

FLOTSAM AND JETSAM.

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THE ROMANCE OF THE WOOLSACK.—The "opportunity" that made Mr. Herschell was one of those rare and remarkable chances that occur in the legal profession. An old woman had been brutally murdered in her cottage on the road between Liverpool and St. Helens. A tramp was arrested by the police at the Old Swan, and was committed for trial on the capital charge. The case came on at the Crown Court, St. George's Hall, before the late Chief Justice Bovill. When the prisoner was placed in the dock and arraigned he said that he was undefended. There were only about four barristers in the court, of whom Mr. Herschell was one. The judge asked him to undertake the defence. The young lawyer cross-examined the witnesses—the evidence being purely circumstantial—with much acuteness; in dealing with the doctor's testimony he displayed considerable scientific knowledge; and his speech for the defence was remarkable for its eloquence and power. The result was that the prisoner was acquitted, and Chief Justice Bovill paid a high compliment to Mr. Herschell for his talent in conducting a defence under circumstances of exceptional difficulty. The result of the trial caused a great sensation throughout Lancashire. The fame of the young lawyer, to whose brilliant advocacy was mainly attributable the prisoner's acquittal, spread far and wide, and from that time briefs, both in civil and criminal cases, were freely sent to him.—*Liverpool Courier.*

TELEPHONE TESTIMONY.—All our "modern improvements," railroads, telegraphs, gas-light, electric lights, etc., produce much litigation, and bring before the courts new principles, or more properly, perhaps, the application of old principles of law to new conditions and circumstances. The railroad more particularly has been a most fruitful source of litigation. One can hardly open a modern book of reports without encountering the familiar abbreviation, "R. R. Co.," and our old acquaintances "negligence," and "contributory negligence." The telegraph, too, has done something, but very much less, in furnishing business to lawyers, and employment to courts, but the

telephone is as yet behind and has evolved very few legal questions. It is young yet, and in due time will, no doubt, do better.

A rather singular case occurred a few days ago in a *nisi prius* court in this city, which brought up the question, whether a communication by telephone was admissible in evidence, the person receiving the communication not being able to recognize the voice of his interlocutor, nor identify him otherwise than by the fact that he had called up A. B., and that the party at the other end of the line stated that he was A. B. The "Central" official was not called to prove that he had put the two numbers into communication, and the testimony of the witness amounted simply to this: that he had heard somebody whom he did not recognize, say that he was A. B., and that he accepted the proposition made by the witness. The question was, is such testimony competent as tending to prove that A. B. by the response to the telephonic inquiry, incurred a civil liability? The court permitted it to go to the jury "for what it was worth."

The only case which as yet we have been able to find, was decided by the Supreme Court of Kentucky.* The facts were that A., desiring to talk over the telephone with B., asked the operator to call him. At A.'s request the operator conferred with B. by telephone and reported to A. what B. said. Upon being called as a witness, the operator could not remember what B. said, but the court admitted the testimony of A. and bystanders as to what the operator said that B. said; the trial court held that the testimony was competent.

Upon appeal the Supreme Court took the same view, regarding the operator in the light of an interpreter, who has been held to be, for the purposes of his function, as the agent of both parties, and his declarations of what was said by them are admissible in evidence.†

* *Sullivan v. Kuykendall*, 24 Am. Law Reg. 442.

† *Camerlin v. Palmer*, 10 Allen 539; *Scheerer v. Harper*, 36 Ind. 536; 1 Greenl. Ev. § 163; 1 Phillips Ev. 519.