LAW REPORT, July 21.

SUPREME COURT OF JUDICATURE.

COURT OF APPEAL.

(*Before* LORDS JUSTICES LINDLEY, LOPES, *and* CHITTY.)

STROHMENGER V. THE BOROUGH OF FINSBURY PERMANENT INVESTMENT BUILDING SOCIETY.

This was an appeal against a decision of Mr. Justice Stirling (reported in *The Times* of the 1st inst., and in *The Times* Law Reports, vol. 13, p. 484) upon an application by the plaintiff, who sued on behalf of himself and all other members of the defendant society, for an injunction to restrain the society from acting upon certain alterations introduced into its rules by a general meeting of the society held on May 18, 1897, and from dealing with the funds and property of the society otherwise than in accordance with the rules of the society as they stood immediately prior to that general meeting. The question raised in the case was one of considerable importance to building societies generally—viz., whether, when a society has lost part of its capital, it can alter its rules so as to affect the rights of members, who have entered into contracts with the society under the rules as they previously existed, as to the repayment of their subscriptions—in other words, whether a society which has lost part of its capital can, like the shareholders of a company, by means of altering its rules, effect a reduction of capital and so avoid an immediate winding up. The plaintiff was the holder of fully-paid shares in the society, which was formed in 1863, and incorporated under the Building Societies Act, 1874. The rules of the society, as originally framed, provided (*inter alia*) as follows :—

"Withdrawal.

"Rule 71.—Any member may, subject to the provisions of Rules 73 and 91, withdraw all or any part of his shares upon giving one month's notice in writing, dating from any subscription meeting, to the manager, when such member shall be entitled to receive back his subscription, with such portion of the profits realized as may have been posted to his credit, either by way of interest or bonus, together with interest calculated up to the date of the notice.

There was no Rule 72.

"Rule 73.—In the event of the assets of the society being insufficient to meet the liabilities thereof the directors may order that a sum sufficient to discharge a proper proportion of such liabilities shall be deducted from the amount payable to any member on withdrawal. The decision of the directors as to the sum so to be deducted may be made either before or during the currency or after the expiration of the notice of withdrawal, but before compliance therewith. If, owing to the number of members desirous of withdrawing their shares, or to the amount of money available for the purpose, or on any other account, the directors are of opinion that the interests of the society require the postponement of payment to members who have given notice of withdrawal, the directors shall have power, whether the assets are sufficient to meet the liabilities or not, to postpone payment to any such members who have given notice of withdrawal, for a period not exceeding one year, and from time to time to continue such postponements for like further periods, or to direct such payment to be made in rotation, according to priority of notice, as the funds of the society will allow. The exercise of this powar shall not interfere with the payment of interest upon investment shares, unless the directors shall, in their discretion, declare otherwise. Provided always that, if any member having investment shares in the society desires to obtain an advance, the directors shall have power to repay to such member the whole or any part of such shares for the purpose only of being applied towards the purchase of the property proposed to be mortgaged to the society, and such payments shall have priority over all then existing notices of withdrawal, and the directors shall also have power in their absolute discretion to give priority to the notices of withdrawal given by representatives of deceased members.

"Rule 91.—The funds of the society shall be applied solely for the purpose set forth in these rules, and in manner therein provided. Firstly, in payment of all expenses of the society authorized by these rules. Secondly, in payment of the interest, dividends, or bonuses due to the holders of investment shares. Thirdly, in making advances to members, notwithstanding the currency or expiration of any notices of withdrawal by other members. Lastly, in repaying subscriptions to members withdrawing their shares."

The society had, from various causes, suffered considerable losses, and in 1896 the directors found that it was impossible to pay out any share capital of which notice of withdrawal had been given, and they determined to call meetings of the shareholders to consult with them as to whether they would prefer to wind up the society or carry it on under rules so altered as to enable the directors to pay out to withdrawing shareholders the amount actually due to them as represented by the assets of the society. Meetings were accordingly called, and at a special general meeting on May 18, 1897, it was resolved to adopt the following alteration of the rules :—"Rule 71.—Strike out the words 'his subscription' and substitute 'the amount standing to his credit in the books of the society.' Rule 72.—Insert as Rule 72, 'The amount due from the society to each member in respect of any share or shares held by him on the 1st day of December, 1896, shall be deemed to be and taken as 33-50ths of the net amount paid on such share or shares, anything in these rules to the contrary contained notwithstanding.'" The plaintiff objected to these alterations, and commenced this action for a declaration that they were *ultra vires* and invalid; and he moved for an injunction in the terms above mentioned. Section 16 of the Building Societies Act, 1874, provides that "the rules of every society hereafter established under this Act shall set forth (2) (*inter alia*) the terms upon which paid-up shares (if any) are to be issued and repaid." Section 18 enables societies under the Act to alter or rescind any rule or make any additional rule in the manner therein prescribed. The defendant society was established in 1863—*i.e.*, before (not after) the passing of the Act of 1874. The Building Societies Act, 1894, provides by section 1 :—"The rules of every society under the Building Societies Act established or substituting a new set of rules for its existing rules after the passing of this Act shall set forth (*inter alia*) (*c*) the terms upon which paid-up shares (if any) are to be issued and withdrawn." Section 28 repeals clause 2 of section 16 of the Act of 1874. By some oversight these provisions of the Act of 1894 were not brought to the attention of Mr. Justice Stirling, nor was he aware that the society had been established before the Act of 1874, though it was incorporated under that Act. Mr. Justice Stirling held that the new rule 72 was *ultra vires*, and he accordingly granted the injunction. In doing so he followed a decision of Mr. Justice Charles in "Knight v. the Tabernacle Building Society" (reported in the *Building Societies' Gazette* for July 1, 1892). In that case also the society had been established before the Act of 1874, though, so far as appears, the learned Judge was not aware of that fact. The defendant society appealed.

Mr. GRAHAM HASTINGS, Q.C., and Mr. WURTZBURG, for the appellants, argued that, inasmuch as it now appeared that section 16 of the Act of 1874 did not apply to this society, and that, even if it did, it had been repealed by the Act of 1894, there was nothing *ultra vires* in the new rule, there being nothing unjust or unfair in its provisions.

Mr. P. S. STOKES, for the plaintiff, argued that the new rule was not a fair one.

The COURT allowed the appeal.

LORD JUSTICE LINDLEY said he did not wonder that some slips had been made, and he hoped this Court would not make any. It was to observed that this society was established in 1863, before the Act of 1874, though it was afterwards incorporated under that Act. The question was by what Act was this society governed when they in May last resolved upon these new rules. The old Building Societies Act of 1836 had been wholly repealed by section 25 of the Act of 1894 as regarded this society. Consequently no argument based upon anything in the Act of 1836 could be legitimately used. Section 18 of the Act of 1874 enabled the society by a vote of three-fourths of the members to alter their rules. Section 1 of the Act of 1894 also applied. It applied every society established after the passing of the Act or substituting a new set of rules for its existing rules after the passing of the Act. Mr. Justice Stirling based his judgment upon this—that he had to consider section 16 of the Act of 1874. But that section did not apply, nor, indeed, did "Knight's case." The Court need not consider that which had been substituted for section 16. It came back to this—that some members said it was not competent to the society to pass the new rule 72. The reason why a majority of three-fourths of the members thought it desirable to pass this new rule was quite plain. The society had lost a large sum through the defalcations of one of its officers. It was a loss which fell upon all the members. There was nothing dishonest in the new rule. What was there in any Act of Parliament to render it illegal? His Lordship could not see anything. Even under section 16 of the Act of 1874, if it had applied, his Lordship thought it would have been perfectly competent to the society to do this. That which could have been properly and honestly done if the society had substituted an entirely new set of rules could not be rendered *ultra vires* by the fact that they only made an alteration in one rule instead of re-enacting the old rules with the one alteration. But for an accidental slip there would have been no difference between this Court and Mr. Justice Stirling. No one could be surprised at such a slip, looking at the state of the Building Societies Acts. Probably similar slips had been made by other Judges. As it was, the decision was founded on a mistake, and must be reversed.

LORD JUSTICE LOPES concurred. He said that the case stood upon section 18 of the Act of 1874, and that section authorized what had been done. It would not authorize an alteration of the constitution of the society, but it did authorize an alteration of the internal rights and management, and that was what had been done here.

LORD JUSTICE CHITTY said that the plaintiff's contract as a member had always been subject to alteration by new rules. What power of altering their rules had the society in May, 1897? The power was conferred by section 18, which gave to every member the safeguard of a vote of three-fourths of the members. A new rule could not change the nature and constitution of the society; it must be confined to the internal rights of the members. They could not say, We will not pay an outside creditor. In his Lordship's opinion the new rule had been fairly and equitably made. It was not directed against any individual member, but it dealt with all the members equally. This was one of the matters left to the discretion of the society, acting by the specified majority. It was for the benefit of all the members that the loss which had been incurred should be written off at once, and it was within the competence of the members to make this rule. The society could have made a new set of rules, and this rule 72 would have been justified if it had been contained in a complete set of rules. This was not the form which had been adopted, but in substance a new set of rules was made, when some alterations were made, leaving the rest of the rules standing.

It was then arranged that the motion should be treated as the trial of the action, and that judgment should be entered for the defendants.

HIGH COURT OF JUSTICE.

CHANCERY DIVISION.

(*Before* Mr. JUSTICE KEKEWICH.)

WURM V. WURM.

This was a singular action between two brothers, rival band proprietors. On July 22, 1896, the plaintiff, Anton Stanislaus Wurm, the proprietor of Herr "Wurm's Viennese White Band," obtained a perpetual injunction restraining his brother, the defendant, Moritz Wurm, from issuing, publishing, and circulating programmes, notices, and advertisements only colourably differing from those of the plaintiff, or representing or calculated or intended to pass off the band conducted, directed, or managed by the defendant as the band conducted, directed, or managed by the plaintiff and known by the above name, or from representing or leading to the belief that the defendant's band was the same as the plaintiff's or that the defendant was the plaintiff; and from making use of the copies of printed or manuscript music in the possession of the defendant, taken or made by him or on his behalf while in the plaintiff's employ: and the defendant was ordered to deliver up to the plaintiff all such copies of music. The defendant had been a violinist in the plaintiff's band from October, 1894, to September, 1895, when he left, and in December, 1895, started a band of his own under the name of "Herr Wurm's Viennese Blue White Band." His band had been performing at Romano's Restaurant, Strand, and it was said to have been playing musical selections which were copies by the defendant of selections played by the plaintiff's band during his (the defendant's) employment in it. The result was this action and judgment for the plaintiff granting an injunction as above mentioned. The matter now came before the Court again on two motions by the plaintiff to commit the defendant to prison for contempt in having, it was alleged, committed breaches of the injunction, one motion dealing with the first part of the injunction, which prohibited any representation that the defendant's band was the plaintiff's, and the other with the latter part of the injunction as to performing music from copies made by the defendant from the plaintiff's. The two motions were heard and argued separately. In support of the first motion the plaintiff relied on evidence to the effect that the defendant was still advertising his band with the collocation of the words "Wurm" and "Viennese," calling it the Red or Blue "Viennese Band," the letter "B." being prefixed to the name "Wurm," so that the public were led to think that the plaintiff had a red, a white, and a blue band. Then it further appeared that the defendant was employing the same agents, Messrs. Keith, Prowse, and Co., of New Bond-street, who had formerly been employed by the plaintiff, and who in their advertising books of entertainments still retained a photograph of the plaintiff and his band. The defendant said that he had two bands called the "Red" and "Blue," and that Keith, Prowse, and Co. had entered into arrangements with him for the exclusive services of himself and his bands, and made all engagements for those bands; but that he himself had no part in the framing or publication of any advertisements of his bands. It appeared, however, that he did not scruple to avail himself of the advertisements as relating to his own bands. The entertainment manager of Keith, Prowse, and Co. made an affidavit, in which he admitted that the issue of the photograph of the plaintiff's band had been continued by his firm notwithstanding their agency for the plaintiff had terminated, but said this had happened through inadvertence.

Mr. Warrington, Q.C., and Mr. Peterson appeared for the plaintiff; and Mr. Renshaw, Q.C., and Mr. Waggett for the defendant.

MR. JUSTICE KEKEWICH, in delivering judgment on this part of the case, said the case was so near the border-line separating honesty from dishonesty that he was by no means confident that he could administer accurate justice; but he would do his best. And in coming to the conclusion, which he did, that he could not make an order for committal he did so mainly on the ground that it was for the moving party to prove the dishonesty, not to leave it to the Court to assume or infer it. Messrs. Keith, Prowse, and Co. were not now before him, and he was anxious that nothing he said should be considered as unduly reflecting upon them, as they were not here, and had no opportunity of defending themselves. Therefore he did not wish to say that they had done anything wrong. They were not parties to this injunction, and could not be made parties to it; and therefore they were, in one sense, at liberty to do what might be reprehensible because they could not be restrained by any legal proceedings at present. Even if they were parties to the injunction he did not say he could make an order against them. But he did venture to suggest to them that advertisements such as this, and statements made by persons to the public, must be construed in this Court in the sense in which they were understood by the public; and that it was of no avail to say that the words of an advertisement, or a circular, grammatically meant so and so, when the inference of the ordinary reader would be of a different character. It was quite possible to say "Do" when you meant "Don't," and to say "Don't" when you meant "Do," and to be so understood. With regard to the defendant, Moritz Wurm, he had been restrained by the injunction from issuing any programmes, notices, or circulars only colourably differing from those of the plaintiff, or representing or calculated or intended to pass off the defendant's band as "Herr Wurm's Viennese White Band," and in his Lordship's opinion there was no evidence to show that he had done anything of the kind. He had taken advantage of the advertisements of Keith, Prowse, and Co., which his Lordship had not commented on critically; he could not bring home to the defendant those advertisements, otherwise he should have been obliged to comment on them critically. The defendant had taken advantage of those advertisements, no doubt, and had by those means obtained engagements, but it appeared that his bands were under the control of Keith, Prowse, and Co.; therefore, his Lordship might reasonably conclude that those advertisements were issued by Keith, Prowse, and Co., and not by the defendant. It would be an abuse of language to say that because the defendant took advantage of these advertisements he was "issuing and circulating" them. Therefore, his Lordship absolved the defendant from any breach of the first part of the injunction. Then he was further restrained from representing or leading the public to believe that his band was the same as the plaintiff's. Again, his Lordship did not see that the defendant had issued these advertisements which had been issued by Keith, Prowse, and Co., therefore his Lordship could not bring that home to the defendant, and he could not consider that these advertisements did in fact represent or lead to the belief in any way that the defendant's band was the same as the plaintiff's. There the matter rested. No doubt the defendant's band was in his own name. No doubt it was a "Viennese" band; he was not restrained from calling his band by his own name, or from calling it a Viennese band, or from calling it a Red or Blue band. Therefore, his Lordship could not put his finger upon anything the defendant had been enjoined from doing; though, no doubt, the defendant had, as Mr. Warrington said, been sailing very near the wind; the question was whether so near as to invite a capsize. Then as to the costs. Upon a motion for committal for breach of an injunction the case was "Yes" or "No"; if "No," the costs followed as a matter of course. This motion must, therefore, be dismissed with costs.

The second motion was then opened, which was a motion to commit the defendant for an alleged breach of the injunction in having performed music from copies taken by him while in the plaintiff's employ, and not having complied with the order for delivery up. It was asserted by the plaintiff that the defendant still retained in his possession, in spite of the order, some of these copies, and also that, since the injunction, he had obtained possession of copies of other music performed by the plaintiff, and in particular had been performing selections called *Tannhäuser-Lohengrin*, *Faust*, and "Musikalische Nachrichten," by Fischer. On the other hand, the defendant said that he had only performed selections made by skilled musicians at his request. There was a mass of affidavits on both sides.

Mr. Warrington, Q.C., and Mr. Peterson again appeared for the plaintiff; and Mr. Renshaw, Q.C., and Mr. Waggett for the defendant.

MR. JUSTICE KEKEWICH said that, although there was room for great suspicion, the case did not justify committal for breach of the injunction. He thought he ought to apply to a motion of this kind the principle recently stated by the Court of Appeal in "Fairclough v. the Manchester Ship Canal Company," where (he was speaking from memory) the Court expounded the nature of the evidence necessary to justify the Court in issuing sequestration against a corporation for breach of an injunction; and what was true of sequestration must be equally true of committal. It was necessary here to consider what was the subject-matter of the order. The defendant had been restrained from making use of copies of manuscript music taken by the defendant or on his behalf while in the plaintiff's employ. His Lordship would assume in the plaintiff's favour, without any argument or decision as to the exact meaning of the words, that the defendant would be wrong in using his memory of any printed or manuscript music notwithstanding that it had been destroyed or handed over to the plaintiff. If he was using copies of printed or manuscript music, though not actually before him and only remembered by him, and the music was performed by means of memory, that would be a breach of the injunction. His Lordship would therefore assume for the present purpose that the defendant had not used music of the plaintiff's in the way he had pointed out. It was quite possible that the defendant might have been doing that, and had committed a breach of the injunction in so doing. The music performed consisted of selections and not of original compositions; they were selections from well-known works. It followed, of course, that one selection might bear a strong family resemblance to any other selection from the same work. One author might take a selection from an opera like *Faust* of airs which he thought would make a good piece of music, and another author might select another set of airs, but it was common knowledge that in musical works some parts were more pleasing than others, and no one making a selection for the public would omit from the selection the more popular parts of the work. The adaptations would, however, necessarily vary according to the skill of the composers or authors. But that was not what had to be dealt with here. His Lordship should have thought that, if this case had been a case of direct infringement, it would have been easy to call experts to test the rival selections in each case and find out whether the selection of the defendant coincided with the selection of the plaintiff. His Lordship agreed with Mr. Warrington that cases of this kind depended on little things. For instance, in copyright cases it was necessary to examine side by side the passages in the two books in order to see whether there had been a piracy. That ought to have been done here, if it was desired to prove that the defendant had really used the manuscript music he had obtained from the plaintiff. Instead of that, his Lordship had no evidence on the point at all. He had been told by some witnesses that one piece was identical with another, but there was a difficulty in understanding that. The defendant would not have been so foolish as to play the piece exactly as he obtained it from the plaintiff. It was said that what he did was to take not only the selection, but the way in which one air ran into another. That would have been very easily tested by expert evidence. His Lordship had a mass of affidavits and no cross-examination. He thought that if, instead of filing all these affidavits, some of these witnesses had been cross-examined by counsel with the assistance of expert musicians, who could suggest the questions to be asked, some conclusion might have been arrived at as to whether the truth lay on the one side or on the other. Upon the whole, though on the one hand he thought the case was one of suspicion, yet on the other hand he could not hold that there had been any proof of wrongdoing. The strongest case was that of the *Tannhäuser-Lohengrin* selection. It would have been extremely easy to get an expert musician to listen to the defendant's music and to say in what particular respects it was the same or only colourably differing from the plaintiff's. The plaintiff's case seemed to his Lordship to break down; it started with suspicion and never got beyond that; and he had the less hesitation in refusing an order for committal because the plaintiff had not, in his opinion, taken the best way of attaining his end either by cross-examination or by evidence of experts. Then the order went on to direct the delivery up to the plaintiff of the copies of music in the possession of the defendant. His Lordship could not see any ground for supposing that the defendant had any copies of the plaintiff's, nor any ground for supposing that he had used them. If he could not hold that the defendant had used them, he could not judicially infer that he had retained any copies of printed or manuscript music. Before he could send the defendant to prison he would have to be satisfied that the defendant had retained the copies in his possession or under his control, or had parted with them improperly, so that they belonged to the plaintiff. Although the case was one of suspicion, yet, as the plaintiff had come to obtain the strongest relief he could against a litigant—that is, committal of breach of an injunction—and had failed, he must pay the costs.

(*Before* Mr. JUSTICE VAUGHAN WILLIAMS, *sitting as an Additional Judge of the Chancery Division.*)

IN RE F. E. NASH AND CO. (LIMITED).

The voluntary winding up of this company was ordered to be continued under the supervision of the Court.

Mr. Israel Davis and Mr. Eustace Smith were counsel for the parties.

IN RE APPANTO GOLD MINING COMPANY (LIMITED).

His Lordship sanctioned a scheme under the Joint Stock Companies Arrangement Act, 1870.

Mr. C. T. Mitchell was for the applicant.

IN RE COLONIAL COMPANY (LIMITED).

A scheme was also sanctioned under the same Act in the matter of this company.

Mr. Swinfen Eady, Q.C., Mr. MacSwinney, Mr. Kirby, and Mr. Waggett were counsel for the parties.

Mr. Justice Vaughan Williams will not sit again to hear company matters before the Long Vacation. Company business will, during his Lordship's absence on circuit, be taken on Mondays by Mr. Justice Byrne.

(*Before* Mr. JUSTICE ROMER.)

THE LAGUNAS NITRATE COMPANY (LIMITED) V. THE LAGUNAS SYNDICATE (LIMITED).

This was a motion to commit for contempt. The above action was, amongst other things, for rescission of an agreement for the purchase by the plaintiffs from the defendants of certain property in Chile. The action came on for trial before Mr. Justice Romer on July 13 and 14, 1897, and after an opening by the plaintiffs' counsel extending over nearly two days an application was made on behalf of the plaintiffs that a commission to Chile (which had been applied for by summons in February, 1897, and which application had been ordered to stand over until the trial) should be issued. The application was opposed by the defendants, and after some argument his Lordship made an order for the appointment of a special examiner to take the evidence of witnesses in Chile and that the plaintiffs should bear the costs of the special examination in the first instance, but without prejudice as to by whom they should ultimately be borne. No other order was made except that the hearing of the action be postponed. On Thursday, July 15, 1897, there appeared in the issue of the *Daily Mail* of that date, in a column headed "Chat on 'Change, Wednesday Evening," two separate and consecutive paragraphs. The first of these was as follows :—

"Mr. Justice Romer delivered this afternoon a very important judgment in favour of the Lagunas Nitrate Company against the original Lagunas Nitrate Syndicate. This action, which has been pending for months past, was brought by the present directors of the Lagunas Nitrate Company demanding a rescission of the contract for purchase of their business from the Lagunas Nitrate Syndicate principally on the grounds that the Lagunas Nitrate Syndicate was formed merely as a dumping ground for the syndicate to get out upon, and never had an independent existence until the new board came into office about a year ago. We understand Mr. Justice Romer found for the company on all leading points and sanctioned a commission which is to proceed to Chile to investigate the affairs of both companies on the spot and to report as to the value of the grounds at the time of sale. If this decision be upheld, as the Lagunas Nitrate people confidently predict, a wholesome lesson will be given to promoters of subsidiary companies formed to buy property-rights, patents, &c., at any fancy value fixed by the parent company."

The second paragraph was as follows :—

"In the present depressed condition of the nitrate trade it would be unwise to regard this decision as of any money value, and in any case we cannot see where the £850,000, or anything like such a large sum, is to come from, but the principle established is a sound one, and we congratulate the company on its initial success. It will be recollected that Paris has an interest in these shares, and the rather unusual spectacle of an eminent member of the Coulisse embracing an equally eminent member of the House in Threadneedle-street this afternoon is now accounted for, we hope, satisfactorily."

On another page of the same issue of the *Daily Mail* appeared another paragraph, shortly, but so far with accuracy, stating the actual order in the action made by Mr. Justice Romer. On July 15, 1897, the defendants, after application to his Lordship, gave Mr. A. C. W. Harmsworth, the proprietor and editor of the *Daily Mail*, and Mr. J. H. Lingard, its printer and publisher, notice of motion for the 20th of July to commit them for contempt of Court in inserting and publishing the above two paragraphs in their newspaper, imputing, contrary to the truth, that Mr. Justice Romer had delivered judgment in favour of the plaintiffs after hearing the action on its merits, and had sanctioned a commission which was to proceed to Chile to investigate the affairs of both companies on the spot and report as to the value of the grounds the subject of the action, and for having in the said paragraphs made certain other injurious and untrue statements affecting the credit and position of the defendants in the action, both with regard to the pending litigation and otherwise. On the 20th of July, at the hearing of the motion, counsel on behalf of the respondents offered the fullest and humblest apologies and payment of the costs of the motion. Mr. Lingard stated that he was manager of the paper, but was unaware of the two paragraphs until they appeared in print, and that as soon as it came to his knowledge that they were incorrect, and before service of the notice of motion, it was arranged that the withdrawal and apology should be inserted. The city and financial editor of the *Daily Mail*, Mr. C. E. Rose, stated in his affidavit that he caused the two paragraphs to be inserted in consequence of information given to him, as he believed, from an absolutely reliable source, and that the same were inserted on his responsibility. He expressed his regret and humbly apologized to the Court. His Lordship expressed an opinion that the city editor had been misled by some malicious person, and after some discussion, during which the respondents declined to give up the name of the person who gave the false information, and counsel for the applicants submitted that in that event the respondents must be held responsible, his Lordship made an order for the attendance to-day in court of Mr. Rose, the city editor.

Upon the motion again coming on this day, Mr. LEVETT, Q.C., and Mr. MARK L. ROMER, for the respondents, stated that it was felt that the mistakes were as wrong as they could be. They were, however, merely of a gossiping character. The second paragraph showed this clearly enough. Their clients repeated their apologies and offer to pay costs, and if any wider apology could be suggested than that which had already appeared in the *Daily Mail*, the applicants could dictate any such apology and the respondents would most willingly insert it in any form or shape the applicants desired.

Mr. FARWELL, Q.C., and Mr. O. LEIGH CLARE, for the applicants, submitted that they were entitled to the name of the person who had supplied the false information, and

His LORDSHIP accordingly ordered Mr. Rose into the witness-box.

Mr. Rose stated that he had written the paragraphs himself from information supplied to him by a person whom he believed to be reliable.

Mr. FARWELL asked the witness for his name.

Mr. LEVETT.—I take the point that the witness cannot be asked that.

His LORDSHIP.—The respondents are entitled to ask the question. If the witness declines to answer I must draw my own inferences.

The witness.—I am afraid I cannot tell you. I know the name of the person. I am unable to answer. It is a question of etiquette in support of one's friends and informants.

Mr. FARWELL.—But a Court of justice does not admit etiquette as a reason for not answering.

His LORDSHIP.—Of course, if the witness does not give the name I shall draw certain inferences of fact.

Mr. FARWELL.—Did you hear in the course of Thursday, the 15th, that an application had been made to his Lordship to serve notice of motion to commit?

Witness.—Yes, in the afternoon.

Mr. FARWELL.—And consequently you put in an apology?

Witness.—I should have put in an apology anyhow whether these proceedings had been taken or not, because I felt that I had written what was wrong as soon as I read the next morning the reports in other newspapers.

Mr. LEVETT.—I am entirely in your Lordship's hands.

MR. JUSTICE ROMER.—As this witness declines to answer who his informant was I draw the inference that these statements are perfectly unjustifiable in every way. Of course the printer and more especially the publisher are responsible for the acts complained of. The statements were wholly inexcusable and might have done great damage to the defendants. I can quite understand that mistakes may very often occur in reporting legal intelligence and in dealing with legal matters, and those are not cases, of course, for any application of the present kind. But in the case now before me the statements were to my mind obviously malicious, and must have been made either wholly without any real information, or from information from a source which was intending to misrepresent what had actually passed and with some ulterior object. What the object was I cannot say. The case is a bad one. Unfortunately a motion of this sort must be made against the publishers, because the real authors cannot be reached, and the city editor, who is responsible, is not a respondent to the motion. It is essential that the persons who are responsible for the newspaper shall be made to suffer for what is a perfectly unjustifiable act. I admit there was an apology, but I think it a case in which I ought to inflict a fine, and accordingly I inflict a fine of £50 on the respondents, and order them to pay costs as between solicitor and client.

QUEEN'S BENCH DIVISION.

(*Before* Mr. JUSTICE HAWKINS, Mr. JUSTICE VAUGHAN WILLIAMS, *and* Mr. JUSTICE WRIGHT.)

KERR V. KEER.

This was an appeal by Mr. W. H. Kerr, a chemist, from an order of commitment by the County Court Judge of Westminster. The facts were these. Mrs. Kerr in 1893 obtained an order in the Probate and Divorce Division of the High Court against her husband for payment to her for maintenance of the yearly sum of £108 by monthly instalments. Mr. Kerr failed to keep these payments up, and in October, 1896, Mrs. Kerr issued a judgment summons in the County Court to enforce payment of arrears of five instalments. The County Court Judge, on October 13, made an order committing the defendant to prison for 14 days for non-payment of the three instalments due in February, March, and April, the Judge being of opinion that the debtor had had means to pay that portion of the judgment debt. The issue of the warrant, however, was to be suspended until December 1. The defendant on December 5 filed an affidavit stating that on November 30, 1896, a receiving order was made against him, and that the debt in respect of which the order of commitment was made was provable in bankruptcy. The Registrar thereupon, under Order XXV., section 30, made an order staying the issue of the warrant. The Judge, however, in February, on the application of Mrs. Kerr, the plaintiff, rescinded the Registrar's order, being of opinion, on the authority of "Re Hawkins—*Ex parte* Hawkins" (1894, 1 Q.B., 25), that the wife could not prove in bankruptcy for arrears of alimony due before the husband commenced his proceedings in bankruptcy. The Judge, therefore, took off the stay, but he stayed proceedings pending appeal.

Mr. Powles appeared for the appellant, the husband; Mr. Montagu Lush for the wife.

To-day Mr. Justice Vaughan Williams read his judgment, with which Mr. Justice Hawkins expressed his assent, supporting the decision of the County Court Judge. He also read that of Mr. Justice Wright, who was not present, and dissented.

The judgment of MR. JUSTICE VAUGHAN WILLIAMS was to the following effect :—This was an appeal against the order of His Honour Judge Lumley Smith discharging the order of the Registrar staying an order for commitment for non-payment of arrears of maintenance payable by a husband to a divorced wife. The Court was of opinion that the County Court Judge was right. The order for maintenance made by the Divorce Court was an order made under section 1 of 29 Vict., c. 32, for payment of £9 a month for maintenance. It had been decided in "Linton v. Linton" (15 Q.B.D., 239), that arrears of alimony accruing after the adjudication were not provable in Bankruptcy, and that an order under the Debtors Act, 1869, might be made in a proper case to enforce payment for such arrears. That judgment was a judgment on the question of proof of debt for a sum payable under 29 and 30 Vic., cap. 32, section 1, *qua* alimony—*i.e.*, *qua* an allowance payable to a wife under a judicial separation. The case of "Watkins v. Watkins" (1896, 2 Q.B., 122) showed that it made no difference if the sum were a periodical sum payable *qua* maintenance to a divorced wife. The only question, therefore, in the present case was whether "Linton v. Linton" applied to arrears payable at the date of the receiving order. Now, the considerations which had led the Court of Appeal to hold that there could be no proof for arrears which had become due since the receiving order were that—(1) the sum payable was not a lump sum but a payment to be made monthly or weekly; (2) that the sum was payable out of personal earnings; (3) that that which would go to the wife would take nothing from the creditors; (4) that the payments could not be valued or have a capital value put upon them, because the payments might at any time be put an end to by resumption of cohabitation. These considerations, except the last, applied to permanent maintenance under this Act. The last consideration—namely, the impossibility of valuation—also applied, although the impossibility was based on different facts in the case of permanent maintenance to those on which it was based in case of permanent alimony for a judicially separated wife. Resumption of cohabitation between man and wife was no longer possible after divorce. The parties no longer stood in that relation, but the uncertainty as to the continuance of the obligation to make the payment existed, and existed not only as to future payments, but also as to arrears, for the Divorce Court could, and would, wholly or partially relieve a husband from payment of arrears if it were just to do so ("De Blanquiere v. De Blanquiere," 3 Hagg., 322). The terms of section 1 of 29 Vic., c. 32, showed that the Court had the power. Further, sub-section 3 of section 37 of the Bankruptcy Act showed that a debt was equally provable whether the obligation arose before the receiving order or after it at any time before discharge. It followed that "Linton v. Linton" was an authority for the proposition that, so far as regards permanent alimony, there can be no proof for arrears accruing before the receiving order, unless there was something in the nature of the arrears which made it possible to form an estimate of their value. His Lordship then commented on the cases of "Hardy v. Fothergill" (13 App. Ca.) and "Watkins v. Watkins" (1896, 2 Q.B., 122).

MR. JUSTICE WRIGHT, who differed, said that if liberty of the person had not been in question he would not have thought it necessary to express the doubt which he entertained. But he thought it right to say that, in his opinion, the case was governed by "Hardy v. Fothergill" (13 App. Ca.), and the Court ought to hold that arrears of alimony accrued due and payable before the receiving order were provable in the bankruptcy, unless the Court had declared them incapable of valuation.

(*Before* MR. JUSTICE HAWKINS *and a Special Jury.*)

BANFIELD AND WIFE V. THE "MORNING" (LIMITED).

This was an action for damages for libel. The defence was that a settlement of the case had been arrived at between the parties before the action was brought.

Mr. Moyses and Mr. Chamier appeared for the plaintiffs; and Mr. Cock, Q.C., and Mr. Llewellyn Davies were for the defendant company.

The plaintiff and his wife resided in Redmore-road, Hammersmith, and let a part of their house to lodgers. The alleged libel was published on June 19, 1896, in the *Morning* newspaper, and was in the form of a paragraph headed, "Alleged Child Murder at Hammersmith." The paragraph was as follows :—"The Central News says that at 7 o'clock last evening a Mrs. Banfield, of Little Strelland-street, Hammersmith, was apprehended on the charge of having murdered the child of a lodger. The latter, who owed arrears of rent, went into the workhouse infirmary to be confined of an illegitimate child. On returning to her lodgings it is said that Mrs. Banfield attacked her, giving her a black eye. She also, it is stated, struck the baby with a bar of iron and threw it downstairs. The child died. Mrs. Banfield, it is reported, took poison on Monday, but recovered."

The plaintiff, Mrs. Banfield, gave evidence, and said that she had a quarrel at the time in question with a lodger, Mrs. Knight, and in consequence she was charged at the police-court with assault. The summons against her was dismissed, and she was granted a summons against the lodger. It was quite untrue that a baby was killed, or that anything alleged in the paragraph occurred. Subsequently two gentlemen from the Central News visited the witness and offered her five sovereigns to go on with, telling her she should have more. A paper was written out, and she was asked to sign it. She replied she could not read or write, and then she was asked to put a cross to it. She did not know its contents.

Cross-examined.—A solicitor, Mr. Hanson, kindly took up the case for her. She told him she had been paid £5. She thought she told him that in July. She did not know one word that was in the paper that was written. The gentlemen said it would be all right. Her daughter was there, but she was so ill she could not speak; and another woman was there, too, but she was so deaf she could not hear. (Laughter.) The gentlemen from the Central News said they were quite ready to compensate her for the harm which had been done her, and to insert a withdrawal in the paper of the statements that had appeared. When she was given the £5 she put her cross to a paper; but if she had known it was a receipt in satisfaction of all her claims she would not have done it.

The plaintiff's daughter said she wrote a letter to the *Morning* for her mother complaining of the libel. When the gentlemen from the Central News called and offered her mother money witness advised her to have nothing to do with it. When the £5 was put on the table they said it was on account. Witness did not read the paper, but put her name to it; one of the gentlemen said the paper was merely an acknowledgment of the £5.

Cross-examined.—She advised her mother not to take the money because she thought she was entitled to more. She could not swear that the paper was not read over to her mother.

Mr. COCK having opened the case for the defence,

Mr. Charles Smith, solicitor for the Central News, said that on July 8 he went in the evening to Mrs. Banfield's house. He told her who he was, and that the Central News were very sorry that the paragraph had appeared, and they were willing to insert an apology in any paper she liked. Witness offered the plaintiff at first £2, and Mrs. Banfield asked for £5. Witness put that sum on the table and wrote out the receipt, which he read and fully explained, in full satisfaction of all her claims.

Cross-examined.—Witness was not in any way acting for the *Morning*. The plaintiff's grievance was chiefly against Mrs. Knight. It did not require any persuasion to make the plaintiff come to terms. He certainly went with the intention of settling with the woman.

At the close of the witness's evidence the jury stopped the case, and found a verdict for the defendants. Judgment was given accordingly.

(*Before* Mr. JUSTICE MATHEW *and a Special Jury.*)

COMMERCIAL CASES.

ELLIS V. POND AND THE BLOOMSBURY SYNDICATE.

This was an action by a stockbroker, Mr. Welbore Stuart Ellis, to recover £8,551 0s. 11d. moneys due in respect of stocks and shares bought and sold for the defendants, and commission due. The defendants denied that the money was due and owing from them; and pleaded that the plaintiff, in breach of his duty as a stockbroker, closed the account without instructions from his clients; that the plaintiff was guilty of negligence in realizing the stocks and shares; and the defendants further counterclaimed for losses owing to alleged breach of duty on the part of the plaintiff.

Mr. Bigham, Q.C., Mr. C. C. Scott, and Mr. Whateley appeared for the plaintiff; Sir Edward Clarke, Q.C., Mr. Lawson Walton, Q.C., and Mr. Tindal Atkinson, for the defendants.

Mr. BIGHAM, in opening the plaintiff's case, said the action was brought to recover the balance of an account of the purchase and sale of large blocks of Metropolitan District Railway stock, which the plaintiff had opened for the defendant Pond in the latter part of 1896. The defendant Pond was a financial expert, and in the summer of 1896 had conceived a notion that by certain organizations, one of them being the Bloomsbury Syndicate, he could carry through successful operations in the Metropolitan District Railway stocks. The Bloomsbury Syndicate and the Metropolitan Shareholders' Association were to find the money for the construction of a deep-level railway from Earl's Court to the Mansion-house under the present District Railway. Mr. Pond was to find the money to construct such a railway. It was necessary to get the concurrence of the board of the Metropolitan District Railway, and Mr. Pond thought it was necessary to get the control of a large amount of the stock of that railway, to have voting power at the meetings and carry the scheme through. Mr. Pond approached the plaintiff and asked him to make certain purchases of the stock. The plaintiff was willing to use his influence to assist Mr. Pond with the scheme. Mr. Pond told the plaintiff that he was buying stock for the Bloomsbury Syndicate, but did not mention their names. The purchases began on the basis that Mr. Pond should keep the plaintiff covered. Before the transactions commenced Mr. Pond placed in plaintiff's hands 1,000 shares of the Electric Lighting Corporation, upon which the plaintiff had made advances which had all been paid off except £270. The plaintiff purchased large blocks of Metropolitan District stocks on the instructions of Mr. Pond. Mr. Pond found large sums in cash, and kept up a margin of cover until towards the end of October, when £200,000 of stocks had been bought. In October and November Mr. Pond