LAW REPORT, Jan. 23.

(Before MR. JUSTICE CHITTY.)
IN RE THE YURDARI COMPANY (LIMITED).
Resolutions having been passed by the above company for its voluntary winding up and the appointment of Mr. Alfred Good as liquidator, an order was now made continuing the voluntary winding up under the supervision of the Court and Mr. Good as liquidator.
Mr. Whitehorne, Q.C., and Mr. Scott Fox, Mr. Latham Q.C. and Mr. Mr. Whitehorne, Q.C., and Mr. Scott Fox, Mr. Latham, Q.C., and Mr. Bramwell Davis, Mr. Byrne, Q.C., and Mr. Vernon, Mr. Farwell, Q.C., and Mr. Maidlow, Mr. R. B. Morris, and Mr. D. M. Kerley, were the counsel appearing.

IN RE THE CORPORATE TRUST (LIMITED).

Resolutions having been passed by the above company for its voluntary winding up, an order was now made for the continuation of the voluntary winding up under the supervision of the Court.

Mr. Byrne, Q.C., and Mr. Bradford, Mr. G. H. Stutfield, and Mr. Waggett were the counsel appearing. appearing.

(Before MR. JUSTICE NORTH.) IN RE THE CRYSTAL REEF GOLD MINING COMPANY. A petition to wind this company up, presented by contributories, was dismissed with costs.

Mr. Beddall appeared for the petitioners; Mr. C.
E. E. Jenkins appeared for other contributories;
Mr. Cozens-Hardy, Q.C., and Mr. Warrington, for the company, were not called upon.

THE LOAN AND FINANCE CORPORATION (LIMITED)

THE STUD FARM (LIMITED).

The COURT appointed, on account of the emergency of the case, a receiver of the horses and other property of the Stud Farm (Limited), on the application of debenture-holders, though the debentures were not overdue. It appeared that the manager of the stud had died suddenly under distressing circumstances. Mr. Eve and Mr. Martelli appeared in the matter. (Before MR. JUSTICE STIRLING.)

RE STEEL AND IRON COMPANY (LIMITED). The usual winding-up order was made in the case of the abovenamed company on the petition of a creditor, but it was arranged that the order should lie in the office for ten days with a view to a possible settlement of the petitioner's claim.

Mr. Eve appeared for the petitioner, and Mr. Simonson for the company.

(Before MR. JUSTICE KEKEWICH.) IN RE STANDARD CONTRACT AND DEBENTURE

CORPORATION.

This was a creditor's petition for the winding up of This was a creditor's petition for the winding up of the above-named company. The petition as presented to the Court and served on the parties contained blanks as to the date of the incorporation of the company, as to the amount of its capital, the number of shares, and the nominal value of each share and the sum paid up per share, and as to the objects for which the company was established. On behalf of the petitioner it was stated that the company was registered in the Isle of Man although it was subapplication had been made to the officials of the company at its London office, the information requisite for filling up the blanks could not be obtained. It was also stated that the reason why the company was registered in the Isle of Man was that the stamp duty parable there was less than in England and that payable there was less than in England, and that. since the presentation of the petition, an order for the winding up of the company had been made in the Court in the Isle of Man.

Mr. Dunham appeared for the petitioner; Mr. a Beckett Terrell for a creditor, who supported; Mr. Warmington, Q.C., and Mr. Duke for the company; and Mr. George Henderson and Mr. Douglas for other MR. JUSTICE KEKEWICH said that this was a

MR. JUSTICE KEKEWICH said that this was a Manx company and he was now told that since the petition was presented in England proceedings had been taken in the Isle of Man—i.e., in the domicile of the company. Nobody suggested that the company could not be properly wound up there. If there were a winding up here at all it would be made in such a manner and form that the liquidation proceedings in the High Court would be ancillary to those in the Court of the domicile. Therefore, if the petition were now got rid of, no injustice would be done, because no such order as was asked for could be made without modification. Whether, there were other creditors who were anxious to present a petition did not appear, but, as a matter of fact, there was presented to the Court a petition containing certain blanks. to the Court a petition containing certain blanks. His Lordship referred to the blanks as they occurred in the petition, and observed that that was not the way in which a petition ought to be presented to the Court. Blanks in certain cases were inevitable, but that a petition should be presented with such blanks as were found here was an abuse of the practice of the Court, and not being wholly unacquainted with the way in which these things were done, the Court might infer that the petition was presented in order to snatch a position which would not have been available if there had been such a delay as was necessary to put the petition in a proper form. To entertain this petition would be to encourage loose practice, and his Lordship, therefore, ordered that the petition should be dismissed with costs—namely, according to the ordinary practice, those of the company and one other set of costs.

QUEEN'S BENCH DIVISION.

COURT FOR CROWN CASES RESERVED. (Before Mr. JUSTICE HAWKINS, Mr. JUSTICE WILLS, Mr. JUSTICE LAWRANCE, Mr. JUSTICE WRIGHT, and MR. JUSTICE COLLINS.) THE QUEEN V. CLARKSON AND OTHERS.

This was the case of eight members of the Salvation

by order of the Court of Queen's Bench to the Central Criminal Court for trial. The indictment contained six counts, the first, second, and third charging the defendants with conspiring to contravene the provisions of the Eastbourne Improvement Act, 1885. The remaining three counts charged the defendants with an unlawful assembly. On each; count, except the fourth the defendants were accounted. with an unlawful assembly. On each; count, except the fourth, the defendants were acquitted. On the fourth the jury found each of the defendants guilty. I reserved the following case for the opinion of the Court for Crown Cases Reserved;—By s. 169 of the Eastbourne Improvements Act, 1885, it is in substance enacted that "No procession" (except of her Majesty's naval, military, and Volunteer forces) "shall take place in the borough of Eastbourne on a Sunday accompanied by instrumental music." The defendants were charged in the fourth count of the indictment (upon which alone the question for the Court is reserved) for that they "On the day aforesaid, being Sunday, in the borough aforesaid unlawsaid, being Sunday, in the borough aforesaid unlawfully did assemble and gather together armed and provided with drums, cornets, and horns, and other musical instruments, to disturb the peace of our said Lady the Queen, and, being so assembled and gathered together armed and provided with musical instruments as aforesaid, did then and there unlawfully make a great noise, tumults, and disturbance, and did then and there continue making such noise, tumults, and disturbance for the space of an hour or more then next following, to the great disturbance and terror of ligra sphicets of our said Lady the Queen residing liege subjects of our said Lady the Queen, residing and being, and of all other the liege subjects of our said Lady the Queen then passing and repassing along the Queen's common highways there, in contempt o the Queen's common highways there, in contempt of our said Lady the Queen and the laws, to the evil example of all others in the like case offending, and against the peace of our said Lady the Queen, her Crown, and dignity.' Mr. Willis, Q.C., for the defendants, after the defendants had pleaded "Not guilty," asked me to quash the conviction upon the ground that it did not describe any offence amounting to an unlength escephly, his chief chiefting height. to an unlawful assembly, his chief objection being that the alleged acts of the defendants were not stated to have been "riotously or tumultuously" done, citing 2 Chitty, C.L., 488, Hawk, P.C., Book C., 65. I declined, however, to stop the case then, but reserved to myself liberty to submit the validity of the count to this Court in case of necessity. I ask the Court, therefore, to pronounce its opinion whether the count is good or bad, confining the question merely to the points argued by Mr. Willis. In support of the indictment the following evidence was given. I can best send a copy of my notes, for I have no other minute of it. but it either notes, for I have no other minute of it, but if either party desires to use a shorthand note of the evidence, and the Court thinks fit to receive it, it may be made part of the case. The case then stated the learned Judge's notes of evidence. John Fraser, Chief Constable of Eastbourne since April 6 in last year, gave evidence as to what took place on Sunday, July 19 (evidence of what had previously occurred being (evidence of what had previously occurred rejected),—There is a piece of waste ground in Latimerroad. On July 19, shortly after 10 a.m., I went there. I saw the local contingent of the Salvation Army, consisting of 25 persons holding a service. Large number of persons were there; number grew till 1,200 to 1,500 assembled; at last they made a shouting, a disturbing point bettil towards the Salvation Army.

disturbing, noise hostile towards the Salvation Army

Hymns, parodies on Salvation Army's, were sung by portion of crowd. No physical interference. I spoke

to person conducting the service. None of the defendants were there. I saw defendants arrive in Latimer-road; they were strangers to me. I saw some were carrying musical instruments, drum and brass instruments. I had there 30 men of police force and these reconstructions.

some were carrying musical instruments, drum and brass instruments. I had there 30 men of police force and three mounted men; they were at an end of street leading into Latimer-road. The waste land was private property, but open to the road. Defendants were dressed in uniform. The defendants joined the remainder, and the service was continued. Defendants that moved off together in an easterly direction:

had closed in on the Salvation band. Crowd was threatening. I saw sticks raised in the air close to defendants; the sticks were raised by the members of the crowd, by nobody else. I believe the Salvation Army were then marching peaceably along with the mounted police. We cleared the crowd from the band. Then I saw the instruments go to the lips of the band; they made no sound. I told Clarkson I would not allow them to play. He said "We (or I) have played." I then passed three or four of my men through their ranks and endeavoured to disperse them. control to allow them to play, He said "We (or I) have we played." I then passed three or four of my men to the passed three or four of the passed three or four three thr overdue. It appeared that the manager of the band went away alone down side street. Charlest had died suddenly under distressing circumstances, and that, especially as some of the horses were in training, it was necessary to immediately appoint of them before. Nothing in their conduct to terrify or alarm anybody. I do not believe the defendants increase to get. I thought it likely the crowd would waylay the army. I did not attempt to disperse the crowd. If I had dispersed them there would have been a disturbance. Cross-examined.—We had not sufficient men to protect the army. Victorine Whittey, a lodging housekeeper, Royal Parade, stated there was a procession of Salvation Army on Sunday, the 19th. Frederick William Bathurst, a wine merchant, stated that he was, on the 19th of July in Seaside and saw defendants marching. I saw defendants do nothing at first. I saw pushing of crowd. The mounted police went to rear. I heard two beats on a drum. On turning round I noticed police surrounding defendants. They proceeded to junction of Langley and Pevensey roads. Mass of people at citadel. I was afraid there would be trouble. Previous disturbances. Nothing there that led me to suppose there would be disturbances. Harry Caldey, a grocer's assistant, stated that on Sunday, the 19th of July, he saw band; saw attempt to play in Tower-street, near Seaside. Chief constable spoke to leader of band. Good deal of excitement by shouting and holloaing of crowd. Second attempt near Ordnance-yard. Instruments up to mouths. When crowd pushed I saw band strike with instruments and fists. Several blows by bandsmen. Saw mounted police. I was one of crowd. I annuer assembly. He desired, he said, to add something from I did not attempt to disperse the crowd. If I had dispersed them there would have been a disturbance. Cross-examined.—We had not sufficient men to protect the army. Victorine Whittey, a lodging housekeeper, instruments and fists. Several blows by bandsmen. Saw mounted police. I was one of crowd. I apprehended breach of the peace. Cross-examined.—I had a companion, Wood, with me. I had a message from Town Clerk. I cannot pick out one who used his fist. I saw sticks in air. They were not then playing. Several of them struck before being struck. Men in uniform. Frank Wood, a grocer's assistant, saw army marching along Seaside-road. When band began to play crowd hustled. The band struck out at crowd. I could not identify one who struck. I only saw push-

This was the case of eight members of the Salvation Army indicted for an unlawful assembly and also for conspiring to violate the provision in the Eastbourne Local Act prohibiting processions with music on Sunday, and tried before Mr. Justice Hawkins at the November Sessions of the Central Criminal Court, when a verdict of guilty was given only of an unlawful assembly, the learned Judge, however, reserving a case for the opinion of this Court. The case was stated as follows:—

These nine defendants were tried before me at the November Sessions of the Central Criminal Court upon an indictment which had been found by the grand jury at the last Lewes Summer Assizes, and removed by order of the Court of Queen's Bench to the Central Criminal Court upon an indictment which had been found by the grand givry at the last Lewes Summer Assizes, and removed by order of the Court of Queen's Bench to the Central Criminal Court upon an indictment which had been found by the grand givry at the last Lewes Summer Assizes, and removed by order of the Court of Queen's Bench to the Central Criminal Court upon an indictment which had been found by the grand givry at the last Lewes Summer Assizes, and removed by order of the Court of Queen's Bench to the Central Criminal Court upon an indictment which had been found by the grand givry at the last Lewes Summer Assizes, and removed by order of the Court of Queen's Bench to the Central Criminal Court upon an indictment which had been found by the grand givry at the last Lewes Summer Assizes, and removed the order of the peace. It was the case for the defendants. He read the count on which they had been convicted, laying stress on the words alleging that they were "armed "with instruments of music. And he urged that it was bad because it did not contain the word "tumultuously." [Mr. JUSTICE WILLS Q.C. (with Mr. Colam), argued the case for the defendants. He read the count on which alleging that they were "armed "with instruments of music. And he urged that it was bad because it did not c

that such an assembly with such an intent is an offence? If force be intended. He cited Hawkin's Pleas of the Crown (edition by Curwood), section 0. 516 tion 9, ρ. 516 :-"An unlawful assembly according to the common definition is a disturbance of the peace by persons assembling together with intention to do a thing which if executed would make them rioters, though which if executed would make them rioters, though not actually executing it. . . But this seems much too narrow a definition; for any meeting whatever of great numbers of people with such circumstances of terror as cannot but endanger the public peace and raise fears among the subjects of the realm seems properly to be deemed an unlawful assembly." That seemed the largest definition which had been adopted as law. There was a larger definition sometimes given by those who desired to amend the law (reading a passage from Stephen on the Criminal Law), but all the definitions appeared to agree in this—that there must be something in the nature of the assembly to create apprehensions as to a breach of the peace. [MR. JUSTICE WILLS.—In terrorem populi?] peace. [MR. JUSTICE WILLS.—In terrorem populi?] Yes. But there was a passage in Mr. Justice Stephen's book which certainly went beyond the other definitions, where he made it an element in the offence that the assembly was such as to be likely to provoke that the assembly was such as to be likely to provoke others to break the peace. That was certainly an extension of the law. [Mr. JUSTICE COLLINS said it had been so held.] It has, And the law is rightly laid down in 2 Chitty on the Criminal Law, p. 488, where the word "tumultuous" was used. There the offence of unlawful assembly was thus defined .—

is not sufficient to describe the offence with which the defendants are charged, and that requires the word "tumultuous." [Mr. Justice Wright.—There are precedents of indictments for riotous and unlawful assemblies without that word.] In cases of riotous assemblies where the riot is the offence what constitutes by the law of England an "unlawful assembly"? An unlawful assembly at common law is an assembly of three or more persons with intent to break the peace, or under such circumstances as to create an apprehension that a breach of the peace is

break the peace, or under such circumstances as to create an apprehension that a breach of the peace is intended. [Mr. JUSTICE HAWKINS.—Then you admit

thus defined:—
"The intention with which the parties assemble or act must be unlawful. . . There must be either an actual violence or an offer to committit, and the mere going about in a tumultuous way will only constitute an unlawful assembly. The distinction between a riot, rout, and unlawful assembly seems to be that the first is a tumultuous meeting of persons who are guilty of actual violence; the second where they endeavour to commit an act which would make them rioters; and the last where they meet with an

intention to make a riot." [MR. JUSTICE WILLS pointed out that the dictment seemed to show that there was a tumultuous assembly, though the particular word was not used.] The word "tumultuous" must be used. No person has ever yet been convicted of taking part in an unlawful assembly without its being alleged that it was 't tumultuous.''
[MR. JUSTICE WRIGHT pointed out several such cases in the first volume of the New State Trials.] These are mere abstracts of the indictments which might have contained the word "tumultuous." MR. JUSTICE WRIGHT observed that the abstracts were very carefully made by a learned gentleman, matters in question occurred. Now, what was the now one of the Masters of the Court.] But I have already found four mistakes in the volumes I have procession through the streets, it was negatived by now one of the massers of the volumes I have obtained, and a point so important cannot be established by mere abstracts of indictments. He then cited "Beatty v. Gillbanks" (9 Q.B.D., 308), Salvation Army case arising at Weston-super-Mare, in which the word "tumultuous" was used. There Mr. Justice Field in his judgment said the charge was "tumultuously and unlawfully" assembling, and that charge must be sustained, and it must be shown that the assembly was tumultuous, whereas the shown that the difference of the band left and went by a bye-street on to the beach, and the "contingent" of 25 members of the army did the "contingent" of 25 members of the mainder, and the service was continued. Defendants then moved off together in an easterly direction; went down a side street leading to Seaside. Then I met them, marching three or four deep. Shortly after I heard beat of a drum, one or two beats, not to make a loud noise. I heard a note or two on brass instruments. I turned back and stopped them by standing in front. Defendant Clarkson appeared to take the leading part. I said they would not be allowed to play. They proceeded along towards eitadel, not attempting to play then. We went in procession in front. I directly afterwards heard

shouting in the rear. I turned round and saw crowd in the assembly itself, either in their object or the showed what they meant. They were assembled line of rails. The plaintiffs would contend that was was practically impossible for sparks to go 30 or 40 mode in which it was carried out. Here, on the contrary, there was an unlawful organization to prevent there for the purpose of jeering and annoying the members of the Salvation Army; they sang parodies trary, there was an unlawful organization to prevent these defendants from lawfully assembling together, and the finding of the justices came to this—that doing a lawful act was unlawful if it led others to do unlawful acts. It was impossible, he said, to uphold such an order, and in that judgment Mr. Justice Cave concurred. Now, such being the law on the subject, what were the facts in the present case? It appeared on the evidence that 20 or 30 persons came together Mr. DANCKWERTS (with Mr. William Graham and Mr. Gill) appeared for the prosecution in support of the verdict of "guilty" on the count for unlawful assembly. He desired, he said, to add something from the shorthand-writer's notes of the evidence. [Mr. JUSTICE HAWKINS said he had taken down, he was certain, everything that was material.] He did not, he said, quite agree with Mr. Willis even as to the effect of the evidence as stated. (He went into it, as it is stated above.) The case, he said, was that these people came down in uniform, and members of an organized body, surrounded by a hostile crowd, and nevertheless they started in formation. [Mr. WILLIS.—Nine of them.] With their instruments, which they attempted to use. [Mr. JUSTICE HAWKINS.—Hardly so—as a band; the evidence was merely that a bands—as a band;

The control of the co attempts were so slight that I cannot conceive it seriously capable of being contended.] A highly trained mind may so consider, certainly. [Mr. JUSTICE WILLS.—But the question is whether these defendants are not entitled to the protection of the "highly trained mind."] Not if the "highly trained mind."] Not if the "highly trained mind." should come to conclusions different from those of common minds, and here attempts were made to play, which were likely to, and did, provoke the crowd. [Mr. JUSTICE WILLS.—When the police interposed they at once stopped.] The attempts were made, and distinguish the case from that of "Beatty v. Gillbanks," which, indeed, in Ireland, has been disapproved of. [Mr. JUSTICE WILLS.—I doubt whether Mr. Willis requires the authority of that case.] The

s requires the authority of that case. The not come before the jury in the dry form they appear on the Judge's notes. [Mr. WILLS.—We must take the facts as they JUSTICE WILLS.—We must take the facts as they appear upon the Judge's notes.]

Their LORDSHIPS conferred, and then proceeded to give judgment that the conviction could not be supported MR. JUSTICE HAWKINS, in giving judgment, said,-We are unanimously of opinion that the conviction must be quashed without discussing the question whether the count is good or bad or what is the law as to unlawful assemblies, confining ourselves simply to the evidence and the question raised on the evidence. We have come to the conclusion that there was not any evidence on which a reasonable jury could have acted in finding these defendants guilty could have acted in finding these defendants guilty of an unlawful assembly; and we have come to that conclusion on considering the whole of the evidence before the jury. The first thing to be observed is that the defendants, the members of the Salvation Army, were strangers to fastbourne. They came there undoubtedly with their musical instruments, which they used in their band for the Salvation Army. They found on this Sunday assembled on a piece of waste ground, which they had either taken or were permitted to use for the purpose, 25 members of the army assembled. It does not appear—on the contrary, it was carefully excluded from the evidence—that these was carefully excluded from the evidence—that these nine defendants had the smallest knowledge when they came down to Eastbourne of what had occurred they came down to Eastbourne of what had occurred there on other occasions. They were strangers to the place. They merely joined the contingent of the army on that piece of waste ground. No one has suggested that on that occasion anything was said or done by the army or the band which in the least degree could have tended to provoke any human being to suppose that they intended a breach of the peace. They conducted themselves as quietly as men could do; they did not even play their instruments, as they might have done. They merely proposed to go from that place to a place called their "citadel," to which they had a right to go, and where, also, they would have been entitled to play their band as long as they thought fit; and in going to the citadel the they thought fit; and in going to the citadel the matters in question occurred. Now, what was the conduct of the band? As to any intention to go in

1,000 persons had assembled at Latimer-th what object it is not difficult to discover.

Mr. Willis requires the authority of that case.]

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The ATTORNEY-GENERAL, for the defendants, said he would admit it was caused by a spark from one of their engines.

Mr. WIGHTMAN WOOD, continuing, said,—Then the question was whether the fire was caused through a want of reasonable care in the construction of the engine. If a company for public purposes ran a machine which

members of the Salvation Army; they sang parodies of their hymns, and when the members of the army and band attempted to go on the crowd followed them until there were 1,500 persons assembled, not one of whom during the whole time ever raised hand or voice to prevent the brutal outrages perpetrated on the bandsmen while they were proceeding peaceably and lawfully along the streets. They had a perfect right to walk over the streets carrying their instruments; there was nothing to prohibit them from so doing; the bye-law only prohibited them from playing their instruments in a procession. The chief constable had only 30 or 40 men, and could not be blamed for not coming into direct contact with the mob. The band had had no notice not to play on the occasion, and were ignorant when they started that their merely going along the streets could excite the crowd. It is true that one or two just struck their drums, but when H. Groom, one of the plaintiffs, examined, said he H. Groom, one of the plaintiffs, examined, said he occupied a farm near Craven Arms on each side of the railway. Had regularly seen sparks coming from the engines, especially from express trains coming up the incline of 1 in 120. He had actually seen cinders on level crossings, and on the road adjoining the level crossings. He had a fire in April, 1886, and another in July, 1887. They broke out in the same stackyard. They were caused by sparks from locomotives. The premises were the same as when he went there. The buildings had been there over a century. The stacks were in a Dutch barn.

stacks were in a Dutch barn. Cross-examined.—The Dutch barn was there when he Cross-examined.—The Dutch barn was there when he took possession. The stack was 28 to 30 yards from the rail way. The insurance company wouldnot insure within 100 yards of a railway without an extra premium. He paid 7s. 6d. per cent. extra premium. It was the first claim he had made against defendants. He had requested his landlord to put up a corrugated iron barn since the fire. Fifty or 60 trains passed during the day. the day.

from saying that this might not have formed the subject of an indictment. But there was no evidence that either in the inception of the assembly or during its progress anything of this nature was in their minds, or that they did anything which ought to have led any one to suppose that they were likely to do anything unlawful or likely to lead to a breach of the peace. I think, therefore, that, under these circumstances—and I express the opinion of my brethren—the count on which the defendants were found guilty was not supported by the evidence. I left it to the made no claim.

Charles Davis, examined, said he was a labourer at Craven Arms. In October, 1890, he lived near plaintiff's farm. Had seen sparks coming from the engines many different times. Had seen the hedge set on fire after trains had gone by.

was not supported by the evidence. I left it to the jury with great hesitation, and felt that I was almost wrong in doing so; but, as I had to leave the count on a conspiracy to the jury, I thought it might be well to leave this count also, intending to reserve the case for this Court, which has decided, as I anticipated, that there was no evidence to sustain the count. The count therefore will be set edde. count. The conviction, therefore, will be set aside. (Before Mr. Justice Hawkins and Mr. Justice Wills.) WILLETTS V. WATT AND CO.

This was an appeal from the County Court of Stafford, holden at West Bromwich, and raised a question as to what was the meaning of the word "way" in the first section of the Employers' Liability Act. It appeared that the defendants had large works, and that there was a yard in them 50 yards by 50ft. The surface of the yard was covered more or less with machinery and tanks, which were not always lying

machinery and tanks, which were not always lying in the same place. In the yard there was a well which had not been uncovered for seven years, but on the day of the accident, some water being required for testing an iron cylinder, it was uncovered and left so. Half an hour later the plaintiff, while going across the yard between the bits of machinery, for the sparks. purpose of seeing whether more steam was wanted, fell into the well, which was in his direct line of way, and injured his arm and head. For these injuries he brought this action, and in the particulars; claimed ney dly dsgar may be reason of a defect in the "ways." The jury awarded him £150.

Against this judgment Mr. Hugo Young, for the defendants, appealed, and argued that no defect in the defendants, appealed, and argued that no defect in the defendants, appealed, and argued that no defect in the defendants, appealed, and argued that no defect in the defendants appealed, and argued that no defect in the defendants appealed, and argued that no defect in the defendants appealed, and argued that no defect in the defendants, appealed, and argued that no defect in the defendants, appealed, and argued that no defect in the defendants, appealed, and argued that no defect in the defendants, appealed, and argued that no defect in the defendants, appealed, and argued that no defect in the defendants, appealed, and argued that no defect in the defendants, appealed, and argued that no defect in the defendants, appealed, and argued that no defect in the was no special or usual passage acrossthis yard—"M'Griffin to the current of air on to the full. If it was not there, there would be nothing to prevent the air from going straight through the tubes. It had no aguable distribution of the gases through the tube, argued that if the word "way" meant any defined way, then the passage traversed by the plaintiff was defined by the word did not mean a defined way.

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make consignments to him with a view to his securing orders for them, they paying him a commission of 22 per cent. upon sales, he paying all office expenses, &c., and bearing half the loss from bad debts, and the defendants paying for the annual £10 10s. licence. The plaintiff stated that, acting under the agreement, he devoted much time and labour and incurred considerable expense in endeavouring to place upon the market the defendants' brandies. Much preliminary trouble and expense was necessary, he stated, before returns in the shape of orders could be looked for. He complained that when he had paved the way for receiving orders, but before they had actually come in except to a limited extent, the defendants in March, 1891, wrongfully terminated the agreement by refusing to pay commission in future at the agreed rate, and dismissed him without notice from their employment, for which he now claimed damages. The defendants denied that there was any employmen by them of the plaintiff, alleging that he merely acted as commission agent in the business, and that such a relation might be terminated at any time without notice on either side, and they counter-claimed £135 6s. 8d. as the price of brandy sold by the plaintiff and less than the state of the many light and the state of the sta tiff, and also the return of the unsold portion of their

consignments.

At the conclusion of the plaintiff's case, Mr. Lock-wood, Q.C., submitted that there should be a nonsuit, on the ground that there was no evidence of employment, and, therefore, no need of notice.

Mr. Robson submitted that it was a question for the inner whether the plaintiff was not in the employment. jury whether the plaintiff was not in the employment of the defendants. It could never have been contemplated by the parties that after all his initial expendi

ture the plaintiff might be dismissed at once. MR. JUSTICE DAY, in giving judgment, said that there was no evidence of anything in the nature of service or of a contract only determinable by notice. The plaintiff was an independent merchant who sold wines for his own profit, and also sold champagne and beer for other people upon commission, and he undertook to see what he could do in the way of selling the defendants' prandies upon similar terms. He their servant, and was not bound to devote any time or energy to the business on their behalf. No action in the nature of wrongful dismissal was maintainable in respect of such a relation. His judgment must therefore be for the defendants upon the claim, and also upon the counter-claim, the amount to be agreed between the parties.

(Before MR. JUSTICE MATHEW and a Special

Jury.)
GROOM AND ANOTHER V. GREAT WESTERN
RAILWAY COMPANY.
In this action the plaintiffs claimed £1,164 damages

for injuries by; fire caused by one of the defendant company's locomotives. Mr. Murphy, Q.C., Mr. Wightman Wood, and Mr.

farm lay on both sides of the Shrewsbury and Hereford Railway. On October 3 his stack yard was fired by a spark from an express engine, there being a strong wind blowing. The question was whether the fire was caused by a spark from an engine passing on the rail-

what view could they have assembled around this peaceable body of persons—about 34 altogether—who were there assembled—nine bandsmen and 25 of the "army" engaged in prayer? What the crowd meant there is little difficulty in ascertaining, for their acts

line of rails. The plaintiffs would contend that was not a good plea in law. The railway company could not prevent the plaintiff from using his land in the way he did. If the defendants' contention was right it would be very far-reaching, and prevent others all over the country from placing farm produce near a railway, without giving those persons any compensation for this curtailment of their rights. Interrogation for this curtailment of their rights. Interrogation for the country from placing farm produce near a railway, without giving those persons any compensation for this curtailment of their rights. Interrogation for this curtailment of their rights. Interrogation for the country from placing farm produce near a railway, without giving those persons any compensation for this curtailment of their rights. Interrogation for this curtailment of their rights was practically impossible for sparks to go 30 or 40 yards.

Mr. Joseph Tomlinson, president of the Institute of locomotives for 35 years on various English railways. The load of this engine was light. The engine was fitted with the best appliances for preventing sparks. He agreed with Mr. Deane. This was infinitely superior to the spark arrester. The blast would have to be increased, which would tear the fire but said there were special contrivances—(1) a brick arch; (2) the smoke deflector plate; (3) tubes of small diameter. The plaintiffs would call evidence to prove that none of them were fitted for the purpose of preventing the emission of sparks. They were there for other reasons. They were there to create better blast. Not one of them was a special contrivance for the purpose alluded to. The plaintiffs would prove that other companies did use a spark arrester, which was a wire netting placed in the funnel and sometimes in the smoke-box. No doubt the brick arch and narrow tubes created better combustion, still they and narrow tubes created better combustion, still they created greater velocity and scour through the tubes, and therefore an engine fitted with them bad a tendency to throw out sparks, which should be set off against the other benefit said to be derived from their use.

Re-examined.—The first fires were small and he

Albert Darbishire corroborated last witness.

Josiah M'Gregor said he was an engineer. He had 45

years' experience, and had been 12 years superintendent of the British India Steam Navigation Company. He had superintended the construction of steamships. He was Calcutta president of the Board of Engineers. Had experience of boilers of locomotives. He went to Swindon and examined the engine No. 815. There was no contrivance for the preparation of the contributions was no contrivance for the prevention of the emission of sparks. It was possible to have such a contrivance. Spark arresters, such as perforated diaphragms, were placed across the smoke-box. Sometimes there were perforated plates or wire netting. Another arrangement was a conical wire cage stretching from the blast orifice towards the funnel. With ing from the blast orifice towards the funnel. With these contrivances the risk of the escape of sparks was reduced. A large spark could not escape. A spark could not be carried 30 yards if a spark-arrester was, used. He had seen spark-arresters in use on the Great Eastern Railway in this country, in India, and in America. In America he had seen a cap; in India and on the Great Eastern Railway a perforated plate. None of the contrivances in use by the defendants was a special prevention against the emission of sparks. The object of the brick arch was to facilitate the combustion of coal and had the effect of protate the combustion of coal, and had the effect of pro tecting the tube plate from the fierce heat of the furnace. It insured the complete admixture of the gases. It increased the suction through the tubes.

with English railways. In India they fired with wood on one part of the line and coal on the other. He knew some people held the opinion that when spark arresters were used the draught had to be increased. A spark arrester could be made for 10s. He had never designed a locomotive for this country. Perfect combustion would get rid of sparks.

matter must be again mentioned to the Court.

PROBATE, DIVORCE, AND ADMIRALTY DIVISION.

That was the plaintiff's evidence. The ATTORNEY-GENERAL, in opening the defend-

ants' case, commented upon the extra premium charged by the insurance office upon things within 100 yards of railways. If railway companies used reasonably ordinary means of preventing their engines from emitting sparks they were not liable. The matter had been before a Court of law 30 years ago upon the question whether the company had to use spark arresters, and the verdict had been for the defendants. As to the question of contributory negligence, it was the duty of every person not to put inflammable matter within the risk from sparks, which must necessarily come the risk from sparks, which must necessarily come out. The insurance company understood that and charged an extra premium. The plaintiff had had two fires within two years, and the insurance company, suing in the name of their customer, must prove that he was prudent in placing his stacks within 30 yards of the railway. The engine was running with a light train. The engine was fitted with a brick arch, the object of which was that there should be a great heat to consume all the small particles of coal and prevent them going into the tubes. Millions of miles were run each year. In the whole of that running there were only seven fires in 1888, four in 1889, and eight in 1890, the companyonly having spark arresters on a few shunting engines. On the London and North-Western, having 2,600 engines, only 34 had spark arresters. Practical test had proved that the deflector and brick arch were the best means to arrest sparks. He would arch were the best means to arrest sparks. He would ask the jury to come to the conclusion that the engine was properly constructed, and the defendants were not liable.

Mr. W. Deane, examined, said he locomotive engineer of the Great Western Railway. For 27 years he had to do with the Great Western engines. He knew the engine in question. The object the of brick arch, which was made of fire-brick and placed below the tubes, and became of white heat, tas to consume the particles of coal driven up against t. The deflector plate directed a current of air under the brick arch. This current of air had a tendency to bring down the air coming in through the apertures under the fuel. There was a continuous inlet of air from the top, which was necessary for Harvey Murphy were for the plaintiffs; the AttorneyGeneral, Q.C., Mr. Asquith, Q.C., and Mr. Knox were
for the defendants.

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dameter inside. He knew spark arresters \$\frac{1}{2}\text{in. to}
diameter inside. He knew spark arresters \$\frac{1}{2}\text{in. to}
di more sparks with the spark arrester. The effect of the expense was immaterial, as the engine expendi-ture of the Great Western was £1,300,000 a year, and the £300 extra for spark arresters was trifling and the £300 extra for spark arresters was trifling. He could not recommend spark arresters. Other companies had spark arresters, and they were not now putting them in. The Great Western had 2,029 engines. In 1888 31,400,000 miles were run; in 1889, 33,000,000; in 1890, 34,400,000 miles. There were only two claims for fires in each of those years. They paid in 1889 nothing, and in 1890 nothing, in respect of fires from sparks. That confirmed him in his opinion that they were doing as well as any other company. A sharper blast had a tendency to stir up the particles in the fire.

would have to be increased, which would tear the fir about.

Cross-examined.—He believed the Lancashire and Yorkshire still constructed engines with spark Re-examined.—There were 66 per cent. of engines

arresters.

Re-examined.—There were 66 per cent. of engines in this country without spark arresters.

Samuel W. Johnston, examined, said he was chief locomotive superintendent of the Midland Railway. He had to consider the desirability of putting in the spark arrester. He thought it was not prudent to put them in. He agreed with other witnesses. Out of 2,100 engines they had only five with spark arresters. No question of economy entered into the question. They should use them if they did any good.

Cross-examined.—The non-user did economize fuel. Mr. Dugald Drummond said he had been chief locomotive engineer of the Caledonian and North British Railways. Had examined engine 815. He agreed with evidence of previous witnesses. The spark arresters increased the blast and disturbed the fuel. The Great North of Scotland Railway had spark arresters, and he advised them to remove them.

George Whale, examined, said he was assistant locomotive superintendent of the North-Western Railway. They had 2,621 engines. Twenty-four shunting engines had spark arresters. These engines were used in docks, and by the regulations of the docks they were bound to put them in. The spark arrester increased the blast and increased sparks.

This closed the defendants' case.

increased the blast and increased sparks. This closed the defendants' case.

Counsel having addressed the jury,
MR. JUSTICE MATHEW summed up and said,—The

action was practically between the insurance company, who had paid the loss, and the railway company. They were not to be influenced by the fact that the action was by the insurance company. The insurance company had a right to stand in the shoes of the person who had suffered the loss. The jury were in a position, without any question of prairies to in a position, without any question of prejudice, to give their decision upon this important question. The plaintiff had placed his stacks in a place where he give their decision upon this important question. The plaintiff had placed his stacks in a place where he was entitled, and they were destroyed by a spark from defendants' engine. The law of the case was narrowed to this, to quote the words of a very learned Judge in the case of "Dimmock v. the North Staffordshire Railway Company" (4 F. and F. 1,063), "The company, in the construction of their engines, are bound not only to employ all due care and skill for the prevention of mischief arising to the property of others by the emission of sparks, or any other cause, but are bound to avail themselves of all the discoveries which science has put within their reach for that purpose provided they are such as, under the circumstances, it is reasonable to require the company to adopt. But if the dangers to be avoided were insignificant, or not very likely to occur, and the remedy suggested was very costly and troublesome, or such as interfered materially with the efficient working of the engine, you will say whether it could reasonably be expected that the company should adopt it. On the other hand, if the sik was considerable, and the expense, or trouble, or inconvenience of providing the remedy was not great in proportion to the risk, then you would have to say whether the company would reasonably be excused from availing themselves of such remedy because it might to some extent be attended with expense or other disadvantage to themselves." Before he approached the point of construction he would ask them, was the plaintiff guilty of contributory negligence? He could not help saying that the evidence on the part the of defendants displaced that suggestion against the plaintiff; because, although so many millions of miles were run, there were very few claims against the plaintiff; because, although so many millions of miles were run, there were very few claims for fire. There was nothing to show that there was a for life. Incre was nothing to show that there was a risk which a reasonable man ought not to have taken in placing the stacks so near the railway. Was there negligence on the part of the defendants? If the defendants had been able to work the engine as they had, ought the jury to come to the conclusion that it was defective in construction? The plaintiff's skilled witnesses had no experience of the working of leasons. witnesses had no experience of the working of loco-motives in this country. There was not a single person of experience in locomotive works in this country who had been called to say that the spark country who had been called to say that the spark arrester was necessary. They were used in times past and were used by some lines still, but experienced men who had to consider the question said they had come to the conclusion that they were no good, and that, by the appliances they had for arresting sparks, few sparks were emitted, so that engines could travel millions of miles without causing fires from sparks. Was there any reason to doubt the experienced gentlemen called for the defendants? It was then said, on behalf of the plaintiffs, that spark arresters were not used owing to expense. It was proved as to their cost being triffing; and did those insignificant things operate to prevent their use? Experienced engineers had said that the construction of this engine was the best to prevent sparks. He thought the question he ought to put to them was whether the engine was defective or not; and whether the defendants took fair and reasonable precautions, under all the circumstances, to have the whether the defendants took fair and reasonable pre-cautions, under all the circumstances, to have the engine properly constructed? If so they would find for the defendants. If they thought, upon taking proper advice and consulting the right men, among them Mr. Gregor and Mr. Halpin, in preference to those efficient, skilful, and intelligent engineers those efficient, skilful, and intelligent engineers whose opinions the jury had heard, that the defendants would have said that, without a spark arrester, the engine was defective, and if the jury thought the defendants could have got that advice and ought to have acted upon and believed it to be sound and reasonable, then the verdict ought to go for the plaintiffs

the defendants.

Mr. Murphy, Q.C., Mr. Wightman-Wood, and Mr. Harvey Murphy were for the plaintiff; the Attorney-General, Q.C., Mr. Asquith, Q.C., and Mr. Knox for the defendants.

(Sittings in Bankruptcy, before Mr. Justice Vaughan Williams.)

IN RE HILL.

Mr. MACASKIE made an application yesterday in re-

Mr. MACASKIE made an application yesterday in respect of this case, which was on the list for to-day, that it might stand over for the present, on the ground that the solicitor for the applicant, and the applicant himself, who was also the principal witness in support of the motion, were both ill, the latter being stated to be a victim to the prevailing epidemic.

Mr. JUSTICE VAUGHAN WILLIAMS asked what evidence there was of the illness of the applicant.

Mr. MACASKIE said that he made the statement on the instructions of his solicitor, but an affidavit could be filed if necessary.

MR. JUSTICE VAUGHAN WILLIAMS said that an affidavit was not necessary, but it would certainly be better that some certificate should be produced. At the present time persons might very well be excused if they fancied themselves somewhat more ill that they really were. The case should not be taken the they really were. The case should not be taken to-day in any event, and if a certificate was filed in due course the case might stand over for a fortnight, as asked, without further application. Otherwise the matter must be again mentioned to the Court.

(Before the RIGHT HON. the PRESIDENT.)

DANNETT V. DANNETT.

Kate Marion Dannett, whose maiden name was
Vale, petitioned for the dissolution of her marriage
with Herbert A. Dannett on the ground of his adultery
and cruelty. The respondent denied the cruelty, and
pleaded that if there had been adultery and cruelty
both these metrimonial offences had been envalued. both these matrimonial offences had been condoned.
Mr. Inderwick, Q.C., and Mr. H. Bargrave Deane
appeared for the petitioner; the respondent conducted

appeared for the petitioner; the respondent conducted his case in person.

The story told in this action was a curious one. Previously to April, 1885, the petitioner was staying with some of her friends at Scarborough, she being a young girl at the time. According to the statement of her counsel, neither she nor her family know up to the present time who the respondent really is, or what were his antecedents; but the petitioner said that when she met him at Scarborough he had a yacht there, and represented to her that he was a captain in the Royal Navy, and had served in the Sultan, one of the ships of Admiral Seymour's fleet, when it bombarded Alexandria, and that he had been awarded a medal with the other officers who had taken part in that achievement. He showed that he was in possession of £700, and, thinking he was in a good position, she accepted his offer of marriage. They were married at King's Norton Church, and there were two children of the marriage, one of whom, a boy, is surviving. Soon after they became man and wife he commenced to use abusive and sometimes threatening language to use abusive and sometimes threatening language towards her. On one occasion he told her he would knock her head off. His bad language was followed after a time by personal violence. In one instance he pushed her and she fell, and remained for a time insensible, and, in another, he took hold of her so violently that she fainted. In 1889 she ascertained with a young woman. She separated from him, but after an interval resumed cohabitation. He was, however, guilty of an act of violence on February 2, 1891, which caused her to finally leave him and institute her proceedings for a divorce.

The President told the respondent that he could cross-examine the netitioner if he thought fit to do

cross-examine the petitioner if he thought fit

The respondent then commenced to address observations to his wife which were in the nature of

The PRESIDENT, interrupting him, told him that in addressing his wife he must confine himself to questions. When the proper time came he would be at liberty to make such comments on her evidence, and

in support of his own case, as he might desire to put before the Court.

The respondent then put a number of questions to the petitioner, some of which the learned Judge ruled to be irrelevant. The others were directed to showing that the lady had had most of his money.

A maid-servant, who was also cross-examined by the

respondent, gave corroborative evidence of the cruelty.
Lillian Hatton swore that towards the end of 1889 she gave birth to a child, of which the respondent was the father, and that on a bastardy summons he was ordered to pay half-a-crown a week for the mainten-ance of that child.

The PRESIDENT told the respondent that he was at

appliances ng sparks. Ilberty to go into the witness-box and give evidence if he desired so to do.

The respondent, having been sworn, admitted the adultery charged against him, but denied the cruelty. thrown against the arrester would be broken up. It! Both before and after his sevidence, he addressed the