

The Legal News.

VOL. VIII. JUNE 20, 1885. No. 25.

The expediency of establishing a court of criminal appeal was considered in the English House of Commons during the present session. Sir Wm. Harcourt, while admitting to some extent the justice of the principle, did not think the present system could be charged with serious injustice. The Home Secretary in the course of his remarks made the following important reference to the diminution of crime: "I am happy to think that in this country crime of a serious character is rapidly decreasing. That is one of the most satisfactory features of the time. The sentences of penal servitude are less than one-half what they used to be some years ago. There is, I think, a disposition on the part of those who administer the criminal law to mitigate its severity. I believe that the time has arrived when it may be more considerably done—when the sentences may be less severe and less protracted with equal security to life and property in this country. I have never failed to express that opinion, and upon proper occasions I always like to act upon it. My honored and learned friend has referred to many cases in which men were condemned to death, and the sentences afterwards commuted, and has rather illogically concluded either that the men deserved to die or that they ought to be released as innocent. That is not so. A doubt may have arisen, and in no case of doubt will a Secretary of State allow the sentence of death to be executed."

That some confusion of ideas prevails even in England, with regard to the sanctions of evidence, would appear from the following incident which recently occurred in the City of London Court before Mr. Commissioner Kerr:

"In the course of an action brought by Mrs. Marchant against Mr. C. B. Snelling, a gentleman named Edward Snelling said he wished to make a statement.
—Defendant: I object. Are you a Freethinker?—
His Honour: I don't know what a Freethinker is. I

will ask the witness if he believes in the existence of a God, and in a future state of rewards and punishments?—Witness: I am an Agnostic.—His Honour: I don't know what that is. I have nothing to do with these grand, learned modern words, which are too often in the mouths of the ignorant. Do you believe in a Deity, and a future state?—Witness: No.—His Honour: Then I can't take your evidence.—Witness: Will you allow me to affirm?—His Honour: No; because a person who affirms must state that he has a conscientious objection to take an oath. That is the law of England, whether right or wrong."

But the *Law Journal* thereon remarks:—"Mr. Commissioner Kerr's reading of the statute-book seems to have ceased before the year 1869. He is stated to have rejected a witness because he could not swear, not believing in a Deity, and because he could not affirm, not having a conscientious objection to take the oath, and he applied these two tests as exhausting the law of England 'whether right or wrong.' But this is not the law of England, as everyone knows whose legal education has not stagnated at a somewhat distant period. Has Mr. Commissioner Kerr never heard of the Evidence Amendment Act, 1869, which allows a man to make a solemn promise and declaration if the judge is satisfied that the taking of an oath would have no binding effect on his conscience? We prefer to believe that the report stops abruptly, and that the witness was eventually allowed to make the declaration."

THE LAUDERDALE PEERAGE.

The question on which the title to the Lauderdale peerage and its yearly income of \$80,000 a year depend is whether Sir Richard Maitland was legally married according to the laws in force in New York prior to the Revolution. From 1765 to 1772 he was an army officer in the colony. It has always been taken for granted that while here he was married to Mary McAdam, and the title to the peerage has descended on this assumption. An unexpected claimant now appears in the person of Sir James Ramsay Maitland, who contests the claim of Major Frederic Henry Maitland, a lineal descendant of Sir Richard, on the ground that Mary McAdam was not the lawful wife of Sir Richard, and hence that the latter left no legitimate offspring.