

## FLOTSAM AND JETSAM.

of hand ; a bill against a married woman for specific performance of an agreement to purchase a lease and good will, the trustee of her separate estate being a party to the suit ; a bill for the administration of separate estate ; a bill by a married woman to restrain an infringement of copyright, a decree for payment of debt secured by note of hand out of separate estate, and a decree for administration of separate real and personal estate.

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## CURIOSITIES OF THE LAW REPORTERS.

Sir Harbottle Grimston wrote of his father-in-law, Sir George Croke, that he was continued one of the judges of the King's Bench, "till a *certiorari* came from the Great Judge of heaven and earth to remove him from a human bench of law to a heavenly throne of glory." Preface to Cro. Eliz.

Sir Francis Palgrave relates this anecdote : Within memory, at the trial of a cause at Merioneth, when the jury were asked to give their verdict, the foreman answered : "My lord, we do not know who is plaintiff or who is defendant, but we find for whoever is Mr. C. D.'s man." Mr. C. D. had been the successful candidate at a recent election, and the jury belonged to his colour. On the authority of the King's Council, p. 143.

The Term Reports, when they use the very language of Lord Kenyon, often contain a series of broken metaphors. For example : "If an individual can *break down* any of those safeguards which the Constitution has so wisely and so cautiously erected, by *poisoning* the minds of the jury at a time when they are called upon to decide, he will *stab* the administration of justice in its most vital parts." Townsend's Lives of Twelve Eminent Judges, Vol. I. p. 79.

"When a man is taken in adultery with another man's wife, if the husband shall stab the adulterer, or knock out his brains, this is bare manslaughter ; for jealousy is the rage of a man, and adultery is the highest invasion of *property*." *Regina v. Mawgridge*, Kelyng, 137.

"In truth," as was said by Wilmot, C.J., "The common law is nothing else but statutes worn out." *Collins v. Blantern*, 2 Wils. 341, quoted by Willes, J., in *Pickering v. Ilfracombe Railway Co.*, L. R. 3 C. P. 250.

In *Commonwealth v. Meriam*, 14 Pick, 518 which was an indictment for adultery, it was

held that other instances of improper familiarity between the defendant and the same woman, might be given in evidence to corroborate the witness. But such evidence has been rejected, the Court say, "where it tends to show a *substantial act* of adultery on a different occasion." *Thayer v. Thayer*, 101 Mass. p. 112.

Holt, C.J.—"If a man solicits a woman and goes gently to work with her at first, and when he finds that will not do, he proceeds to force, it is all one continued act, beginning with the insinuation and ending with the force. And this being an attempt and solicitation to incontinency, coupled with force and violence, it does by reason of the force which is temporal, become a temporal crime in the whole. An indictment will not lie for a plain adultery, but libel in the Spiritual Court will." *Rigault v. Galliard*, Holt, 51.

"Hearsay is no evidence. But it may be admitted in corroboration of a witness's testimony." Gil. Ev. 890. Kelyng Appendix to 3d ed. 92.

In the thirtieth edition of Burn's Justice, vol. III. p. 1031, note, it is said : "It seemeth to savour not much of gallantry that one's ancestors supposed none but women could be guilty of being a common scold ; for the technical words denoting the same, whilst the proceedings were in Latin, were all of the feminine gender ; as *rixatrix*, *calumniatrix*, *communis pregnatrix*, *communis pacis parturbatrix*, and the like."

A curious instance of the plea, *molliter manus impositus*, occurs in a case reported in Levinz. *Ashton v. Jennings*, 2 Lev. 123. The plea to an action for assault and battery was, that the female defendant, being the wife of an esquire and justice of the peace, the female plaintiff being the wife of a doctor in divinity, assumed to go before her at a funeral at Plymouth, whereupon the defendant gently laid her hands upon her to displace her, as she lawfully might. The Court, without deciding the question of precedence, gave judgment for the plaintiff.

Lord Bacon writes that certainty is so essential to law, that law cannot be even just without it. "For if the trumpet give an uncertain sound, who shall prepare himself to the battle?" 1 Corinth. xiv. 8. So, if the law gives an uncertain sound, who shall prepare to obey it? It ought, therefore, to warn before it strikes. It is well said, also, "That that is the best law which leaves least to the discretion of the judge." Arist. Rhet. i. 1 ; and this comes from the certainty of it. De Augustinis, viii. Aph 8 Vol. V. p. 90, ed. Spedding.