The Lower Canada Law Journal.

Vol. II. FEBRUARY, 1867. No. 8.

AUTHORITY OF COUNSEL.

The case of *Strauss* v. *Francis*, Law Rep. 1 Q. B. 379, is of considerable interest to the profession as a decision upon the powers of counsel in conducting trials. The point held was that "it is within the general authority of counsel retained to conduct a cause to consent to the withdrawal of a juror, and the compromise being within the counsel's apparent authority, is binding on the client notwithstanding he may have dissented, unless this dissent was brought to the knowledge of the opposite party at the time." The action was brought against the defendant, as publisher of the *Athenæum*, for an alleged libel contained in a criticism on a novel of the plaintiff, styled *The Old Ledger*. The criticism was as follows:—"Our first impression on opening this production was that so many italics and inverted commas were never congregated into the same space before; our last on closing it is that it must be the very worst attempt at a novel that has ever been perpetrated. It cannot even claim the utility of an opiate: its inanity, self-complacency, vulgarity, its profanity, its indelicacy (to use no stronger word), its display of bad Latin, bad French, bad German, and bad English, its perpetual recurrence of abuse, or, as the author more euphemistically expresses it, 'slightly digressive reflections' on great men, living and dead, and wholly unconnected with the subject,—all make the reader more indignant than weary, and how much this means can only be conceived by an operation which few are likely to attempt, and fewer still to achieve, that of reading the book." The plea was, "not guilty."

At the trial before Erle, C. J., Mr. Serjeant Ballantine, for the plaintiff, simply put in the article in question, and proved that it had reference to the plaintiff's novel. Mr. Hawkins, Q. C., for the defendant, read various paragraphs from the novel, which he contended fully justified the criticism. While he was addressing the jury Mr. Ballantine interposed, and a juror was withdrawn by consent, of which course the Chief Justice expressed his approval. The plaintiff subsequently moved to set aside the compromise, and for a new trial, on the ground that the withdrawal of a juror was against his express wish. The judges, however, were all of opinion that the application must be refused. Blackburn, J., remarked:—"Mr. Kenealy (the plaintiff's counsel) has ventured to suggest that the retainer of counsel in a cause simply implies the exercise of his power of argument and eloquence. But counsel have far higher attributes, namely, the exercise of judgment and discretion on emergencies arising in the conduct of a cause, and a client is guided in his selection of counsel by his reputation for honour, skill, and discretion. Few counsel, I hope, would accept a brief on the unworthy terms that he is simply to be the mouthpiece of his client." Mellor, J., expressed a similar opinion, observing that "no counsel, certainly no counsel who values his character, would condescend to accept a brief in a cause on the terms which the plaintiff's counsel seems to suggest, viz., without being allowed any discretion as to the mode of conducting the cause. And if a client were to attempt thus to fetter counsel, the only course is to return the brief. I am quite sure no such limitation of authority was consented to by the counsel on the present occasion; and I think the power to withdraw a juror is strictly within the limits of the conduct of the cause. Nothing can be more to the advantage of a client than that the counsel should have the power to enter into a compromise of this kind, when he finds his own case become desperate, or an overwhelming case made by his adversary."

RETAINERS.

We copy below a singular correspondence which appeared in the *Times*, between Messrs. Shaen and Roscoe, solicitors to the Jamaica Committee, and Mr. Coleridge, Q. C., with reference to the retainer accepted by that gentleman, but objected to by Mr. Rose, repre-