

"In America all lawyers drink; *very few are sober after ten o'clock in the morning.* It is not customary to keep sherry bottles or beer barrels in offices, because sherry and beer are rarely drunk in America—except by women. Lawyers, like all other men, drink whiskey, and for this purpose a hogshead of it is kept in every practitioner's safe. Formerly, it was kept in the main office, but since the introduction of wall safes (and the passage of the prohibitory laws, which are now so common throughout the country) the safe has been found the most convenient place. For conveyancers, the register of deeds keeps a supply. This practice is entirely unknown to the English, owing to the absence of compulsory registration. Formerly, in Massachusetts, no contract was considered valid in the profession, unless it had been, to use the term then in vogue, "ratified." Ratification consisted of a solemn drink, *inter partes*, participated in by the attorneys. Whether this custom would ever have ripened into law it is impossible to say, because the practices we have been describing excited for some reason so much animosity among the Jesuits, that they procured the enactment of a prohibitory law by the legislature, nominally directed against the sale of all liquors, really however, against the Bar. This has resulted in making alcoholism in chambers more secret. It is thought, however, that nothing will totally eradicate it, except the introduction of light European wines."

What can this mean? Is it that the public which has endured a "Tammany Hall" and an "Erie Ring" puts up, as a small matter, with a legal profession "very few of whom are sober after ten o'clock in the morning;" or is this piece of self-accusation as ridiculous as the mare's nest of legal alcoholism lately unearthed by a legal journal on this side of the Atlantic? American lawyers who come to England tell us that lawyers in the States work nothing like so hard as their brethren here. The tone, too, of the legal profession is very much less fastidious in America than in England. But there is moderation, and we do not believe that the American lawyers are the exception which proves that rule. The paragraph in our transatlantic contemporary's pages, if not intended as a hoax, must have been written, after ten a.m. by an unfortunate specimen in a mood of generalization.—*Solicitors' Journal.*

It has been held in England, in *Lee v. The Lancashire and Yorkshire Railway Company*, that the legal and equitable rights of a passenger injured by a railway accident are exactly the same as those of a passenger injured by any other common carrier, and the same considerations and rules apply in both cases. And that where a receipt has been given under seal it discharges at law all cause of action, and can only be set aside by the equitable jurisdiction of courts of law; but a mere receipt in writing has no such effect, it amounts simply to an acknowledgment of money paid; it cannot be pleaded in answer to an action, and it may be impeached or explained by parol evidence.

CANADA REPORTS.

ONTARIO.

COMMON LAW CHAMBERS.

IN THE MATTER OF SOPHIA LOUISA LEIGH *

Custody of children—Con. Stat. U. C. cap. 74, sec. 8.

Upon an application by the mother, under Con. Stat. U. C. cap. 74, sec. 8, for the custody of her infant daughter, four years of age, the husband and wife having separated: *Held*, (after reviewing the cases decided under the corresponding English Act,) that the statute in question does not take away the common law right of a father to the custody of his child, but only makes the recognition of this paternal right conditional upon the performance of the marital duty, and subjects it, in some degree also, to the interest of the child.

If, therefore, upon an application of this kind, it appears that the husband and wife are living apart, the court will inquire into the cause of their separation, in order to ascertain

(1) Whether the husband has forfeited, by breach of his marital duties, this *prima facie* right to the possession of his children. (2) And whether the wife, by deserting the husband without reasonable excuse, has relinquished her claim to the benefit and protection of the statute, which was intended "to protect wives from the tyranny of their husbands, who ill-used them."

[Chambers, May 17, 1871.—*Gwynne, J.*]

This was a petition, under Con. Stat. U. C. cap. 74, sec. 8, by Mrs. Henry Leigh, praying that her infant daughter, Sophia Louisa Leigh, aged four years, might be taken from the custody of its father and delivered to her.

It appeared, from the affidavits filed on the application, that the husband and wife had been living apart since April, 1870; the cause of separation alleged by the petitioner being her husband's ill-treatment of and cruelty towards her for eight years previous to that time. The husband, in reply, filed the affidavits and certificates of a large number of his neighbours, all of whom testified in the strongest terms to the high character which he had always borne in his social and domestic relations. He also fully met and disproved the allegation of the petitioner that on account of hereditary insanity in his family, it would be unsafe to entrust him with the custody of the child.

The material portions of the evidence, and the cases cited upon the argument, fully appear in the judgment.

Dalton McCarthy appeared for the petitioner.

William Boys for the respondent, Henry Leigh.

GWYNNE, J.—In *Re Taylor*, 11 Sim. 178, which was one of the first cases that arose under the English Act, 2 & 3 Vic. cap. 54, it appeared that on the 20th October, 1837, Mrs. Taylor left her husband's house, alleging, in justification of that step, a charge of adultery, which she then preferred against him, upon grounds of which she afterwards admitted the entire insufficiency, and which were, in fact, wholly without foundation. Overtures for a reconciliation were immediately made by Mr. Taylor, and various negotiations followed; but Mrs. Taylor, by the advice of her friends, refused to return home. Circumstances occurred which convinced Mr.

* See *In re Kinne*, 6 C. L. J. N. S. 96, and the judgment of Adam Wilson, J., in *Re Allen*, Q. B. H. T., 1871 (not yet reported).—Eds. L. J.