

## The Legal News.

Vol. XIV. JULY 11, 1891. No. 28.

### CARRIER—CONTRACT FOR SLEEPING CAR—BREACH—DAMAGES.

The plaintiff engaged two berths in a sleeping-car, telling the porter that he wanted them for himself and two ladies. He then went back to the passenger coach and returned with his mother and his wife. When the conductor came through the car, the two ladies were seated together, and the wife paid for a berth. The plaintiff was then in the other berth, and when the conductor came to him he also paid for one. When she had put his mother to bed, the plaintiff's wife went over to the berth to which he had retired. She was partly undressed. The porter observed this, and pulled the curtains aside, saying that the company did not allow such proceedings. Being told that the lady was the plaintiff's wife, the porter called the conductor, and the two pulled the curtains aside, exposing to view the plaintiff and his wife undressed. They insisted that she leave the berth, which she did, returning to the other. *Held*, that there was no breach of contract. No question can exist, remarked Henry, J., in delivering judgment, with regard to the right of the husband and wife to occupy the same berth in a sleeping-car. At the same time, the proprietors of such conveyances imperatively owe to the travelling public the duty of seeing that men and women who do not occupy to each other that relation shall not occupy the same one. Usually there need exist no difficulty about preserving and enforcing both the right and the duty. When a berth is contracted for by the husband, either with the express understanding that it is engaged for the joint occupancy of himself and wife, or under circumstances that are not misleading within themselves, the refusal to permit such joint occupancy, without other reason than the difference of sex, and when such refusal would be a breach of contract, would give the injured party a right of action for damages, in which might be considered circumstances of insult and aggravation attending the breach.

In this case, the wife, with the consent of her husband, made a contract for one berth, while he made one for another. Unquestionably, the wife acquired the right to occupy the one for which she paid, and an unexcused expulsion of her from that would have been a breach of contract, for which plaintiff could have recovered damages. Unless she acquired by contract the right to occupy, at the same time, two berths, it is evident that the refusal to permit her to occupy the one paid for by her husband would not be a breach of any contract. As it cannot be claimed that the evidence shows a contract for the wife to occupy more than one berth, it results that a case is not shown for the recovery of damages for the breach of a contract. There is no assault or battery; nor is there a cause of action stated for defamation. It may be admitted that there was nothing improper in the conduct of the plaintiff and his wife, when their relationship to each other is considered; and yet it cannot be affirmed that their actions were not, under the circumstances, calculated to excite the suspicion, and arouse the vigilance, of defendant's servants, and make it their duty to investigate the matter, and apply a remedy for the wrong, if one was found to exist. It was a duty which defendant owed to plaintiff and his wife, as well as to the other passengers on the coach, that the investigation should be conducted without rudeness or greater publicity than was absolutely necessary. The evidence indicates that the defendant's servants did not discharge their duty in this manner, but that on the contrary they were guilty of great rudeness. Such conduct would properly be considered and given weight, in estimating the amount of damage, if a cause of action otherwise existed. But we have been unable to find a precedent for holding that there exists in favor of plaintiff a cause of action growing out of the manner alone in which the servants of defendant discharged an apparent duty. *Tex. Sup. Ct. Dec. 2, 1890. Pullman Palace Car Co. v. Bales.*

### LOAN OR PARTNERSHIP.

The recent admirable Act codifying the law of partnership, which came into operation on January 1 in this year, has not interfered

much with the law previously in force as to a loan to a partnership in return for which the lender receives a share of the profits, as declared by Bovill's Act (28 & 29 Vict., c. 86). While community of profit is declared to be a *sine qua non* of a partnership by section 1 of the new Act, section 2 provides that a receipt of a share of profits does not of itself make the receiver a partner. Omitting the other subsections, we pass to section 2, subsection 3 (d), which enacts that 'the advance of money by way of loan to a person engaged or about to engage in any business or a contract with that person that the lender shall receive a rate of interest varying with the profits, or shall receive a share of the profits arising from carrying on the business, does not of itself make the lender a partner with the person or persons carrying on the business or liable as such, provided that the contract is in writing, and signed by, or on behalf of, all the parties thereto.' That is substantially a re-enactment of a similar clause in Bovill's Act, except that the requirements as to signature are new. However, the late Master of the Rolls held, in *Pooley v. Driver*, 46 Law J. Rep. Chanc. 466: L. R. 5 Chanc. Div. 458, that an unsigned contract was not a contract in writing required by the Act. For the future, not only the ostensible partners have to sign it, but all the parties must do so or have it signed on their behalf. The first thing to be noticed is that the loan must be to a person, not to a business. If the loan is to a business, it is probably in reality an advance of capital, which the pretended lender is willing to put into the concern, and to risk the loss of, provided that he is not made subject to the other liabilities of the borrower. An illustration of this may be found in *In re Megevand, ex parte Delhasse*, 47 Law J. Rep. Bankr. 65; L. R. 7 Chanc. Div. 511, where, upon the evidence, Lord Justice Baggallay said: 'However much the parties may have intended it, I cannot consider that this was a loan within the provisions of the Act, and for this reason: the Act expressly provides only for a case in which the loan is made "to a person engaged or about to engage in any trade or undertaking," and according to my view of the agreement in this case, this was not a loan made to the two ostensible

partners, but a loan made to the business. It was made by Delhasse to himself as well as to the two partners, and this imposed on him, as on them, an equal obligation of bearing any loss in respect of it.' Reference was made in the agreement in that case, which was treated by the Court as the articles of partnership, to Bovill's Act, but that was not allowed to interfere with the general result of the agreement. Otherwise, it would become a matter of common form for partners simply to declare in their articles that they were not partners, and thus they would be able to obtain the advantages without the correlative liabilities of a partnership. *Pooley v. Driver* is an instance of a similar abortive attempt. Two deeds were employed there, the first being between the two ostensible partners, and the second, which was never executed, being between those two partners and the lenders, and referring to Bovill's Act. The substance of the deeds is summarised by Sir George Jessel as follows: 'That they (the ostensible partners) should contribute certain shares of the capital, and should give their services in order to carry on the business; that the rest of the capital should be contributed by other persons who were disposed to come forward under the provisions of the Act to which I shall call attention presently . . . and then that the capital should be divided in certain proportions, giving everybody who put in 500l. . . . a share in the capital in proportion, and a share in the profits indefinitely. When the partnership is wound up this capital is to be paid back preferentially. The contributors were to take their share of the profits; but if it turned out that, on taking a final account, the profits of any years which had been paid, being added together, exceeded the total profits made from the business, the contributors were to pay back the excess, not exceeding in any event the amount they had contributed, and of course not exceeding in any event the amount they had received in profits.' There were also certain other provisions which an ordinary dormant partner would have had. Indeed, in both the cases to which we have referred there was an attempt to make a man practically a sleeping partner as long as all things went well with the partnership;

but if they took a bad turn, then he was to claim for himself the position of a creditor who took the chance of profits instead of specified interest. The danger of being treated as a partner, and, therefore, of being held liable for the borrower's debts contracted on account of the partnership, causes Mr. Morris, in his 'Patents Conveyancing' (1887), p. 31, to suggest that, 'in view of the construction which the Court might, adversely to a lender, put upon an agreement so as to hold him liable as a partner, it seems safer, in his interest at least, not to give him as interest a share of the net profits in specie, but some percentage on the principal moneys dependent on the amount of net profits.' Discretion may be the better part of valour, but this would not in all cases carry out the intentions of the parties. Besides, the Act speaks of a lender receiving 'a share of the profits,' and, as is pointed out in Professor Pollock's fifth edition of his 'Digest of the Law of Partnership,' p. 16: 'The true doctrine, as laid down in recent authorities, and now declared by the Act, is that sharing profits is evidence of partnership, but is not conclusive. We have to look not merely at the fact that profits are shared, but at the real intention and contract of the parties as shown by the whole facts of the case.' If, for instance, a wealthy person wishes to help a friend less well off to bring out and work a patent, for which the former is to receive a share of profits in lieu of interest, he must take care that a loan is made for which the patentee is personally liable (Pollock, p. 17), so that, if the patent business came to grief, the patentee would still be responsible for the money. He should be careful, too, to have no further control over the business than a mortgagee would naturally have, for it is now 'decided that persons who share the profits of a business do not incur the liabilities of partners, unless that business is carried on by themselves personally or by others as their real or ostensible agents' (Lindley, 5th ed., p. 30); so that, if he had further control, he would run the risk of the patentee being held to be his agent.—*Law Journal* (London).

## FIRE INSURANCE.

(By the late Mr. Justice Mackay.)

[Registered in accordance with the Copyright Act.]

[Continued from p. 215.]

## CHAPTER XVII.

## OF SUBROGATION.

§ 311. *Subrogation of insurer to claims of insured.*

It is a general principle of the law of insurance in England that where the assured has any claim to indemnity for his loss against a third person who is primarily liable for the same, the underwriters, on the payment of the loss, are entitled to the benefit of such claim, and the assured consequently holds, and can recover it merely as their trustee.

By stat. 7 and 8 Geo. IV, c. 31, s. 2, the above-mentioned stat. 1 Geo. I, st. 2, c. 5, has been repealed, as also stat. 9 Geo. I, c. 22, stat. 22 Geo. II, c. 46, stat. 57 Geo. III, c. 19, and stat. 3 Geo. IV, c. 33, by which the hundred had been made liable for injuries to private property. And it is enacted by stat. 7 and 8 Geo. IV, c. 31, s. 2, "that if any church or chapel, or any chapel for the religious worship of persons dissenting from the united Church of England and Ireland, duly registered and recorded, or any house, stable, coachhouse, outhouse, warehouse, office, shop, mill, malthouse, hopcast, barn or granary, or any building or erection used in carrying on any trade or manufacture, branch thereof, or any machinery, whether fixed or moveable, prepared for or employed in any manufacture, or branch thereof, or any steam engine for sinking, draining or working any mine, or any staith, building or erection used in conducting the business of any mine, or any bridge, waggon way, or trunk for conveying minerals from any mine, shall be feloniously demolished, pulled down or destroyed, wholly or in part, by any persons riotously and tumultuously assembled together, in every such case the inhabitants of the hundred, wapentake, ward or other district in the nature of a hundred, by whatever name it shall be denominated, in which any of the said offences shall be committed,

shall be liable to give full compensation to the person or persons damnified by the offence, not only for the damage so done to any of the subjects hereinbefore enumerated, but also for any damage which may at the same time be done by any such offenders to any fixture, furniture or goods whatever, in any such church, chapel, house, or other of the buildings or erections aforesaid."

By the 3rd section it is enacted "that no action or summary proceeding as herein-after mentioned, shall be maintainable by virtue of the act for the damage caused by any of the said offences, unless the person or persons damnified, or such of them as shall have knowledge of the circumstances of the offence, or the servant or servants who had the care of the property damaged, shall, within seven days after the commission of the offence, go before some justice of the peace residing near and having jurisdiction over the place where the offence shall have been committed, and shall state upon oath before such justice the names of the offenders, if known, and shall submit to the examination of such justice touching the circumstances of the offence, and become bound by recognizance before him, to prosecute the offenders when apprehended; provided also, that no person shall be enabled to bring any such action unless he shall commence the same within three calendar months after the commission of the offence."

The following sections prescribe the process against the hundred.

The 30th section of the statute states what it is that constitutes a felonious demolishing, pulling down or destroying, which entitles the sufferer to his remedy against the hundred.

"If any persons, riotously and tumultuously assembled together to the disturbance of the public peace, shall unlawfully and with force demolish, pull down or destroy, or begin to demolish, pull down or destroy (any of the subjects before mentioned), every such offender shall be guilty of felony, and, being convicted thereof, shall suffer death as a felon."

The words of the statute appear, therefore, to indicate that mere damage to a house (for example, breaking windows), even by per-

sons riotously and tumultuously assembled, will not give the remedy against the hundred, but there must be either a demolition, pulling down or destruction, or such a beginning as would intimate an intention on the part of the riotors to demolish, pull down or destroy.

#### MHLAKWAPALWA AT COURT.

*The narrative of an uncivilised native  
(translated.)*

You ask me, Sir, to relate my experiences at the Circuit Court last week, where I was summoned to appear before the Judge to give evidence in a case against Vamsinya, who was charged with burning the hut of my wife, Nowayiti.

To begin with I must tell you that although "smelling-out" (a) is not permitted by Government, we still firmly believe in the existence of witchcraft, and further that the witch-doctor or *Sanuse* has the power of divining these who are guilty of practising it. It is therefore only natural when a person is accused of the offence by the *Sanuse* that the injured party should take steps to punish him. In these days of the Government we find burning the hut is the safest punishment to adopt, and if the guilty party is in the hut at the time so much the better.

In this particular case three of Vamsinya's children had died one after the other at short intervals, and when the *Sanuse* was applied to he accused my wife, Nowayiti, of having killed them by means of witchcraft. This was doubtless because some time before Nowayiti had a quarrel with their mother at a beer party given by one Matambeka. Nowayiti's hut was burnt a few nights after; we were both in at the time, and when I rushed out I identified a man I saw running away in the distance as being Vamsinya. The case was, of course, reported to the Magistrate, who, after hearing what we had to say, informed us that it was one of importance, and

(a) Smelling-out is a ceremony in which supposed witchcraft is believed to be brought home to some person, who is then either killed or banished after being cruelly treated, and his property confiscated by his chief, in territories not subject to a civilized Government.

must be settled by the Judge who was expected shortly in Butterworth. This pleased me greatly, as it made our case more important, and our neighbors would, of course, look upon us as persons of consequence. The case was discussed in all its details every day, and when I related what I knew to friends I met at the different kraals I visited, I would imagine I was before the Judge, and endeavor to deliver my version of the affair in the oratorical manner for which Kreli's great men are so famed. My style was admired by the people, who said that to listen to me reminded them of the olden times when cases were decided by Kreli, and the Gcaleka orators spoke before their Chief. I was overflowing with confidence. The conviction of Vamsinya was so certain to my mind that I did not trouble my head about him. What chiefly concerned me was to make my speech in a creditable manner so as to excite the envy of the natives who would be assembled in the Court. Before the Gcaleka war I occupied an important position amongst Kreli's Councillors, I have taken an active part in the trial of many cases, and the settlement of important political questions with the Government; I felt pleased, therefore, to think that once again I should be called upon to appear at the big meeting of the Judge to shew what an old Councillor of Hintza's son could do.

As I already stated, this case was the theme of our daily conversation, and a traveller passing through the kraal would not leave it before we furnished him with full details, commencing from the day when Vamsinya's first child died.

The people in the location were all deeply interested; but the majority supported Vamsinya. Having faith in the *Sanuse*, they firmly believed that he had stated the truth, and looked upon the punishment Vamsinya had attempted to award Nowayiti as being in accordance with the true faith.

After a considerable time intense excitement was caused in our neighborhood by the news that a policeman had arrived with several blue papers which he distributed to people concerned in our case. I awaited his arrival at my kraal with anxiety, and during the course of the evening he arrived. After

the usual greetings he produced the blue papers from his pocket, and told us they were letters from the Judge calling us to Butterworth to state what we knew in the matter of Vamsinya. Of course we were all highly delighted; and as we look upon a policeman as a man of importance and authority I killed a goat for his entertainment, and provided him with a liberal quantity of beer. We spent a very pleasant evening retiring to our mats at a late hour; the policeman having regaled us with the latest news of the District. He left early in the morning, and we spent the day in talking over the news he had told us; several of our friends came over to have it all repeated to them, and, doubtless, also to ascertain whether there was any possibility of their having a small taste of the remains of the goat. As we seldom leave our homes, and few travellers pass our way, it is a great boon when a man from the Office comes amongst us. The policeman told us the Magistrate said we were on no account to fail to wear clothes when attending the Judge's meeting. This caused us some anxiety, as our young men were away at the Gold Fields with all the trowsers of the locality but three pair; two of which I tried to borrow; one pair for myself and the other for my brother-in-law, Bambela. But to my sorrow I was informed that they had both been retained by Vamsinya's side. I was at my wit's end to know what to do. Fortunately, I have a friend who resides some miles from my kraal, and to him I applied, and after some hesitation he consented to lend me one pair. Bambela obtained a pair from a sweetheart of his sister. I fortunately possessed a pair of boots which had been given to me many years ago by a friend who assisted at the looting of a trader's shop during the last Gcaleka war; they were hard and well smoked, having lived on the roof of my hut for some years, but as I had never worn boots before, it did not occur to me that either age or smoke would in any way affect my comfort. All things considered I came to the conclusion that there was no cause to doubt that my personal get up would be otherwise than creditable to a man of my position.

I was extremely anxious for the trial to

come on, as I felt if I once could explain the matter to the Judge, the extermination of Vamsinya and his family from our side of the country would not take long. What made this more desirable was that we did not consider Vamsinya to be a true Gcaleka; he had been brought up by, and lived amongst, the farmers of the Colony for many years, he is a man of canteen habits, and a lover of white man's food. He is neither Gcaleka, Gcaika or a real good Fingoe; but an individual whose parts are made up by a little from each, the combination making him too crafty for us to deal with, the result being that he is obtaining a footing in our neighborhood and assuming an important position amongst us which is highly objectionable.

The day for our departure at last arrived. Vamsinya, I heard, had left the previous day. Having engaged a law agent to take his case for him he went in to see him. Our case belonged to the Government, so we did not consider it necessary to trouble ourselves about law agents. My party consisted of Nowayiti, her sister Nolente, Bambela, and myself. Nowayiti and her sister carried our clothes, while we men walked in front carrying our blankets suspended to a stick resting on the shoulder, feeling the weight of our importance, and anxious for the time to arrive when we should see Vamsinya carried off to the Butterworth prison by the Fingoe policeman.

When about two miles from Butterworth we sat down under the shade of a thorn tree and commenced to put on our clothes. Bambela soon dressed; he is a spare young man and found no difficulty in getting into his clothes, in which he could have found room for a friend had a necessity arisen for placing him there. But with me it was different. I cannot remember when I last wore European clothes, and I was much exercised at the idea of having to put them on. It took some time to get the trowsers on; all my companions assisted, and I was reduced to a condition of intense moisture, when Bambela announced that they were on enough. So we tied them around the waist with a strip of cotton blanket, and then put on the hat and coat which I had borrowed by the way. Bam-

bela now appeared to brace himself together. He expectorated carefully on his hands and seized the boots; I could see very clearly that the real agony was about to commence. The women seized my leg and held it firmly. Bambela turned his back to me and put one of his legs on each side of mine, caught hold of the boot with both hands, and while I clung desperately to the stem of the thorn tree, he pulled like an ox, until, to our surprise, the waistband of the trowsers broke. The astonishment of the women was great, as they could not understand the connection between the waistband and the boot. Bambela, who is a man of determined character, was not daunted by these troubles, and assured us it was all right, so the trio once more bent their backs to the boot question, with the result that both were eventually reported to be on. I heaved a deep sigh of relief, and with the assistance of the women managed to get on to my feet. I cannot describe to you my feelings as I stood on the ground in my new garb. I felt like a bird in a snare; the trowsers irritated me beyond measure. But, oh! the boots, they nearly drove me mad. My feet, which had lived a life of freedom until this day, are large and broad, and when they got into these hard boots, which were originally constructed for a white man, it seemed to me as if my feet were being quietly roasted in the fire. I lost my temper, abused the women, cursed Vamsinya, and was about to strike Nolente for not answering me when I spoke to her, when Bambela came to the rescue and suggested that the boots should be taken off and carried by the women; I acted upon this suggestion, and felt greatly relieved.

Next morning, shortly after sunrise, we duly appeared at the Court House, having passed the night at the kraal of a Gcaleka friend, who has for many years resided amongst the Fingoes. He was very hospitable, killing a goat for us, and showing us all the attention he could. We gave him full details of the Vamsinya case, and he sympathised with us, telling us he thought we would have no cause to complain of the Judge. Our friend, living near Butterworth, had already attended the Judge's meetings. He added that the Judges were severe upon

men of the Vamsinya class, who, when convicted, were removed to distant convict stations in Tembuland, where they are effectually banished from their friends. I was glad to hear this, as I knew very well if Vamsinya was sent to some distant prison it would be a great calamity to his friends, and there would be every probability of my being able to persecute them until they should decide to leave the district. I experienced some difficulty in dressing before starting for the Court, but as my host is a man accustomed to European clothes he rendered valuable assistance, facilitating the boot troubles with an application of lard, thus enabling us to reach the Office without a mishap. We found a few Fingoe policemen about the Court, and they told us the Judge was not due for some time; so I went with Bambela to some thorn-trees near at hand, took off my trowsers and boots, and enjoyed a comforting smoke. After some time I noticed a commotion at the Court House, and presently a vehicle with two prancing horses drove up to the side entrance. I was very much struck with the horses. I had never seen such fine animals before, the horses in my neighbourhood being very small, and there are not many of them. I marvelled at the wonderful animals of the white man, and fattened my eyes upon them.

We hurried over to the Court, and after being worried by the Fingoe policeman, instructed by a white man, who spoke to us in English and appeared surprised at our not understanding him, we settled down quietly under the walls of the building and watched the people with much interest as they came out and went into the Court. I longed to see the inside of the building, I had never seen such a large one before; my experience of houses consisting of our huts and the small shops of the traders in our neighbourhood. Butterworth appeared to me to be a large town with many beautiful houses, of which the Court House is the most beautiful, and while I sat against it I could see it was the great place of the chief of the white man.

I attempted to repeat to myself the speech I intended to make, but did not feel able to do so in my usual form, there were so many people walking about, talking, calling out,

and causing so much bustle and excitement—such as is never seen at our Galeka meetings when cases are being decided—that I became confused, and I imagined I was being bewitched by Vamsinya. Now I must tell you that all of us who can afford it are provided with a medicine (c) which is supposed to bring good luck, and preserve the family from misfortune; and in cases such as the one in which we were engaged the medicine (piece of root) is kept in the mouth and carefully chewed while the case is going on. When I found that my thoughts were wandering I experienced grave doubts as to the quality of our medicine; and serious thoughts that Vamsinya had employed a doctor to deprive me of my senses filled my mind.

Presently there was a movement amongst the police, Vamsinya was marched into the Court by two policemen, and my name was called out in a loud, angry tone. I walked up to the Court House steps, feeling that the hour of victory had arrived, and that I should soon have the pleasure of witnessing Vamsinya's departure for the distant convict station. I was greatly surprised when I entered the Court-room to notice how large it was, the roof appeared so high that it hurt my neck to look at it; the people inside seemed smaller than usual, and were distributed about in so many places and nooks (*amagumbi*), their voices sounded so peculiar and strange to one accustomed only to the open air, that I became confused and felt as if I were in another world. The boarded floor puzzled me, when I put my foot down it come in contact with the floor with a loud noise which sounded throughout the room, and again when I attempted to lift it up it would cling to the floor, and in my endeavours to raise it, I would lift it higher than was necessary, and would find the foot somewhere about the region of the knee, and it would necessarily come down again and cause the same loud noise, which disturbed me and was most trying to my feelings. It was quite clear to me that the boots were the cause of this trouble. I had never, until

(c) In trials of native cases witnesses and others are often observed to be chewing all the time the case is proceeding.

the previous day, worn a boot during my lifetime before, and they felt heavy and weighed my foot down. However, I saw Vamsinya in a little kraal in the centre of the Court looking at me with a smile, and this made me determined not to falter, but to push bravely forward and vanquish my enemy. I was pushed about from one place to another until I found myself in a small box (*mkumbi*) raised above the level of the floor. I was surrounded by white people of all shapes and sizes. I could see Vamsinya a short distance off smiling at me in an impertinent and confident manner, and talking occasionally to a white man just below him; I had no white man to talk to, and I was much annoyed when I saw that Vamsinya had one. Opposite to me was a nice-looking old gentleman who spoke Kafir. Below on my left were four or five white men sitting at a table, who were dressed in clothes which hung over their backs, and reminded me of the *mtika* worn by the Gcalekas in ancient times; these men appeared to be the Councillors of their Chief, the Judge, and were apparently eloquent, fearless men, who spoke in confident tones, as if they were well versed in public matters. They inspired me with admiration. But what I was most struck with was the judge. Was he human? Did he eat? Had he arms? Did he ever take off his clothes? Was he standing or sitting? Could he see that I was standing there? were thoughts that rushed through my mind. He appeared to move occasionally on the right side, and that was the only sign of life I could perceive. His eyes were pink, and appeared to look at nothing, he had peculiar hair, such as I have only once before seen upon a white man, and he had glass over his eyes. His coat was most magnificent, and I thought I was in the presence of a spirit; I was appalled, never before had I seen such a sight. But I felt assured that here was one who was far above being influenced to unfairness for one side or the other.

There was a dead silence, and I began seriously to realize the awkwardness of my position. The silence for a few seconds was so great that I could actually hear my hair growing. And oh! those boots of the Gcaleka war, how they did bite, my feet felt as if they

were growing larger every moment, and the trousers made me experience symptoms of an approaching fit. I felt too loose in some places, and in others too tight; my coat was so tight across the chest that I could not breathe; it was clear to me that if something did not soon happen I would die (*qawuka*); and I became firmly impressed with the idea that Vamsinya was the cause of all this by means of his medicines.

The old gentleman who spoke Kafir put up two fingers of his right hand, and told me to speak the truth, so help my God! This I solemnly declared I would do, and when I was about to add that it was against my conscience to deviate from the strict lines of truth when before my chiefs, he told me to cut it short and say so help my God! which I did. I felt proud as I held up my hand and displayed the absence of the first joint of the little finger (*ngqiti*) by which the Fin- goes could see that I was a true Gcaleka.

(To be concluded.)

#### GENERAL NOTES.

TRIAL BY JURY IN INDIA.—Trial by jury is attended with peculiar difficulties in India, an instance of which I remember as having occurred. In that case also a man was on his trial for the murder of another. He had been caught red-handed, and there was no possible room for doubt in the matter. The murdered man had succumbed almost immediately to his wound, living only long enough, after being discovered, to ask for some water to drink. Some surprise was felt at the time taken by the jury in considering their verdict; but when at length they returned and recorded it, the astonishment of all in court was unbounded when it proved to be one of not guilty. So extraordinary a verdict could not pass unchallenged, and the judge inquired by what process of reasoning they had arrived at their decision; if the accused had not murdered the man, who had? "Your Lordship, we are of opinion that the injuries were not the cause of the man's death. It has been proved that he drank water shortly before his death, and we are of the opinion that it was drinking the water that killed him." The explanation of this remarkable verdict—the more remarkable when it is remembered that the men who brought it in never drank anything but water themselves—was that on the jury was a high-caste Brahman, to whom the very idea of being a party to taking away a man's life was so abhorrent that no earthly persuasion could have induced him to agree to a verdict that would have hanged the prisoner; and the earnestness of his horror had exercised an influence over the rest of the jury so powerful as to make them return the verdict which so staggered the court.—*Notes and Queries.*