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VICARIOUS LIABILITY.

An interesting question is raised in the recent case, *Sherjan* v. *Alemuddin*.[1] The defendant had obtained a decree for money against the plaintiff and three others and had taken steps to execute it against the judgment-debtors other than the plaintiff. The defendant's agent having a grudge against the plaintiff procured the attachment and sale of his cattle in spite of the tender of the sum which was due.

On those facts the question arose on second appeal whether the defendant could be made liable in damages. The question was decided against the defendant on the ground that he employed the wrong-doer as his agent and that it was immaterial that the particular act was not done for the defendant's benefit.

The judgment may fairly be said to be based on *Lloyd* v. *Grace*[2], a case which it is easy to show is utterly unlike the Indian case. In *Lloyd* v. *Grace*[2] the wrong-doer was an agent in the sense in which that word is used in S. 182 of the Contract Act. Being a solicitor's clerk he was employed by the defendant to represent him "in dealings with third persons," to wit, with those who might seek his services as clients. Employing him in this way he represented him as a person on whose honesty a skilled client could rely. The plaintiff being led to put his trust in the clerk and being defrauded by him was in justice entitled to say that the fraud of the agent was the fraud of the principal and it was immaterial that the fraud was committed by the clerk for his own gain and not for the benefit of the defendant. The solicitor who invites clients to have their business transacted by a managing clerk may be said to guarantee the honesty of the clerk and so to render himself liable for his misdeeds. The difference between the facts of this case and those of the Calcutta case is obvious. In the latter the agency was not of the kind indicated above; there was no representation or undertaking. It

1. (1915) I. L. R. 43 C. 513. 2. (1912) L. R. A. C. 716.

may be said that the agent was put into a position to do the wrongful act and language of that sort is used in the judgment. But the same may be said with regard to a coachman and his master. The coachman in the employment as driver of a carriage may do injury to a third person on the high road and may render his master liable for it. But to establish such liability it does not suffice to prove the fact of employment; it must further appear that the coachman was at the time driving on his master's errands for the master is not liable for the negligence of a servant who is using the carriage for his own amusement, *Saunderson* v. *Collins* [1]. Similarly with the agent in the Calcutta case, it might be thought that the employer having directed him to attach the property of A could not be made liable for his conduct in attaching the property of B.

Another class of cases still more closely in point might well have been cited. I refer to the cases relating to the liability of sheriffs for the acts of their officers, and there are also cases relating to bailiffs such as *Lewis* v. *Read* [2]. This latter certainly does not support the judgment. As to the sheriff's cases they stand on a peculiar footing for the sheriff is liable for everything done by colour of the warrant.

In the old case, *Saunderson* v. *Baker* [3], the sheriff was held liable for the act of the officer who by mistake arrested the wrong person. That is intelligible enough. Even if there are cases in which the sheriff has been made to pay damages for the deliberate arrest of the wrong person, they would not, regard being had to the peculiar position of sheriffs as public officers lend any material support to the view taken in Calcutta.

As to the cases other than *Lloyd* v. *Grace* [4], cited in the report, most of them belong to the same class. There are two however in which the agency more closely resembled the agency in the Calcutta case and neither of them lends any support to the judgment. In *Burmah Trading Co.* v. *Mirza Mahomed* [5], the tort consisted of conversion of the timber of a trader carrying on business in rivalry with the defendant. The charge broke down for failure to prove the alleged agency at the particular date, but in the judgment prominence is given to the absence of proof that the act

1. (1904) 1 K. B. 628.
2. (1845) 13 M. & W. 834.
3. 3 Wils. 309.
4. (1912) L.R. A.C. 716.
5. (1878) L. R. 5 I. A. 137.

charged was done for the benefit of the defendant. In the other case, *Gopal Chandra* v. *Secretary of State* [1] the decision was also in the defendant's favour.

On principle it is difficult to see why a man should be held responsible for an act quite different from that which he ordered to be done. You give directions for the seizing of some named person's goods and your agent arrests his person as in *Richards* v. *West Middlesex Water Co.* [2]. How is that different from the case when the agent deliberately seizes the goods of B. instead of those of A? Cases of mistake stand on a distinct footing. It is reasonable enough that the man employing an agent for such purposes should be deemed to guarantee due care in the performance of the act. An act done by an agent under mistake may come as the act of the principal, since the latter might himself have made the mistake. It is a long step further that the High Court of Calcutta has taken. It must be remembered that the lamentably meagre report gives no particulars as to the degree of control over his agent exercised by the defendant or the latter's knowledge or experience of the agent's character which might on the analogy of the cases concerning the liability of persons keeping dangerous animals be material.

If there were any special circumstances there is nothing to show that they weighed with the Court. The case as reported is authority for the broad proposition that an agent directed to do a lawful act in regard to a named person and deliberately acting in a similar way against another person and thus doing for his own purposes a patently wrongful act may involve his employer in liability for damages.

H. H. SHEPHARD.

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1. (1909) I.L.R. 36 Cal. 647. 2. (1885) 15 Q. B. D. 660.

SUMMARY OF ENGLISH CASES.

John Russel and Company, Limited *v.* **Cayzer Irvine and Company, Limited :** (1916) 2 A. C. 298.

Practice—Service out of Jurisdiction—Rules of the Supreme Court, O. XI, R. 1 (g)—Writ issued against two defendants domiciled in Scotland—Acceptance by one defendant—Service out of jurisdiction on the other defendant cannot be ordered.

Where a writ was issued in the King's Bench Division, against two defendants both of whom were resident in Scotland and one of whom was served on his London Solicitor who accepted service and submitted to jurisdiction, service out of jurisdiction cannot be ordered on the other defendant under O. XI, R. 1 (*g*) of the Rules of the Supreme Court which provides that "service out of the jurisdiction of a writ of summons or notice of a writ of summons may be allowed by the Court or a Judge whenever any person out of the jurisdiction is a necessary or proper party to an action *properly brought* against some other person duly served within the jurisdiction."

In the words of Lord Sumner, the words "properly brought" enure to the protection of the person out of the jurisdiction whom it is proposed to serve with process. The persons who are already defendants in the action, although they may submit to the jurisdiction and so preclude themselves from raising any objection, cannot affect the rights of third parties.

Per Lord Wrenbury : "Properly brought" in the rule means at any rate, includes brought with a due observance of the process of the court against a person who could properly be served with the process of the court and not because he chooses voluntarily to submit himself to the jurisdiction of the court.

Daimler Company, Limited *v.* **Continental Tyre and Rubber Company, (Great Britain) Limited :** (1916) 2 A. C. 307.

Alien enemy—Company incorporated in England—Share capital held by alien enemies—Trading with enemy—Right to sue—Secretary, right to bring action on behalf of Company.

A company incorporated in England but all of whose shareholders excepting one were Germans residing in Germany was formed for selling Tyres in England. All the directors were also Germans residing in Germany. In an action for the recovery of a trade debt by the Secretary of the Company two

pleas were raised: (1) that the company was an alien enemy and payment thereto would be trading with the enemy, (2) the Secretary had no authority to bring the action on behalf of the company.

With regard to the first plea, *held* by Lords Shaw and Parmoor: A company incorporated in England and carrying on business in England though the shareholders thereof are alien enemies is not an enemy company or company of enemy character.

By Lord Halsbury: Such a corporation is in substance an enemy partnership and a payment thereto is clearly trading with the enemy.

The mere machinery to do an illegal act will not purge the illegality. No person or any body of persons to whom attaches the disability of suing in a state of war can shield the payment of money to an enemy under the machinery of a company.

By Lords Atkinson, Parker, Mersey, Kinnear and Sumner, circumstances touching the control and management of the company ought to be investigated to see whether the company had assumed an enemy character.

Held, on the second plea, the action was commenced by the Secretary without authority.

In re **Lodwig**: **Lodwig** *v.* **Evans**; (1916) 2 Ch. 26 C. A.

Will—Construction—Vested or contingent interest—Bequest to children when the youngest attains 30—Children dying under 30—Rights of.

Where a testator gave his residuary realty and personalty to trustees upon trust to sell and convert and out of the proceeds to pay a weekly sum to his daughter-in-law until the youngest of her children by his son should attain the age of 30 years, and directed that after the youngest of his said grand-children should attain that age the trust funds should be divided between his (the testator's) daughter-in-law and her said children in equal shares, and in the event of any one of his said grand-children dying leaving lawful issue him or her surviving the share of the parent so dying should be divided between his or her children, *held*, upon the construction of the will, that there was nothing to make the gifts to

the grand-children contingent merely by reason of the fact that postponement of the division was directed until the youngest grand-child attained 30.

In re **Roberts : Roberts** *v.* **Morgan** : (1916) 2 Ch. 42.

Will—Construction—Gift to tenant for life—Remainder as to specific properties to testator's children—Gift over if child should "die without leaving legal issue"—Period of division—Period of Vesting, of indefeasible Vesting—Leaning of Courts.

In cases with regard to real estate, the court leans in favour of vesting at an early period rather than at a later period, and leans also to a construction which will give an indefeasible vesting earlier rather than later.

By his will a testator gave his wife a life-interest in all his property, and then from and after her decease he divided his property amongst his four children in the following way: He gave property called T and £ 100 in money to his son J; he gave £ 1000 secured by way of mortgage on other property for the use and benefit of one of his daughters; and he gave a third estate between his other two daughters. The will also declared that "if any of my (testator's) said daughters or son die without leaving legal issue, her, their, or his share shall be divided equally between the survivor or survivors of him or her or them so dying without leaving legal issue, share and share alike as tenants in common and not as joint tenants."

Held, that the gift over was limited to the event of the child of the testator dying without leaving legal issue during the life of the testator's widow but that it did not extend to any event occuring after her death.

In re **Stanley's Settlement : Maddocks** *v.* **Andrew :** (1916) Ch. 50.

Deed—Settlement—Construction—Estate for life by implication.

When by a settlement the settlor assigned certain lease-hold property to trustees upon trust to pay the balance of the income thereof to his two daughters, M. and R, for their natural lives "as

tenants in common and not joint tenants" and "from and after the decease of the survivor of them then to the use of their respective child or children, share and share alike, as tenants in common and not as joint tenants," *held* (1) that each of the daughters took a life-estate in remainder in the other daughter's share on that daughter's death, on the principle that a life-interest was to be implied in favour of the survivor of the tenants in common and (2) that the gift in remainder was of the whole corpus to all the children of both daughters as one class and not of the corpus to the child or children of one daughter in that daughter's share only.

Cassel *v.* **Inglis**: (1916) 2 Ch. 211.

Stock Exchange—Member—Application for re-election—Discretion of committee empowered to elect if they deem eligible—Refusal of application—Reasons not given—Candidate not heard—Validity of refusal—Conditions.

Plaintiff was a member of a Stock Exchange which was governed by a deed of Settlement and rules made thereunder. Rule 21 gave the committee, in whom the management of the undertaking was vested, the duty of re-electing a member if they *deemed* him *eligible*, whether any charge was made against him or not. In March 1916 the plaintiff applied for being re-elected but his application was rejected by the committee without any reasons being given for their doing so. The plaintiff was not also given an opportunity of offering any explanation which might have induced the committee to re-elect him. Under these circumstances the plaintiff commenced the action for a declaration that the decision of the committee rejecting his application was invalid and inoperative inasmuch as he had not (*a*) been informed of the objection to his re-election and (*b*) been given a proper opportunity of being heard in respect of that objection. He neither alleged nor proved that the committee wrongfully held him guilty of any offence, nor that any specific charge was made or decided against him, nor that the committee acted from any improper motive, nor that their decision was not come to and their procedure selected in the circumstances within the limits of honesty, reason and justice. *Held*, that the Committee had the right to decide how and by what procedure they would carry out

the fiduciary duty committed to them, that in the absence of evidence to the contrary they must be assumed to have to come to a conclusion against the plaintiff for some good and sufficient reason connected with the true interests of the Stock Exchange and that their right to do so under the rules should be preserved to their *cestuis que trust* as a whole.

Held further that (1) cases relating to the procedure of a private or non-judicial tribunal selected to deal with an existing issue *inter partes* and (2) authorities on the expulsion of members from clubs and other societies for misconduct had no bearing on the question to be decided.

Lovesy *v.* **Palmer**: (1916) 2 Ch. 233.

Agent—Contract on behalf of undisclosed or unnamed principal—Right to sue on Contract—Liability to be sued on it.

An agent, who contracts only on behalf of an undisclosed or unnamed principal, and not on his own account, can neither sue nor be sued on the agreement.

Sebright *v.* **Hanbury**: (1916) 2 Ch. 245.

Practice—Interrogatories to persons not parties when allowed or not allowed at instance of plaintiff—Supreme Court Rules—Or. 28, R. 12; Or. 31, R. 1—Effect.

Interrogatories relating to the names of persons not already parties to an action are only allowable where the object is either to make the proceedings complete and effective for all purposes or to enable the plaintiff more effectively to substantiate the case which he makes against the existing defendant. Plaintiff is not so entitled where the result would be in one, and the only relevant, event to discharge the defendant from all liability.

In re **Borwick's Settlement Woodman** *v.* **Borwick**: (1916) 2 Ch. 304.

Grant—Settlement—Condition inconsistent with—Condition repugnant to Public Policy—Settlement of share on infant. Maintenance allowed to infant if he should not be in custody or control of his father—Validity of condition.

Where by a Voluntary Settlement a share of £ 10,000 Stock was settled upon an infant grandson of the settlor by his daughter, who was given a life-interest therein and the trustees of the settlement were empowered at their discretion to apply any part of the income of the £ 10,000, not exceeding 500 £ a year, for the maintenance, education, and advancement or otherwise for the benefit of the infant but were directed to discontinue such payment whilst the infant should be "in the custody or control" of his father, or his father should "have anything to do with his education or bringing up," *held* in a suit by the infant by his father as next friend, for the allowance payable to him under the settlement (the father not being willing to give up the custody or control of the infant and his education) that the condition affecting the father was not repugnant to the interest given by the settlement or contrary to public policy and that the infant was therefore not entitled to the allowance.

Kaufman Brothers *v.* **Liverpool Corporation:** (1916) 1 K, B. 860.

Public authorities—Protection—Limitation of action for claim for Compensation under Riot Act—Whether "act, default or neglect in the execution of any Act, duty or authority."

Under the Riot Act, a person whose shop or house was destroyed or damaged by riot could claim compensation at a certain rate from the Police authority and there was also provided a right of suit for the person against the Police authority in case they do not fix the compensation or if he is dissatisfied with the amount fixed. Where a person brings a suit alleging deficiency in the amount of compensation, such a suit is not one brought for any act, neglect or default in the execution of any act, duty or authority within the meaning of the Public Authorities Profection Act, S. 1; and the limitation of time for bringing an action under that section does not apply.

Lester *v.* **Hickling**: (1916) 2 K. B. 302.

Sale of goods—Bill of Sale—Subsequent agreement—Defeasance—Bills of Sale Act (41 and 42 Vic. C. 31) S. 10 Sub-sec. 3—Bills of Sale Act (45 and 46 Vic. C. 43) Ss. 8 & 9.

Subsequent to the execution of a bill of sale and as a distinct transaction, an agreement was entered into between the grantor

and the grantee that the latter would not enforce the bill of sale so long as the grantor continued to pay money in certain instalments. The Bill of sale was registered without the terms of the subsequent agreement being included in it.

Held, that the agreement, not having been made previous to or contemporaneous with the giving of the bill of sale, was not a defeasance within S. 10, Sub-sec. 3 of the Bills of Sale Act, 1878; that it was therefore unnecessary that the agreement should be included in or written on the same paper or parchment as the Bill of sale; and that the Bill of sale was good.

Malzy *v.* **Eichholz**: (1916) 2 K. B. 308 C. A.

Landlord and Tenant—Covenant for quiet enjoyment—Express or implied—Nuisance by another tenant of lessor—Liability of lessor, extent of—Derogation from grant.

If there is an express covenant dealing with a particular matter as to the demised premises there is no room for an implied covenant covering the same ground or any part of it.

A lessor is not liable in damages to his lessee under a covenant for quiet enjoyment, for a nuisance caused by another of his lessees, merely because the lessor knows that the latter is causing the nuisance and does not take active steps to prevent the commission of the injurious act. There must be active participation on the part of the lessor, in the act complained of, in order to make the lessor personally liable.

A common lessor is not bound to exhaust for the benefit of one of his tenants, all the powers that he may have under agreements with other tenants.

Cescinsky *v.* **George Routledge and Sons, Ltd**: (1916) 2 K. B. 325.

Copyright—Joint owners—Infringement by one—Injunction—Copyright Act (1 and 2 Geo. 5 C. 46) Ss. 1 sub-sec. 2, 2 sub-sec. 1.

Where the copyright in a book of which the plaintiff was the author was vested in the plaintiff and the defendants equally, and the defendants, without the consent of the plaintiff, published another book, which was an infringement of the copyright in the plaintiff's book,

Held, that the plaintiff was entitled to an injunction restraining the defendants from infringing the copyright, notwithstanding the fact that the defendants were part owners of the same.

J. R. Munday, Limited *v.* **London County Council**—(1916) 2 K. B. 331 C. A.

Practice—Costs—Payment into Court—Suit for damages caused by negligence—Denial of liability—Admission of Negligence—Damage denied—Form of Notice—County Court Rules, 1903 and 1914, O. 9, R. 12.

In a suit by the plaintiffs in the County Court, for damages for injury to their horse caused by the negligence of the defendants' servant, the defendants paid into Court, under O. 9 R. 12 of the County Court Rules 1903 and 1914, a sum of £ 40 with the following notice: "Take notice that the defendants admit that the accident was caused through their negligence, but they deny the alleged damage, and, whilst in this manner denying liability, they bring into Court, and say that this sum is enough to satisfy the plaintiff's claim." *Held*, that the notice was neither embarrassing nor a sham, but a proper and valid notice, and that the notice admitted negligence, though it put in issue the damage alleged. The plaintiffs having been awarded only £ 40 as damages, were not entitled to their costs.

Where there is a payment into Court with an admission of liability the plaintiff can take the money out; where, however, there is a denial of liability, he cannot get the money out until he has established the liability of the defendant, unless he takes it out in satisfaction of his claim.

Lord Ashburton *v.* **Gray**: (1916) 2 K. B. 353 C. A.

Costs—Discretion of Court—Limits of—Arbitration—Powers of Arbitrator—Legislative provision for compulsory Arbitration—Agricultural Holdings Act (8 Edn. 7 C. 28) Sch. ii, Rr. 14 and 15.

In exceptional cases and for sufficient reasons, a Court can, notwithstanding the success of the plaintiff in an action, order him to pay the whole of the costs thereof. But a Court has no power to order a defendant to a successfully resisted claim to pay the whole costs of the action. In the one case the plaintiff comes to the court, and the court has complete control. In the other case the defendant never wishes to be there, but is brought there at the summons of the king at the instance of the plaintiff.

Where there has been a reference to arbitration under the compulsory provisions of the Agricultural Holdings Act, 1908, the arbitrator has no wider discretion than a Judge of the High Court to deprive a successful party of his costs of the proceedings. In ordinary circumstances, a plaintiff who has succeeded in recovering a substantial sum, though much less than his claim, should not be made to pay the costs of both parties, unless the court finds that the plaintiff never ought to have taken the proceedings or has been guilty of misconduct.

The case of an arbitration under the Arbitration Act, 1889, where the parties have submitted the question of costs to a tribunal selected by themselves, is different.

Capel *v.* **Soulidi** (1916) 2 K.B. 365 C. A.

Shipping — Charterparty— Construction —"Commandeer," meaning of.

The owner of a Greek ship chartered her for 12 months to the plaintiffs in England, to carry certain cargoes within the limits specified in a Charterparty dated 6—5—1915. It was a term of the Charterparty that if the ship should be 'commandeered' by the Greek Government, the Charterparty should be cancelled. While the ship was lying at Marseilles discharging cargo for the charterers, the Greek Government on 25—9—1915 sent an order to the captain of the ship directing him to proceed to Greece and to place the ship at their disposal, if they should desire to use it. On 11—10—1915, while the ship was still at Marseilles, the Greek Government withdrew their order and released the ship. *Held* that the ship was effectually 'commandeered' and that the Charterparty was thereby cancelled.

(1916) 1 K. B. 439, affirmed.

Heath's Garage, Limited *v.* **Hodges**: (1916) 2 K. B. 370 C. A.

Tort—Nuisance—Highway—Sheep straying on highway—Damage to vehicle using highway—Liability of owner of land to fence it—Duty to the public.

Apart from special legislation, it is no part of the duty of an owner or occupier of land adjoining an ordinary highway to fence it so as to prevent harmless animals like sheep from straying upon the highway.

The plaintiffs sued for damage to a motor car alleged to be caused by the negligence of the defendant in the following circumstances. While the car was being driven along a highway in the daylight, at a moderate speed, several sheep were going unattended on the highway, having escaped through the gaps in a defective hedge on the defendant's land. The car stopped but two sheep ran into the car and caused it to be overturned and damaged. *Held*, dismissing the suit, that the defendant was under no duty to the plaintiffs as members of the public using the road, to keep his sheep from straying upon it and that the accident was not the direct and natural consequence of the breach of any duty on his part.

The King *v.* **Watson :** (1916) 2 K. B. 385 C. A.

Receiving stolen goods—Essentials of offence—Negotiation for sale of goods, not enough—Possession or control essential.

A person who negotiates for the sale of goods which he knows to have been stolen cannot be convicted of receiving the goods knowing them to have been stolen unless it is also proved that he has been in possession or control of the goods either by himself or jointly with the receivers.

Greene *v.* **Greene :** (1916) P. 188.

Restitution of Conjugal Rights—Reasonable cause—Burden of Proof—Matrimonial offence, absence of—Discretion of Court to refuse relief—Tests of—Impossibility of Co-habitation.

Where in a suit by a wife for restitution of conjugal rights, the husband pleads that there was reasonable cause for his having separated himself from his wife, the onus of proving it rests on him.

Even in the absence of proof of a matrimonial offence on the part of the plaintiff, in a suit for restitution of conjugal rights, the Court has a discretion to refuse relief. The fact that the wife has developed habits of intemperance and exhibits undue jealousy of her husband and frivolity of conduct, does not constitute a defence to an action by her for restitution of conjugal rights. Where the husband pleads reasonble cause for leaving the wife, and the wife seeks restitution the Court should refuse relief to the latter only if it has become practically impossible for the spouse to live together.

The Bangor: (1916) P. 181.

International Law—Prize Court—Neutral Vessel—Enemy service —Capture in Neutral Territorial Waters—Validity.

It is a well-established rule of International Law that neither an enemy, nor a neutral acting the part of an enemy, can claim the restitution of a captured vessel on the sole ground that the capture took place within neutral territorial waters; and that it is only by the Neutral State whose neutrality has been violated that the validity of the capture can be questioned.

JOTTINGS AND CUTTINGS.

The Law Dinner.—We are glad to say that this year's Law Dinner which came off last Saturday was as great a success as any of its predecessors and it had this unique feature in addition that it was presided over by an Indian Advocate General and the principal guest of the evening, the Chief Justice was an Indian. At the time the institution was started by Mr. Corbet (who, we are glad to learn, is improving and will be able shortly to return) though no doubts were felt as to its utility considerable misgivings were entertained as to its feasibility but these misgivings have all been dispelled by the success that has attended the movement. As we said, no doubts were at any time felt as to its usefulness and we feel sure that the words of the learned Officiating Chief Justice wishing for its permanence, will have ready response all over the country. Even as a ceremonial we think such an institution has a great value. It brings into prominence the unity of purpose that runs through us all, the Bench and the Bar, high and low, no matter whether High Court Judge, District Judge, or Subordinate Judge, Advocate, Vakil or Solicitor. We have no reason for existence, any branch of us, except as collaborators in the sacred task of administering justice. By being reminded of that once in a year, even in a spectacular way, we have no doubt, we will be considerably helped in realising that service to the community is the reason for our existence and after all, their good must be the governing factor in all our movements. The arrangements were excellent and did great credit to those that were in charge of them. Lateness of the hour is hardly congenial for the appreciation of lengthy speeches and we are glad that the speakers recognised this fact.

English Barrister in French Court.—For the first time on record (says the Paris Correspondent of the Daily Telegraph) a member of the English Bar has pleaded in a French Court. The case was unimportant—a suit between a tradesman and an ex-Sultan of Zanzibar—but the interesting point is that a precedent has been established. Mr. Perdrau, of the Middle Temple, was especially authorised to appear as counsel for the ex-Sultan. Maitre Henry Robert, Batonnier of the Order of the French Advocates, made a particular application for the admittance of the English Barrister to plead in the French Court, and appointed a well-known French Lawyer, Maitre Ambelouis, to assist him. The Court granted the application as a compliment to the English Bar, and in consequence of the alliance in arms between France and England. The precedent being thus established, in future members of the English Bar will probably be allowed on occasion to plead in French Courts, a thing they have never been able to do before.—*Law Journal, August 5.*

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Length of Trials.—'How long do you think your case will take?' Sir George Jessel once asked a well-known Q. C. not accustomed to the ways of his Court. 'Quite a long time, my lord: my opening speech will take at least three days,' was the reply.

'Not in my Court, sir, it won't' responded the most rapid of modern Judges. And it did not. But Jessel had less reason than has the Chancery judge of to-day to keep in view the possibility of an appeal. A Judge of first instance in these days knows that any attempt to cut short a trial may eventually result in protracting the proceedings by provoking one of the parties to take the case to the Court of Appeal.—*Ibid.*

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Beards and Inns of Court.—Nowhere was there more prejudice against beards than at the Inns of Court centuries ago. The 'Black-books' of Lincoln's Inn of the 16th century (says the Daily Chronicle) are full of references to offenders who were 'fyned double comens durynge such tyme as they shall have any berde.' This proving ineffective, a whole batch of bearded Barristers was in 1554 'banysshed from ye Howse,' and shortly afterwards a Judge's order was obtained for the compulsory shaving of some of the members. The Inner Temple benchers were not quite so severe for a fine of 20 *s.* was the sole penalty imposed in 1555 for 'wearing beardes of more than three weekes growthe.' The war against bearded barristers continued at the

Inns of Court until the 17th century. Long after this, however, the prejudice against the unshaved barrister remained. The late Vice-Chancellor Bacon carried his dislike so far that he always refused to listen to bearded or moustached counsel, pretending that he could not hear them. Even now, although there are plenty of bearded barristers and K. C.'s, few have attained eminence. The most brilliant exception was perhaps the late Judah Philip Benjamin, 'silver tongued Benjamin,' who despite of his moustache and American "Goatee" earned the princely income of 35,000 £ *a year.—Ibid.*

CONTEMPORARY LEGAL LITERATURE.

Unlike Wordsworth who had a very poor opinion of lawyers Charles Lamb had many lawyer friends whose friendship he warmly cherished and for which. says a writer in the *American Law Review*, July-August, the legal profession should gratefully remember his memory. "The poet's Epitaph in the Lyrical ballads" he indignantly wrote to Wordsworth, "is disfigured to my taste, by the vulgar satire upon parsons and lawyers." Lamb objected specially to Wordsworth's following stanza:

"A lawyer art thou? draw not nigh!
Ed, carry to some fitter place
The keenness of that practiced eye
The hardness of that sallow face."

Making Bacon's Lost Rules and Decisions the peg, another writer hangs his panegyric on Roman Law which he considers infinitely superior to all other systems of Law. According to the writer in the History of English Law, Bacon represented the Roman system, Coke the feudal or the common law. The latter specially owing to its appeal to insular prejudices gained predominance, he thinks, with disastrous consequences. He wishes that instead of the Common Law, the American people accepted the Civil Law for instance as enacted in the Code Napoleon to the infinite advantage of the litigant public. It is to be noticed that Japan in search of a perfect system of jurisprudence for her country, adopted the Civil Law in preference to the English.

Another writer considers the history of lawyer's fees. In Greece and Rome, till the very end, the lawyer's services were purely gratuitous and it is said of Cicero that he proudly declined to accept any portion of the honorarium which the people of Sicily offered for his services in the trial of Verres. The same holds good in theory in England though in practice, the only net

result of it is that the advocate is not liable for neglect though he receives fees. In the United States of America, with the single exception of the State of New Jersey, which yet adheres to the English rule, it has been long held that a contract between a lawyer and his client for compensation for his services, is enforceable like any other contract between laymen subject to this qualification that it is improper to stipulate for a portion of the thing in action, though it is not deemed improper to stipulate for a fee bearing a proportion to the value of the subject-matter. This distinction the writer thinks is unsound and reminds one he says, of Gilbert A. Becket in the comic Blackstone when he states that when an Act of Parliament is repealed and thereafter the repealing statute is repealed, the repealed Act is thereby revitalised and put in operation on the theory that if A kills B and C kills A, B is thereby instantly restored to life. Speaking of "refresher" he says that this made its first appearance in *the trial of Q.* v. *Castro* [1] (sequel to the Tichborne Case) in which Mr. Kenealy had to be frequently regaled with these refreshers to give him power to stand the strains of a six weeks' address to the Jury.

Another writer in the same journal gives a description of the British constitution and institutes some interesting comparisons between the American and the British constitutions. It is almost as difficult he says to radically change the British constitution as the American though changes have been effected. In the last century there were 5 amendments to the federal constitution. During the same period, England also had practically the same number of changes in her constitution—the Reform Bill, manhood suffrage, the ballot abolition of the property qualification for membership of the House of Commons, the removal of Catholic and Jewish disabilities and the Parliament Act.

The journal of Comparative Legislation (July 1916) contains many articles of interest. In one of them Mr. Reason Pyke urges the desirability for the setting up of an International tribunal. On the one hand the Government should not be able to shelter itself behind its own judges; on the other, the judges should not be able to hamper the Government in any regularised use of its sea power for the successful prosecution of the war. Another writer gives a summary of the rights and duties of Public trustees in the different parts

1. (1916) 2 A.C. 97.

of the British empire. In another article Mr. Walter George Smith describes the amount of success that has attended the efforts of the conference for uniform State Laws in the United States of America. Another article is about the legal procedure in Canada which seems to be largely based on the English model. From the Courts of different States there is an appeal to the Supreme Court of Canada from which an appeal lies by leave to the Judicial Committee. The Supreme Court seems to have many consultative functions in addition to its purely judicial functions. Exchequer Court is a peculiar institution which deals with actions against the Crown or certain actions against public bodies. Professor Courtney Kinney describing the case method of teaching Law inaugurated by Professor Langdell points out some of its advantages over the lecture system. Dr. Keith compares the constitution of Canada with that of India. A short account of the Indictments Act is given by Mr. G. Glover Alexander which by simplifying the law on the subject, has made the recurrence of the scandals such as were witnessed in the 17th and 18th centuries by technical flaws in Indictments impossible.

Sir John Macdonnel urges the codification of the commercial laws of the Empire which have already approximated to each other to a large extent. Norway is taking the lead in the new kind of legislation which tries to protect the rights of children born out of wedlock by giving those children rights of inheritance to both the parents and casting upon the parents the duty of maintaining and educating them. Dr. Blake Odgers traces the sources of the influence of Rousseau's Theory of socia. contract. The doctor thinks that it owes much of its power to the style and manner of the author. It will be found that Rousseau drew his inspiration in respect of most of his theories from the Bible which he had carefully studied.

A writer in the Canadian Law Times discusses the extent to which the appellate court should interfere on questions of fact. He says that the rule that the findings of fact should not be interfered with when resting on the credibility of witnesses seen by the Judge is not absolute and admits of exceptions. The rule has little or no application when the evidence is not purely oral or when the Judge has not himself seen the witnesses.