

The Legal News.

VOL. XI. APRIL 7, 1888. No. 14.

The *Edinburgh Law Journal* has the following:—"The law of murder has within recent years been the subject of judicial discussion and definition. In *Reg. v. Dudley*, 14 Q.B.D. 273, it was held that self-preservation, as distinct from self-defence, will not make homicide justifiable. Therefore if A and B, two shipwrecked sailors, lay hold of a floating plank, which will support one but not both of them, and A, considering his own life to have the greater 'real value' to society, push B into the water, and escape to land, he is guilty of murder. In *Reg. v. Serne*, tried at the last Old Bailey Sessions, Mr. Justice Stephen gave the weight of his high authority to 'the domestic fowl' dictum of Mr. Justice Foster. A, intending to steal B's fowl—which is felony—tries to shoot it and kills B by mistake. A has murdered B. But the act would not be murder—if Sir James Stephen is right—had A only fired at B's fowl in fun."

In *Thatcher v. Weeks* (25 Rep. 202), the Supreme Judicial Court of Maine was asked to pronounce upon a claim for certain drums which had been taken from the Salvation Army by the mayor and city marshal. The officer did not bring the drums before the magistrate, nor had he obtained any order disposing of them. The Court held that an officer who has taken from a prisoner the instrument with which he has committed an offence, cannot justify its detention after the trial of the accused is over, except by an order of the court. The Court observed: "The officer claims, that for the purpose of preventing any further violation of the city ordinance, he could lawfully take the drums thus being unlawfully used, and could lawfully retain them in his own possession so long as he had reason to believe and did believe, that the plaintiff would immediately again use the drums in the same unlawful manner if restored to him. The principle thus contended for by the

officer would enable him to detain the team of a person arrested for too fast driving, so long as he (the officer) believed, with reason, the owner would immediately repeat his offence of too fast driving, if the team were restored to him. There is an evident difference, also, between articles which can only have an unlawful use, like counterfeit coin, and articles in themselves innocent, like drums. If an officer may indefinitely hold the former, it does not follow that he can so hold the latter." The judgment of the lower court in favor of the defendant was overruled.

The reply to a question put by a correspondent with reference to the report of *Anders v. Hagar*, 6 Leg. News, 98, may have an interest to our readers generally. He asks for the result of the appeal which was granted by the Court of Queen's Bench from the decision reported on the page above mentioned. It appears that the appeal was never proceeded with.

Mr. Wicksteed, our senior Q.C., has supplemented his collection of "Waifs" by a translation of Mr. Louis Fréchette's "Les Excommuniés," a touching episode in the history of Canada, relating how five of the old subjects of France braved the terrors of excommunication rather than submit to the new rulers of the land. The incident is said to be true, and the names of the five are given. Mr. Wicksteed has preserved very faithfully the pathetic simplicity of the original, which loses none of its interest in its English rendering.

NEW PUBLICATION.

THE CRIMINAL STATUTE LAW OF CANADA, Relating to Indictable Offences. By H. E. Taschereau, Justice of the Supreme Court of Canada. Second Edition. Carswell & Co., Law Publishers, Toronto.

The new edition of Mr. Justice Taschereau's well-known work will be received with satisfaction by the profession in Canada. The author states that it has been rendered necessary by the proclamation, on the 1st March, 1887, of the Revised Statutes.