

"It appears, however, under the modern law of France, to have been revived for vexatious actions."

The word "vexatory" is not English, and, for obvious reasons, I am unwilling on this occasion to use the words "gone almost out of use."

But applying my faculties to the subject, and hoping that the reader will follow me, I venture to say that I understand the Chief Justice to have given his opinion and the grounds of his opinion. It is as if he had said, "The Appellant would not have succeeded in France because the ordinance had almost fallen into disuse."

Here, then, appealing to every lawyer, to every man of sound judgment and common sense, I would enquire whether the word "almost" does not so far qualify the sentence as to prove the Chief Justice to have assigned an insufficient reason, to have proclaimed from the Bench a *non sequitur*. It may, it is true, be proper to refrain from enforcing a law fallen *entirely* into disuse. Admitting, in favor of the Chief Justice, that proposition, I maintain that a law may be said to have "gone *almost* out of use," not because it is a bad law, but, on the contrary, because it is so good a law that it has not for a long time been violated, or that transgressors have been few and far between. Thus the law prescribing the double sleigh, which was an excellent law in winter, but a dead letter in summer, might be said every autumn to have "almost gone out of use." Would that justify the refusal of the Chief Justice on fitting occasion to enforce it?

Taking, for example's sake, the city of New York, I submit that there the whole press says that the gallows and hang-

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