

EDITORIAL ITEMS—CERTAINTY IN THE LAW.

not be registered as a trade mark under the Trade Marks Registration Act.—*Re Stephens*, 24 W. R. 963.

SOME misapprehension seems to exist as to the effect of the statute of 1875-6, altering the practice as to payment of money into court. Upon an application made to Mr. Dalton, in a case of *Steinhoff v. Royal Canadian Insurance Company*, for an order for the payment out of court of money paid in under a plea of payment into court, the pleadings having been filed in an outer county, the order was refused. Mr. Dalton, held, that the statute only applied to cases where the pleadings were filed in Toronto, and the money paid to the master there; and that the words "at Toronto" are not part of the description of the court, but are intended to restrain the operation of the statute as above. The practice therefore is not altered as regards the outer counties.

THE death of Mr. Justice Quain, one of the Justices of the Queen's Bench Division, in England, on the 12th September, is thus alluded to in the *Law Journal*: "The profession will sincerely regret the early death of Mr. Justice Quain. It was known that his health had been for some time bad, and that lately his condition had caused anxiety; but the fatal termination is a painful surprise. The late learned judge, after practising as a special pleader without the bar, was called in 1851, and joined the Northern Circuit. His progress was continuous, though not rapid. He took silk in 1860; and the following year he became Attorney-General for the County Palatine of Durham, in succession to Mr. Hindmarsh. Although only four years on the bench, Sir John Quain fully realised the expectations of his friends. His demeanour was at all times kind and courteous,

and his zeal was not less conspicuous than his urbanity. Day after day he became more valuable as a judge, and his death is a great loss to the public service." Later papers announce the death of Mr. Justice Archibald, of the Common Pleas, on the 18th Oct., last. Mr. Archibald was a native of Nova Scotia, and was educated there. He is said to have been a distinguished ornament of the Bench. Mr. Manisty, Q.C. takes the seat vacated by Mr. Justice Quain.

CERTAINTY IN THE LAW.

Upon no subject have many authors and many lawyers been more sarcastic than upon the adherence to precedent which is one of the characteristics of the English law. Tennyson in his "Aylmer's Field" heaps contempt upon "the lawless science of our law,

"That codeless myriad of precedent,
"That wilderness of single instances."

Lawrence Sterne also writes that "Precedents are the bane and disgrace of legislation. They are not wanted to justify right measures, and are absolutely insufficient to excuse wrong ones. They can only be useful to heralds, dancing masters, and gentlemen ushers, because in these departments neither reason, virtue, nor the *salus populi* or *suprema lex* can have any operation." In much the same spirit did good old Serjeant Hill make reply to the judge who hesitated in ruling a point and asked his learned brother for a precedent: "When judges are about to do an unjust or absurd action," Hill said, "they seek for a precedent in order to justify their own conduct by the faults of others."

But it is evident that so long as the law is uncodified, the only practicable plan of giving to it that stability and uniformity