

ON JUDICIAL EXPRESSION.

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While borrowing an idea from the treatise of the late Mr. Coode, on "Legislative Expression," we have no intention of dipping more deeply into legal matters than is warranted by the state of the thermometer. We fully appreciate being in the midst of vacation, which some miserable sinners in England think should be abolished, because banks, &c., have no such seasons of intermitted exertion. Against this short-sighted view, we quote the opinions of Alderson, B., expressed with his usual felicity, though in a somewhat extra-judicial manner:

"My holidays, my holidays!

'Tis over, and now I am free
From the subtle draughtsman's tangled maze,
As he weaves the vacation plea.

My holidays, my holidays!

Now beneath the tranquil night,
And the twilight walk, and the upward gaze
At those distant orbs so bright;
While the swelling wave 'mid the pebbles plays,
And breaks with a gleam of light."

Let subtle draughtsmen weave their mazes, pending vacation; all sensible lawyers will hail this time of emancipation.

True to our severe legal instincts, we have managed to find, even in professional reading, some matters not unsuited for the relaxation of holiday hours. In looking over our recent exchanges, we note a few remarkable utterances of the United States Bench, that have suggested some passages from the sayings and doings of English judges; and our *olla podrida* is now before our readers.

In *Everhart v. Searle*, the Supreme Court of Pennsylvania, on the 13th May, 1872, decided the question that a person who is the agent for the sale of certain land cannot also act as agent for the purchase of that land, and by consequence cannot recover anything for his services in purchasing. This, by the way, is in principle the same thing as was decided by Wilson, J., in *The Ontario Bank v. Fisher*, 4 P. R. 22, where he held that a city principal could not represent as agent in the same case attorneys on opposite sides. However, in the Philadelphia case, Thompson, C. J., announces his judgment by saying:

"The case before us is rather novel. It involves a question, whether the same person may be an agent in a private transaction for both parties, without the consent of both, so as to entitle him

to compensation from both or either. We have the authority of Holy Writ for saying that 'no man can serve two masters; for either he will hate the one and love the other, or else he will hold to the one and despise the other.' All human experience sanctions the undoubted truth and purity of this philosophy, and it is received as a cardinal principle in every system of enlightened jurisprudence."

This sort of citation appears to be much relished by the American judges. Thus, in *Henshaw v. Foster*, 9 Pick. 317, Parker, C. J., after referring to the maxim, "*Qui hæret in literâ hæret in cortice*," says "'The letter killeth, but the spirit maketh alive,' is the most forcible expression of Scripture." In England and Canada such a practice is now-a-days unknown, and we are rather glad it is so. But in olden times, the judges of England, not unmindful of dedications and the like, whether they were styled *très Sage et très Reverend*, deemed it becoming to their dignity to garnish their deliverances with Scripture texts. For example, Mr. Justice Fortescue cites a very old precedent in support of the doctrine that a man should not be condemned before being heard: "I have heard it observed," he says, by a very learned man, that even God himself did not pass sentence upon Adam before he was called upon to make his defence. 'Adam, where art thou? Hast thou eaten of the tree whereof I commanded thee that thou shouldst not eat?' And the same question was put to Eve also." This passage was cited by Maule, J., in *Alley v. Dale*. Another case, before the Quarter Sessions at Philadelphia, merits notice for the peculiar way in which the judge (Ludlow, J.) charged the jury, in an indictment under the Sunday law, for liquor sold on that day in the hostelry of one Jacob Valer. He first recommends the jury "to discard every outside consideration, and to rise above the surrounding atmosphere in their deliberations upon the questions presented, with an earnest effort to seek for and discern the truth under the law of our land." Then, after reading out the statute to the jury, he proceeds thus:

"The testimony in this case is, that on a Sunday night, by a sort of prearrangement, these four persons, the witnesses, went into the house of one Jacob Valer; that they saw the lights burning, the tables around the room, and that they asked for whiskey, lemonade and segars; and that thereupon the whiskey, or that which