

## HOME AND SOCIETY.

### The Legal Relations of Mistress and Servant.

THE relations of mistress and servant are so governed by custom and tradition that few ladies, in hiring cooks, chambermaids, or waitresses, and few cooks, chambermaids, or waitresses, in being hired, remember that they are entering into a legal relation. Neither party to this bargain is in the habit of appealing to the courts. No written contract is entered into, and possible litigation and damages are not, as in the case of most other contracts, kept constantly in view. Nevertheless, the relation of mistress and maid is subject to many well-defined rules of law, a few of which are of considerable practical importance. We say the relation between mistress and maid, because, in this country, the actual relations of servants are generally with the lady of the house, though, when it comes to litigation, the parties who appear in court are generally of the other sex. Usually the husband of the mistress is in law responsible for her dealings with her servants, while among servants a litigious disposition is rarely developed among the gentler sex. The rules of law, however, are the same for both sexes.

One of the questions which must frequently arise in any employer's mind is what remedy she has for simple idleness and neglect of duty on the part of a servant. The right of chastisement is obsolete, and the right to obtain a decree for what is known to lawyers as specific performance has never been recognized by the courts. Under these circumstances custom and law coincide in leaving only one course open, which, curiously enough, was that recommended by the learned Puffendorf two centuries ago, "to expel the lazy drones" and "leave them to their own beggarly condition." This advice Puffendorf derived entirely from his investigations into the law of nature. The common law of the United States is, however, precisely in accord with the law of nature, and its rule about idle servants, expressed in the vernacular of to-day, is simply to discharge them.

When they are discharged, is it the duty of the mistress to give them "characters"? This was settled long ago in the case of *Card v. Bird* (3 Esp., 201), decided in England, at the beginning of this century, by Lord Kenyon. The plaintiff's wife, having been dismissed from the service of the defendant, applied to a Mrs. S. for a situation. Mrs. S. was willing to take her if she could get a character from the defendant. The defendant refused to give her one, and she consequently brought an action. Lord Kenyon said that such an action had never been heard of then, and no such action has been heard of since. But, though the employer is not bound to give any character at all, she is at perfect liberty to do so, and if she does it she is bound to tell the truth, and not indulge in malicious insinuations. The rules of law with regard to servants' characters are simply those of a sound social morality. One or two cases decided in the English courts will show this and the rules

would be precisely the same in this country. Sir Gervas Clifton never complained of his butler's conduct while he was with him, but suddenly dismissed him without notice, and without a month's wages. The butler was not entitled to the month's wages, but refused to leave the house without them. A violent altercation took place, and a policeman was sent for who finally ejected the butler. Sir Gervas subsequently gave the butler a very bad character, and, in the course of it, made some charges which were not true. On these facts the butler recovered a verdict for twenty pounds. (*Rogers v. Clifton*, 3 B. and P., 587.) Under ordinary circumstances, characters given to or statements made about servants are what are known at law as "privileged communications," that is, they may be made, if made truthfully, without fear of the consequences. Thus, in another English case, a master discharged his cook and footman, and they asked him his reason for doing so; he told the footman, in the absence of the cook, that "he and the cook had been robbing him," and told the cook, in the absence of the footman, that he had discharged her because "she and the footman had been robbing him." It was decided that these statements were privileged, and that neither cook nor footman had any cause of action against him.

Disputes of this sort seldom get into the courts in this country, partly because we are less litigious than the English, and partly because work is easier to get here. A dispute which has been made the subject of adjudication here is one which, no doubt, often arises in practice between master and servant and mistress and maid; and that is, when the servant leaves the employment wrongfully before his or her term of service expires, is the employer bound to pay for the time? The old rule was that nothing was due. The modern rule is unsettled, but the better opinion is that the employer is bound to pay for the time actually given. In most cases, however, we presume the servant actually receives wages for the whole time.

G. S.

### "Going Abroad for an Education."

I HAVE read the article in the September *CENTURY* on "Going Abroad for an Education," with interest and hearty approval of the points made, with one exception. My observation and experience differ from those of the writer of that article in regard to the conditions upon which a young man can take a degree in a German university. He says the diplomas which Americans receive at German universities "are nothing more, as a rule, than certificates that they have pursued certain studies at these universities, and quite another thing from the degree which the German student receives. It is hardly within the range of possibility for a graduate from an American college, even if he 'reads a little German,' to be graduated at a German university."

Allow me to modify this statement. I am personally acquainted with at least a dozen graduates