money voluntarily contributed to the Confederate Government could only be recovered from an agent of that Government to the same extent, and subject to the same rights and *obligations*, as if the Confederate Government had not been displaced, and was itself proceeding against the agent.

LENGTH OF TRIALS.—A solicitor, says the *Solicitors' Journal*, moved by the recollection of the Tichborne trial, and the seven days' trial of the Penge case, has been at the pains to give, in a letter to a daily journal, an interesting analysis of the principal criminal trials which have taken place during the last fifty years, with a view to ascertain how far they differ, in intricacy, and in the number of witnesses examined, from the trials of the present day. The result of his investigation, as to the earlier trials, says the *Journal*, may be summed up as follows:—

"At Patch's trial, in 1806, for the murder of his partner,—a very intricate case,—there were thirty-three witnesses, and the trial lasted one day. Bellingham's trial, for the murder of Spencer Perceval, in which there were sixteen witnesses and long defence, lasted only one day. Thistlewood's trial, for the Cato-street conspiracy, with forty witnesses, lasted two days. In 1824 occurred Thurtell's trial, at which there were forty-six witnesses—including one who was an accomplice, and who was examined at considerable length, and another who was called in the course of the summing up. The trial lasted two days. In 1828, Corder was tried, a long indictment read, twenty-six witnesses; and the trial lasted one day and half. In 1828, Burke's trial took place; a long argument as to the indictment, sixteen witnesses (one of them being an accomplice), and the trial lasted one day. In 1831, Bishop, Williams, and May were tried for the murder of the Italian boy; there were forty-one witnesses, and the trial lasted one day. In 1837, Greenacre's case; thirty-five witnesses, two days. In 1839, Frost, for high treason; there were sixty-nine witnesses, one whole day taken up with legal arguments, and the trial lasted seven days. In 1840, Courvoisier: forty-four witnesses, three days; and, in the same year, Gould's case: forty witnesses, one day.

In 1843, McNaghten's case: several scientific witnesses, forty-seven witnesses in all; two days. In 1845, Tawell: twenty-one witnesses, exclusive of those called to character, two days.

"Comparing these trials with our modern 'great cases,' Mr. Woodall asks why the Wainwright case, with sixty-nine witnesses, should last nine days, whilst Greenacre's, with thirty-five witnesses, lasted only two days; and Bishop, Williams, and May, with thirty-seven witnesses, lasted only one day? Or, why should the Penge case, with its thirty-eight witnesses, or thereabouts, require seven days, when Thurtell's, with forty-six witnesses, or Manning's, with forty-seven, only required two? He observes, that the mere circumstances that the court formerly sat earlier in the day, and that counsel for the prisoners were not formerly allowed to address the jury for their clients, go but a little way in accounting for the difference; for, in many of the earlier trials, speeches of considerable length were read, either by the prisoner, or by an officer of the court. And, we may add, the fact, on which he is disposed to lay considerable stress, that the judge has now, as he had previously, to take full notes of the evidence, will not explain the enormous increase in the length of the trials. Of course, the more evidence there is, the more will the slowness of the judge in taking it down lengthen the trial; but the question is, Why is there now-a-days so much more evidence for the judge to take down? And this Mr. Woodall does not attempt to explain. Without pretending to furnish an answer to the question, which would involve the consideration of a large variety of reasons, we may refer to one, which appears to be very much overlooked; viz., the decline of what we may term self-reliant discrimination on the part of the persons whose duty it is to get up and deal with the evidence for the prosecution or defence. The preliminary inquiry before the magistrates is lengthened, from anxiety that nothing which may turn out to be of any importance shall be omitted; the depositions are swollen to an enormous bulk, and the result is that opportunities for the practice of cross-examination (generally discouraged, it is true, by the judge), as to variance between the evidence of the witness on the depositions and in court, are greatly increased. Cross-examination at the trial is extended because counsel does not like, on his own responsibility, to omit a question which may possibly benefit his client. Re-examination is extended because the cross-examination may possibly have damaged the effect of the evidence. And it can hardly be denied that the professional opinion which in former days would have curbed these excesses is diminishing in influence. There is less opportunity for association between members of the bar than formerly; and, as a consequence, counsel, in conducting a case, are less controlled by the apprehension of professional criticism. And it may, perhaps, be thought that learned judges, who have just left off sinning in the way of prolixity at the bar, are not very likely to reprove this fault in others."

THE CLEOPATRA OBELISK.—SALVAGE.—It will be remembered that the vessel containing the Cleopatra obelisk had to be abandoned at sea. It was afterwards picked up by the "Fitzmaurice," and is now held to answer a claim for salvage; and the question has arisen how the amount of salvage earned is to be estimated. The *Solicitors' Journal* says:—

"The value of the property saved is but one of the ingredients of salvage service, and it is only as to this ingredient that the case is a peculiar one; but it must be admitted that it is a difficult question to say in what manner the obelisk is to be valued. On the one hand, it would be unfair to value it simply as a block of granite, and, on the other, it seems almost impossible to put a value upon it as a work of art, or upon its historical associations. We are not aware of any reported salvage case in which the property saved has had what might be called a fancy value. There is high authority for saying that the valuation in a policy of insurance on the ship or goods saved is *prima facie* a mode of ascertaining the value for salvage (1 Park on Insurance, 327); but it is understood that, while Mr. Dixon's interest in his contract was insured to some extent, no insurance was effected on the obelisk. As regards the proportion of value awarded by the English Court of Admiralty, there is no fixed rule of amount. In the recent case of "The Amérique" (L. R. 6 P. C. 468), the rule of the court was in the judgment stated to be that, though the value of the property saved is to be considered in the estimate of the remuneration,

it must not be allowed to raise the *quantum* to an amount altogether out of proportion to the services actually rendered; and a judgment of Lord Stowell's was cited, in which he says that, 'in fixing the proportion of the value, the court is in the habit of giving a smaller proportion where the value is large, and a higher proportion where the value is small; and for this obvious reason, that in property of small value a small proportion would not hold out a sufficient consideration, whereas in cases of considerable value a smaller proportion would afford no inadequate compensation.' In the recent case, the derelict vessel and her cargo were together valued at £190,000. Sir R. Phillimore awarded £30,000 salvage, which was on appeal reduced by the Privy Council to £18,000. In the case of "The Rasche" (22 W. R. 240, L. R. 4 A. & E. 127), where there were circumstances of great difficulty and gallantry in the salvors, the sum of £3,290 was awarded on a value of £6,-294. Generally, one-half the value may be stated as the outside limit awarded."

IRELAND.

JUDICIAL ECCENTRICITY.—Lord Justice Christian maintains his attitude as an "irreconcilable" (*ante*, p. 9). The Council of Law Reporting having asked him to assist the reporting of his judgments by the communication of his notes, or by revising the stenographic report of them, he responds by telling them not to report him at all. The Council are, therefore, left to their own resources.

UNITED STATES.

RAILWAY PASSENGER.—In the case of *Stone* v. *The Chicago & N. W. R.R. Co.*, the Supreme Court of Iowa has had under consideration the frequently recurring question of the right of passengers, who have purchased tickets for a continuous journey, to stop over at way stations. The decision of the Iowa Court is in the same sense as that of the Quebec tribunal in *Livingstone* v. *The G.T.R.R. Co.*, reported at p. 13, vol. 19, of the *Lower Canada Jurist*. The action was for damages for the expulsion of the plaintiff from the defendant's cars. The plaintiff bought a ticket from Clinton to Sioux City. Soon after the train started, the conductor gave him a check, which notified him that, if he wished to leave the train before reaching his destination, he must obtain a special permit. Without doing so, the plaintiff left the train at Marshalltown, an intermediate station; remained twenty-four hours; and resumed his journey the next day, on the train passing through Marshalltown at the same hour, to go to Boone. The conductor refused to permit him to ride on his original ticket, and put him off at the next station—State Centre. The plaintiff then went to the ticket office, and, buying a ticket from State Centre to Boone, again entered the train; but the conductor refused to allow him to ride, unless he also paid the fare from Marshalltown to State Centre; and, the plaintiff declining, he was again expelled from the train. On the question of the second expulsion of the plaintiff, the Court (Seevers, J.) said:—

"After the plaintiff had been ejected, he purchased a ticket from State Centre to Boone, and sought to enter the train from which he had been ejected; and was prevented from so doing by the conductor, who had knowledge that such a ticket had been purchased. In *O'Brien* v. *B. & W. R.R. Co.*, 15 Gray, 20, the train was stopped, and the plaintiff rightfully ejected, and, as the train started again, the plaintiff got on the rear car. The conductor, being so informed, went to such car, and, 'although the plaintiff, before any attempt was made to stop the cars a second time, offered to pay whatever fare the conductor should demand,' it was held that the second expulsion was justifiable. It is said by the court, 'After being rightfully expelled from the train, he could not again enter the same cars, and require the defendant to perform the same contract he had broken.' It is not necessary that we should go so far as was done in the case just quoted; because the plaintiff at no time offered to pay his fare from Marshalltown to State Centre. He had just ridden on that train between those points; and, as we have said, when he entered the cars he was bound to pay his fare to his destination. This he contracted to do; and the defendant contracted to carry him on that train, and none other. This contract was broken by the plaintiff, and he had no right to insist he should go on that train, at least without paying or offering to pay the fare between Marshalltown and State Centre. This ruling by no means excludes him from any other train. Besides this, suppose the plaintiff at State Centre had ten-

dered to the conductor his fare from that point to Boone, could it be claimed this would entitle him to ride on that train to the latter place? We apprehend not. The purchase of a ticket from the ticket agent would give him no greater rights; for under such ticket he would be claiming the same right under the same state of facts he would not be entitled to, had he dealt alone with the conductor. The fact that he made use of another agent of the company other than the conductor cannot enlarge his rights, or change the legal aspect of the case. It must be that the transaction with the agent was a mere continuation of the transaction with the conductor. Both had reference to the right of the plaintiff to ride on that train without the payment of fare from Marshalltown to Boone. The payment of such fare to the agent could not, under the circumstances, give him any more or greater rights than if he had tendered the same amount to the conductor."

RECENT ENGLISH DECISIONS.

Proxy.—Bankruptcy Rules, 1870, provides that the instrument appointing a proxy shall be under the hand of the creditor, and in the form given in the schedule to the rules. That form is as follows: "I appoint C. D., of, &c., my proxy in the above matter." A creditor gave his solicitor a blank proxy duly signed, and the solicitor filled in his own name, and undertook to act under the proxy. *Held*, that the proxy was good.—*Ex parte Lancaster*, 5 Ch. D. 911.

Seaworthiness.—A ship, while lying in the port of S., in a seaworthy condition, was chartered of defendant, by the plaintiff, to proceed to a wharf in said port, take on a cargo of cement, and proceed with it to the port of D. While lying at the wharf she became unseaworthy, though without the knowledge of the defendant, and, while on the voyage, foundered, and the cargo was lost. The jury found the defendant guilty of no negligence. *Held*, that the warranty of seaworthiness attached at the time the ship was loaded and ready to start on the voyage, and was not satisfied by her being seaworthy while lying in port before the cargo was on board.—*Cohn* v. *Davidson et al.*, 2 Q.B.D. 455.

Statute.—The principle appearing to have been laid down in *Couch* v. *Steel* (3 E. & B. 402), that, whenever a statutory duty is created, any person who can show that he has sustained injuries from the non-performance of that duty, can bring an action for damage against the person on whom the duty is imposed, questioned by all the judges in *Atkinson* v. *Newcastle Waterworks Co.*, 2 Ex. D. 441.

Statute of Frauds.—1. K. informed his daughter and her intended husband that he had bought a house which should, in the event of the marriage, be his wedding present to his daughter. After the marriage, the daughter and her husband entered into possession of the house, a lease of which K. had bought, subject to payment of certain instalments. K. paid all instalments which fell due in his lifetime, and died leaving a sum of £110 still to be paid, which fell due after his death. *Held*, that possession following K.'s verbal promise took the promise out of the Statute of Frauds; and that K.'s agreement was to give a house free from incumbrances, and that, therefore, the £110 must be paid out of K.'s estate.—*Ungley* v. *Ungley*, 5 Ch. D. 887; s. c. 4 Ch. D. 73.

2. In a contract for the purchase and sale of land, the vendor was mentioned only as a "trustee, selling under a trust for sale." *Held*, sufficient under the Statute of Frauds.—*Catling* v. *King*, 5 Ch. D. 660.

3. Eight persons made an agreement to convey certain land to two of their number, by an absolute deed, and that they should sell the same in lots, and hold the proceeds in trust for the eight. The defendant, in April, 1875, made a verbal offer to W., agent of the owners for the sale of the lots, for some of them. W. told him that he must purchase subject to certain conditions, printed on a plan of the lands, and which W. made known to him. The last condition was to the effect that each purchaser should sign a contract embodying the conditions, and the payment of a deposit and the completion of the purchase within two months from the date of the contract. W. promised to lay the offer before the "proprietors," and soon after wrote the defendant, saying the "proprietors" had accepted his offer, and inquiring about his wishes as to the title. The next day defendant replied that, unless he was at liberty to build or not, the offer had better be reconsidered. The next day W. answered, saying the acceptance was an unconditional one, and

defendant could do as he pleased about building. Soon after, the defendant wrote, declining to go on. In a suit for performance, *held*, that the use of the word "proprietors" sufficiently designated the vendors to satisfy the Statute of Frauds, but that the signing of the contract, as required in the printed conditions, constituted a condition precedent to the completion of the contract, and therefore the defendant was not bound.—*Rossiter* v. *Miller*, 5 Ch. D. 647.

Trade Mark.—In 1862, S. C. got a patent for a filter, in the name of himself and his son G. C., the plaintiff, then a minor. S. C. died the same year, and G. C. carried on the business and sold filters with the label: "S. C.'s Improved Patent Gold Medal Self-cleansing Rapid Water-Filters." In 1865, the patent ran out, and in 1867, the plaintiff, then of age, altered his label by inserting in it in place of "S. C.'s," "G. C.'s," and placing over it a medallion with the words, "By Her Majesty's Royal Letters Patent." In 1876, the defendant's relatives and former employees of the plaintiff, began in the same town making filters very much like plaintiff's, but with this label: "S. C.'s Patent Prize Medal Self-cleansing Rapid Water-Filters, Improved and manufactured by W. & Co." *Held*, dissolving an injunction granted by Bacon, V. C., that the label was not a trade-mark, but a description only, that the defendant's label was not a fraudulent imitation of plaintiff's, designed to cheat the public, and that the plaintiff could have no standing in court by reason of the fraudulent representation of on his label that the patent was still subsisting.—*Cheavin* v. *Walker*, 5 Ch. D. 850.

Trust.—1. A testator appointed real estate to N subject to a term of years, vested in trustees, who were directed to raise a sum of money therefrom and to pay the income of it to certain life-tenants. This was done, and on the death of the life-tenants, who all survived N., *held*, that the personal representative of N was entitled to the principal of the fund.—*In re Newberry's Trust*, 5 Ch. D. 746.

2. All benefits derived by trustees from the trust-property accrue to the *cestuis que trust*, even though the benefit was secured by the trustees appearing as actual owners; and in case of breach of trust by trustees for their own benefit, no lapse of time can validate the transaction.—*Aberdeen Town Council* v. *Aberdeen University*, 2 App. Cases, 544.

RECENT UNITED STATES DECISIONS.

Evidence.—Indictment for maliciously threatening to charge a person with a crime, with intent to extort money. *Held*, that evidence of the truth of the charge was admissible on the question of intent.—*Commonwealth* v. *Jones*, 121 Mass. 57.

Foreign Attachment.—A salary due to an officer from a municipal corporation may be holden by process of foreign attachment. Otherwise of a salary due from the State.—*Rodman* v. *Musselman*, 12 Bush, 354. The former proposition is denied in *Wallace* v. *Lawyer*, 54 Ind. 511.

Foreign Judgment.—A declaration in an action on a foreign judgment must show that the court by which it was rendered had jurisdiction of the cause of action, as well as of the defendant's person; and the former is not shown, though (*semble*) the latter may be, by setting out the record of the judgment.—*Gebhard* v. *Garnier*, 12 Bush, 321.

Frauds, Statute of.—1. A written memorandum of a pre-existing verbal contract, made after breach of the contract, but before action brought, and signed by the party to be charged, satisfies the Statute.—*Bird* v. *Munroe*, 66 Me. 337.

2. The defendants ordered lumber of plaintiffs, to be taken from certain lots designated by defendants in plaintiffs' yard, and to be cut into sizes required by defendants, who agreed to take it when notified that it was ready. The lumber was selected, cut, and notice was given to defendants; but, before they removed it, it was accidentally burnt. *Held*, that the contract was one of sale within the Statute; that the title to the lumber had not passed; that there was no acceptance nor receipt, and that the defendants were not liable for the price agreed to be paid.—*Cooke* v. *Millard*, 65 N. Y. 352.

Fraudulent Preference.—The rules of a stock exchange board provided that any member becoming insolvent might assign his seat to be sold, and the proceeds should be applied to the benefit of members to whom he was indebted, to the exclusion of outside creditors. The purchaser could not become a member until elected. *Held*, that a sale and disposition of the proceeds under the sale did not constitute a fraudu-

lent preference, and that the assignee in bankruptcy of a member whose seat had been so sold could not recover back debts paid to other members out of the proceeds.—*Hyde* v. *Woods*, 94 U. S. 523.

Grand Jury.—An indictment for burglary committed in a building owned by a corporation was found by a grand jury, two of whose members were stockholders of the corporation. *Held*, no ground for quashing the indictment.—*Rolland* v. *Commonwealth*, 82 Penn. St. 306.

Husband and Wife.—A husband and wife are jointly liable for a trespass committed by the wife in his absence, but by his order.—*Handy* v. *Foley*, 121 Mass. 259.

Indictment.—1. An indictment for murder "by firing a pistol," not showing how the deceased was injured by such act. *Held*, bad.—*Shepherd* v. *The State*, 54 Ind. 25.

2. A statute provides that any person who having a husband or wife living, marries another person, "shall, except in the cases mentioned in the following section, be deemed guilty of polygamy." The following section excepts persons whose husband or wife has been absent for seven years, and is not known to be living. *Held*, that an indictment on the statute need not negative the exception.—*Commonwealth* v. *Jennings*, 121 Mass. 47.

Insurance (Fire).—A policy of insurance on buildings was conditioned to be void from the time that the property insured should be levied on or taken into possession or custody under any proceeding at law or in equity. An execution was issued and delivered to the Sheriff, on a judgment rendered in a proceeding to enforce a mechanic's lien on the buildings; and the sheriff advertised the buildings for sale under the execution, on a certain day, without taking possession in the meantime, and before the day, the buildings were burnt. *Held*, that the insurers were liable.—*Manufacturers' Ins. Co.* v. *O'Maley*, 82 Penn. St. 400.

Insurance (Life).—1. A condition in a policy of life-insurance, making it void if the assured shall "die by his own hand, sane or insane," takes effect if he kills himself while wholly bereft of reason.—*De Gogorza* v. *Knickerbocker Ins. Co.*, 65 N. Y. 232.

2. A child, though of age, has as such an insurable interest in the life of his parent.—*Reserve Mutual Ins. Co.* v. *Kane*, 81 Penn. St. 154.

Jury.—1. In an action by a wife to recover damages for selling liquor (beer) to her husband, a juror testified, on the *voir dire*, that he thought the business of making and selling beer was a "perfect nuisance, and a curse to the community;" that he was bitterly opposed to it, and would do all in his power, except raising mobs, to break it down. *Held*, that he was incompetent to act as a juror.—*Albrecht* v. *Walker*, 73 Ill. 69.

2. At the trial of a civil action for conspiracy, the defendants having been previously convicted on an indictment and imprisoned for the same conspiracy, a person who has expressed an opinion that one of the defendants has been sufficiently punished, and who has signed a petition for his pardon, is incompetent as a juror.—*Ashbury Ins. Co.* v. *Warren*, 66 Me. 523.

3. The drinking of intoxicating liquor by a jury, even in a capital case, does not of itself vitiate their verdict.—*Russell* v. *The State*, 53 Miss. 367.

4. If the record in a criminal case recites that the jury were "duly sworn," it is sufficient; but if it purports to recite the oath and does not follow the statutory form, it is error.—*Miles* v. *The State*, 1 Tex. N. S. 510. So if it does not show that they were sworn at all, but merely that they were "empaneled."—*Rich* v. *The State*, ib. 206.

Landlord and Tenant.—The owner of land who forcibly enters thereon, and ejects, without unnecessary force, a tenant at sufferance, who has had reasonable notice to quit, is not liable for an assault.—*Low* v. *Elwell*, 121 Mass. 309.

Indictment.—An indictment for larceny of bottles of brandy is not sustained by proof that the prisoner drew the liquor from casks into bottles which he took with him for the purpose.—*Commonwealth* v. *Gavin*, 121 Mass. 54.

Larceny.—The stealing, at the same time and place, of several articles belonging to several persons, is but one offence, and a conviction of larceny of one of such articles is a bar to an indictment for larceny of another.—*Wilson* v. *The State*, 45 Tex. 76.

Malicious Prosecution.—If A. makes a false and malicious charge against B, by reason whereof B is arrested and indicted, A is liable

to B for malicious prosecution, though the facts charged by him did not amount to an indictable offence, and B was acquitted on that ground.—*Dennis* v. *Ryan*, 65 N.Y. 385.

Mandamus.—Mandamus lies against the owners of a cemetery, to compel them to permit the burial of a person whom the owner of a lot in the cemetery has a right to bury there.—*Mount Moriah Cemetery Association* v. *Commonwealth*, 81 Penn. St. 235.

Master and Servant.—The engine in a factory was moved from one part of the building to another, and thereby its shaft was left projecting into a room where it had not been before, and a person employed in that room, while attending to her usual duties the next day, the shaft not having been cut off as it should have been, was injured by it. *Held*, that the owner of the factory was liable.—*Fairbank* v. *Haentzche*, 73 Ill. 236.

Municipal Corporation —A city has not, unless specially empowered by its charter, power to establish fire limits, and to declare wooden buildings within such limits to be nuisances.—*Pye* v. *Peterson*, 45 Tex. 312.

New Trial.—1. A verdict cannot be set aside because one of the jury was an infant, if his name was on the list of jurors returned and impanelled, though the losing party did not know that he was an infant until after verdict.—*Wassum* v. *Feeney*, 121 Mass. 93.

2. A and B were indicted jointly. A was convicted and B acquitted. *Held*, that A might have a new trial on showing that B could give material evidence for his defence, as he could not, by any diligence, have obtained B's evidence before.—*Rich* v. *The State*, 1 Tex. N. S. 206.

Officer.—An office was tenable for six years, and until a successor should be elected and qualified. Before the term expired, a successor was elected and commissioned, took the oaths of office, and died. *Held*, that, on the expiration of the term, there was a vacancy, and that the incumbent did not hold over.—*State* v. *Seay*, 64 Mo. 89.

Partnership.—The partnership of A and B was dissolved by the death of A; and B afterwards carried on the same business in partnership with C. *Held*, that a partner retiring from another firm which had had dealings with A and B, was not bound to notify B of his retirement, nor liable on a contract afterwards made by the remaining members of his firm with B and C.—*Gaar* v. *Huggins*, 12 Bush, 259.

Party Wall.—A, owning two adjoining lots of land, conveyed one to B, by deed duly recorded, containing this clause: "It is agreed that the partition wall of any building hereafter erected on the granted premises may be placed half on the granted premises and half on the adjacent lot; and the owner of such lot shall, whenever he uses the wall, pay half its cost." B built a party wall accordingly. A afterwards conveyed the adjacent lot to C, who conveyed to D, who used the party wall. *Held*, that he was liable to B, either on the covenant in the deed from A to B, or on an implied assumpsit for using B's property.—*Richardson* v. *Tobey*, 121 Mass. 457.

Railroad.—1. A receiver of a railroad was appointed in a suit, brought by holders of bonds of the railroad secured by mortgage, to foreclose. *Held*, that he should pay, out of the net earnings of the road, wages due, at the time of his appointment, to laborers and other employees for the building and operation of the road, before paying anything to the bondholders.—*Douglass* v. *Cline*, 12 Bush, 608.

2. The conductor of a railroad train is bound to keep order on the train, and to protect passengers, to the best of his ability, against assaults by other passengers; and if he does not use reasonable exertions to do so, the railroad company is liable.—*New Orleans, St. Louis & Chicago R.R. Co.* v. *Burke*, 53 Miss. 200.

Tax.—Assessments for making roads were laid on the abuttors in proportion to the frontage of their estates on the road. *Held*, that this system was unequal and unconstitutional, as applied to rural or suburban property.—*Seeley* v. *Pittsburgh*, 82 Penn. St. 360.

Witness.—A and B were jointly indicted. A's wife was admitted as a witness for the State. *Held*, error, and not cured by the subsequent entry of a *nol. pros.* against it.—*Dill* v. *The State*, 1 Tex N. S. 278.

GENERAL NOTES.

In the year 1823 some curious evidence was given before a Committee of the House of Commons appointed to inquire into the existing mode of engrossing bills, with the view of ascertaining whether it was susceptible of altera-

tions with advantage to the public service. The Parliamentary Counsel to the Treasury said: "I have always found the oldest hands the most legible; the court hand, which was the original hand for records, was, perhaps, the handsomest hand that ever was written; the present engrossing hand results from the court hand; I find it more easy to read the engrossing or the Court hand than any other hand whatever." An officer of the Court of the Court of Common Pleas gave evidence to show that modern writing would not remain legible any length of time as compared with the "court hand." There is no doubt that the writing and the ink in England four centuries ago were admirable.

—Mr. James W. Gerard, of the New York bar, was in a case where his client, plaintiff, sat beside him, holding a gold-headed cane. The merits were with the plaintiff, but the jury went out and remained out. Eleven of them were in favor of the plaintiff, but the remaining man would not listen to reason, nor did he seem at all inclined to give any ground for holding out. They so remained for a great length of time. At last this one was induced to say why he would not agree with the others. 'I never will find a verdict in favor of a man who carries a gold-headed cane.' This still checked the others; and one of the eleven seemed to begin to waver; and appeared to give in to the propriety of the principle which was involved in this ostentatious exhibition of a gold-headed cane; but he, significantly, called the obstinate one aside, and told him how he himself, while they were all in court, had particularly observed and been offended at this gold-headed cane, and experienced a similar feeling of repugnance against the plaintiff; and that this had caused him to pay particular attention to the cane, and he had ascertained, as a fact, that it was not gold —only pinchbeck—mere brass metal. The obstinate juryman accepted this assurance, and agreed, with his fellows, in finding a verdict for the plaintiff.

A CURIOUS WILL.—We take from the Boston *Advertiser* the following account of the mode in which a testator punished his avaricious relatives by a clause in his will which was made to depend upon their conduct. The *Advertiser* says:—"A curious will has just been settled in Berlin, containing a moral worth a wider circulation than a miser's last statement often obtains. The poor man died, when, to general surprise, it was found he had left 34,000 marks. The 30,000 in a package, signed and sealed, was to be given to his native town in Bavaria; 1,000 each to three brothers, and 1,000 to a friend with whom he had quarreled. It was stipulated that none of the four should follow the body to the grave, which suggestion the three brothers gladly accepted, but the quarreler walked alone and forfeited his 1,000 marks, for the sake of paying a last mitigating honor. When the package was opened for the town, it disclosed another will, giving the 30,000 to any of the four who should disregard the stipulation."

ENGLISH LAW.—The *Solicitors' Journal* thus speaks of the growth of English law during the past year: "As to the growth of English law during the year, there is little to be said. The last session produced several administrative acts, such as the Prison Act and the Solicitors' Examination Act; but, as regards alterations in the substance of the law, it was almost a blank. There were two or three comparatively small changes in real property law, an amendment of the Factors' Acts, and a useful consolidation of the Settled Estates Acts, but little more. Nor can we point to many judicial decisions of wide-reaching scope or great importance. The recently devised doctrine of the fiduciary relationship of the promoter has been again laid down; and the doctrine of contempt of court, which at one time threatened to assume alarming proportions, has been opportunely checked by the Court of Appeal, which, in reversing a singular decision of Vice-Chancellor Malins, stated that 'the exercise of this arbitrary jurisdiction ought to be most jealously and carefully guarded;' that a court 'ought not to resort to it except in cases where no other remedy is to be found;' and that it was 'a power which ought only to be used in extreme cases.' It is in lengthy criminal inquiries and in ecclesiastical law cases that the year has been mainly memorable. The case of *Clifton* v. *Ridsdale* has probably settled for some time the questions as to external observances; and the case of the Rev. Arthur Tooth, who after being 'attached by his body until he should have made satisfaction for his contempt,' succeeded in placing his heel on the neck of Lord Penzance, has brought home to the public at large a profound conviction of the mysterious uncertainty of ecclesiastical law."