The Legal News.

VOL. XII. MAY 11, 1889. No. 19.

CONTEMPT OF COURT.

It appears that the sentence pronounced by Chief Justice Austin in the case of Thos. Taylor (11 Leg. News, 249) has been set aside on the ground of illegality. The matter was brought up in the House of Commons by a question put by a member, which resulted in some correspondence between the Imperial and colonial authorities. A correspondent of the Nassau *Guardian* writes in the Chief Justice's defence as follows: "Mr. Pickersgill (the Liberal M.P. for Bethnal Green) would then have learned that this Thomas Taylor is not only a confirmed and hardened felon, but that he is also a dangerous criminal. That some years ago, whilst undergoing one of his many terms of imprisonment, he made a dangerous assault on one of the overseers with a pick-axe. That for this he was properly whipped. His assault on the Chief Justice was of a like nature. It seemed as though he wanted to show the public how contemningly he esteemed a court of justice inasmuch as in open court, and whilst the judge was discharging his judicial functions, he made this dangerous assault upon him. Now what course was the Chief Justice to adopt? True, it was a criminal assault and could be punished as such. Again, it was a contempt of court and could be punished as such. Now which of these courses did the Chief Justice adopt? I have heard it frequently spoken that he himself was personally unwilling to proceed further in the matter, and that it was in accordance with public feeling that the felon was again brought before him and the dignity of the Bench vindicated. Now, so much for the personal aspect of the case. What as to its legal aspect? The despatch of the Secretary of State treats the entire sentence as illegal. The Attorney-General, however, sems to think the illegality consisted in the infliction of corporal punishment. With all due deference to these high authorities, I, for myself, seem to think the sentence perfectly legal, and will endeavor to show why. That this case was a gross contempt of court, no one will dispute. The Attorney-General admits this, but takes exception to the corporal punishment inflicted. The question then resolves itself into whether the Chief Justice can inflict corporal punishment for contempt of court. Now by 45 Geo. III., ch. 151, the General Court of these islands is constituted a Court of Record with all the powers, authorities and jurisdiction exercised by the Court of Queen's Bench and other superior Courts of Record in England. The jurisdiction to punish for contempt of court, rests with the court and in the discretion of the judge. An appeal from the exercise of that jurisdiction lies to the Privy Council in England. The usual punishment for contempt of court is fine and imprisonment. But though this is the usual form of punishment, what law prohibits a judge on proper cause from adding whipping as a further punishment? I know of no case where it is laid down that a judge is so prohibited. On the contrary, I find in Comyns' Digest that whipping can by the common law be inflicted by a judge on proper cause. Now, what more proper cause than this case of Thomas Taylor? Besides, if the prison official can inflict whipping on an offender, why cannot our Chief Justice? The punishment of whipping arises by the common law and is only restrained and regulated by statute. I know and fully agree with the feeling in England against corporal punishment, but that does not affect my opinion of its legal character. I hold that the Chief Justice had by common law the right of adding whipping to the other sentence of imprisonment. But assuming for the sake of argument, Mr. Editor, that he acted illegally in so doing, who is to set aside his decision? By English law, the Privy Council has been set apart as the Court of Appeal for that purpose. It and it only can legally review the sentence of the Chief Justice and reverse it. The Colonial office has by English law no judicial functions. It can in the exercise of the Crown's rights remit a sentence, but it cannot legally review or reverse it. The despatch you have published does, however, do this. It states that the sentence is illegal,

and orders that it be reversed. Now, Mr. Editor, in my humble opinion this is an exercise of jurisdiction the Colonial office does not possess. The very despatch is illegal. And I certainly think that in a question of dry legality they might have been more careful."

COUR DE MAGISTRAT.

MONTRÉAL, 14 mars 1889.

Coram CHAMPAGNE, J.

ARMSTRONG v. DAMIEN.

Ouvrage fait—Demande de paiement—Offres réelles.

JUGÉ :—1o. *Qu'un photographe ne peut réclamer en justice le prix de ses photographies, sans en avoir préalablement fait la demande au domicile du débiteur.*

PER CURIAM :—Le demandeur qui est un photographe, a pris à son atelier une douzaine de photographies pour l'épouse du défendeur et les a livrées à ce dernier sans qu'il fut question de l'époque et du lieu de paiement. Sans avoir fait une demande de paiement au domicile de son débiteur, il poursuivit pour son compte. Le défendeur immédiatement après la signification de l'action, offrit au demandeur le montant réclamé sans frais, et, sur le refus du demandeur d'accepter ses offres, il les renouvela par son plaidoyer, et en consigna le montant au greffe de cette cour. Ces offres sont considérées suffisantes et le demandeur doit être condamné aux frais.

Autorités :—C. C. 1152 ; *Smardon* v. *Lefebvre*, 3 *Stephens*, 561 ; *Labelle* v. *Walker*, 5 Rev. L., 255 ; *Crébassa* v. *La Cie., etc.*, 8 R. L. 722 ; *Rodrigue* v. *Grondin* (en appel) 6 R. L., 643 ; *Mineault* v. *Lajoie*, 9 R. L. 382 ; 2 Leg. News, 264 ; *Demolombe*, vol. 27, Nos. 267, 271, 281 ; *Beaudry* v. *Barbeau*, *Ramsay*, *Digest*, p. 531.

Jugement renvoyant l'action avec dépens.

A. Leblanc, avocat du demandeur.

W. Mercier, avocat du défendeur.

(J. J. B.)

COUR DE MAGISTRAT.

MONTRÉAL, 7 mars 1889.

Coram CHAMPAGNE, J.

BERNARD v. ELLIOTT.

Avocat—Frais — Convention illicite— Recours contre le client.

JUGÉ :—1o. *Que l'avocat qui devient porteur de pièces bona fide, par l'entremise d'un tiers, a droit à ses frais contre son client, quelqu'aient été les arrangements de ce dernier avec ce tiers.*

2o. *Que la convention par laquelle un avocat s'engage à ne pas charger de frais à son client dans aucun cas, est un marché illicite, mais qui dans l'espèce n'a pas été prouvé.*

PER CURIAM :—Le demandeur qui est avocat réclame du défendeur $47.70 sur mémoire de frais taxés comme ayant agi comme son avocat dans certaines causes. Le défendenr plaide qu'il ne connait pas le demandeur et n'a jamais requis ses services ; qu'il a donné ses comptes à collecter à un nommé Fred. Haas qui s'est engagé de faire ou de faire faire toutes les poursuites à ses risques et périls et sans rien réclamer de lui, et que le demandeur a promis ne rien charger pour ses frais au défendeur en cette cause. La preuve établit par le nommé Haas qu'il a reçu les comptes du défendeur aux conditions indiquées plus haut, et Haas jure qu'il a fait un marché avec le demandeur par lequel ce dernier s'engageait à ne pas charger de frais au défendeur dans aucun cas, et ce témoignage a été positivement contredit par un autre témoin qui s'est trouvé présent à la convention. Haas a fait la preuve d'un marché illicite entre lui et le demandeur, mais ce dernier a droit au bénéfice du doute établi par son témoin qui contredit formellement le nommé Haas.

Jugement pour le demandeur.

J. A. Bernard, avocat du demandeur.

P. Lanctot, avocat du défendeur.

(J. J. B.)

COUR DE MAGISTRAT.

MONTRÉAL, 21 février 1889.

Coram CHAMPAGNE, J.

BANNERMAN v. THOMPSON.

Locataire quittant les lieux—Réparations—Bail verbal—Avis.

JUGÉ :—*Qu'un locataire qui requiert de son propriétaire des réparations nécessaires, et qui pendant que ces réparations sont à se faire,*

quitte les lieux, n'est pas justifiable, et sera condamné lorsqu'il n'y aura pas de bail par écrit et que le loyer échu a été payé, à un mois de loyer, représentant l'avis qu'il aurait dû donner.

Le demandeur poursuivit pour $12.00, représentant trois mois d'avis, que le défendeur s'était engagé à lui donner, dans le cas où il quitterait les prémisses, le loyer étant de $4.00 par mois.

Le défendeur plaida qu'il avait été forcé de quitter les lieux parcequ'ils n'étaient pas habitables, le toit coulait et les mauvaises odeurs provenant des égouts empestaient la maison. Il fit en même temps une demande incidente pour faire resilier le bail.

Le demandeur ne prouva que l'occupation des lieux.

Il résulta de la preuve sur l'état des premisses louées, que le propriétaire aussitôt mis en demeure fit les réparations nécessaires, et que nonobstant ce fait, le défendeur partit.

Le demandeur n'ayant pu prouver la convention quant aux trois mois d'avis, demanda un mois, sur le principe que pour la résiliation de tout bail verbal il fallait un mois d'avis lorsque le loyer était payable au mois. La cour lui accorda un mois, $4.00.

Jugement pour le demandeur pour $4.00, et demande incidente renvoyée avec dépens.

J. J. Beauchamp, avocat du demandeur.

St. Pierre, Globensky & Poirier, avocats du défendeur.

(J. J. B.)

COUR DE MAGISTRAT.

MONTRÉAL, 8 février 1889.

Coram CHAMPAGNE, J.

THYLION v. GRENIER.

Cour de Magistrat—Désaveu—Jurisdiction.

JUGÉ:—1o. *Que la Cour de Magistrat actuelle établie par proclamation émanée le* 2 *octobre* 1888, *en vertu du statut de* 1869, 32 *Vict., ch.* 23, *n'a pas de juridiction pour juger une cause instituée devant la première Cour des Magistrats, d'après l'acte* 51-52 *Vict., ch.* 20, *avant son désaveu par les autorités Fédérales.*

Le Parlement de Québec, par le statut 51-52 Vict., ch. 20, créa, à Montréal, une Cour de Magistrat. L'action fut prise devant cette cour le 28 septembre 1888. Le 2 octobre suivant la loi fut désavoué par le gouvernement Fédéral et, par suite, elle devint caduque. Le bref fut néanmoins rapporté le 22 octobre du même mois.

La Cour, sur une exception à la forme, renvoya l'action pour défaut de juridiction, mais comme la question n'était pas soulevée dans l'exception, considérant que dans le cas même où le défaut de juridiction n'a pas été plaidé et qu'il n'en a pas été fait mention à l'argument, si la cour est d'opinion qu'elle n'a pas de juridiction, les parties doivent être renvoyées sans frais, aucun frais dans cette cause n'a été accordé.

Action renvoyée sans frais.

Augé & Lafortune, avocats du demandeur.

Macmaster, Hutchinson, Weir & McLennan, avocats de la défenderesse.

(J. J. B.)

COUR DE MAGISTRAT.

MONTRÉAL, 21 février 1889.

Coram CHAMPAGNE, J.

FYFE v. LAVALLIÈRE.

Bail-Départ des prémisses-Insalubrité des lieux—Résiliation—Dommages—Compensation.

JUGÉ:—1o. *Que le défendeur peut laisser les lieux loués, par bail authentique, après avoir protesté le demandeur par acte authentique, d'avoir à y faire les réparations nécessaires vu leur état d'insalubrité, lorsqu'il y a danger immédiat pour la vie de la femme du locataire, et sans qu'il soit nécessaire de poursuivre préalablement le propriétaire pour obtenir la permission de faire les réparations à sa place.*

2o. *Que dans ce cas le locataire a droit à des dommages et peut même compenser les dommages réels qu'il a soufferts avec le loyer échus jusqu'à son départ.*

Autorités: C.C., art. 1614; *Tylee* v. *Donegani* 2., R. C. 107; 4 *Aubry & Rau*, p. 477, note 20; *Lorrain*, pp. 85, 86, 87, 94, Nos. 256, 55, 56, 57, 58; *Boulanget* v. *Doutre*, 1 L. C. R. 396 et 4 L. C. R. 170; *Motz* v. *Houston*, R. de L. 440.

Sur la compensation: 3 *Duvergier*, p. 180; 1 *Troplong*, p. 331; *Lorrain*, 131, No. 367.

Jugement résiliant le bail en faveur du défendeur.

F. X. Perras, avocat du demandeur.

Marceau & Lanctot, avocats du défendeur.

(J. J. B.)

COUR DE MAGISTRAT.

MONTRÉAL, 7 mars 1889.

Coram CHAMPAGNE, J.

PICARD v. GINGUE.

Locateur—Chambre garnie—Droit de rétention.

JUGÉ:—*Que le locateur d'une chambre garnie avec usage en commun du poêle de la cuisine, a un lien ou droit de rétention sur les bagages et la propriété de son hôte, jusqu'au paiement du prix de location.*

Autorités: 39 Vict., ch. 23; *Demers, Priviléges des biens meubles*, p. 69; 11 Leg. News, p. 171; *Lalonde* v. *McGloin*, 3 Leg. News, 94; *Boyer* v. *Ross*, jug. 14 mai 1886, confirmé en révision.

Jugement pour le défendeur sur saisie-revendication.

F. L. Sarrasin, avocat du demandeur.

David, Demers & Gervais, avocats du défendeur.

(J. J. B.)

QUEBEC LEGISLATION, 1889.

CAP. 48.

An Act to amend the Civil Code of Lower Canada.

[*Assented to 21st March*, 1889.]

Her Majesty, by and with the advice and consent of the Legislature of Quebec, enacts as follows:—

1. Article 85 of the Civil Code is amended by adding thereto the following paragraph:

"2. The indication of a place of payment in any note or writing, wherever it is dated, is equivalent to such election of domicile at the place so indicated."

CAP. 49.

An Act to amend article 483*a* of the Code of Civil Procedure, added by article 5905 of the Revised Statutes of the Province of Quebec, respecting the revision of judgments.

[*Assented to 21st March*, 1889.]

Whereas the judicial interpretation given to the Act of this Province, 46 Victoria, chap. 26, sec. 4, now Article 5905 of the Revised Statutes of the Province of Quebec, restricts the application of that section to a particular class of cases, and whereas it is desirable that all cases in which judgment has been rendered by default or *ex parte* should be subject to the same provisions; Therefore, Her Majesty, by and with the advice and consent of the Legislature of Quebec, enacts as follows;

1. Article 483*a* of the Code of Civil Procedure, added by Article 5905 of the Revised Statutes of the Province of Quebec is replaced by the following:

"483*a*. In all cases whatever, and not only in those in which the judgment may have been rendered in virtue of Articles 89, 90, 91 and 92 of this Code, any party condemned by default to appear or to plead may proceed against the judgment, whether rendered in term or in vacation, by opposition made and filed according to Articles 484 and following; but no such opposition is allowed, unless the party condemned produces an affidavit that such party has a good defence to the action, which defence must be set out in the opposition, and unless such party has been prevented from filing his defence by surprise, fraud, or other cause considered just and sufficient by the Judge, without whose order no such opposition shall have any effect nor shall it be received by the prothonotary."

CAP. 50.

An Act to amend Articles 1745, 5917 and 5918 of the Revised Statutes of the province of Quebec, respecting exemptions from seizure.

[*Assented to 21st March*, 1889.]

Her Majesty, by and with the advice and consent of the Legislature of Quebec, enacts as follows:—

1. The following paragraph is added after the list of articles exempt from seizure under Article 1745 of the Revised Statutes of the Province of Quebec.

"7. The building materials intended to be employed in the construction of a dwelling

house, barn, stable and other building necessary for the improvement and cultivation of his land."

2. Figure "7" is added after the figures "3, 4, 5 and 6" in the latter part of the same Article which commences with the word "nevertheless."

3. Paragraphs 7 and 8 of Article 5917 of the said Revised Statutes are replaced by the following:

"7. Fuel and food sufficient for the debtor and his family for three months;

"8. One span of plough-horses or a yoke of oxen, one cow, two pigs, four sheep, the cloth manufactured from such wool, and the hay and other fodder intended for feeding the said animals; further, the following agricultural implements or utensils; one plough, one harrow, one working sleigh, one tumbril, one hay-cart with its wheels, all harness necessary and intended for farming purposes."

4. Paragraph 6 of Article 5918 of the said Revised Statutes is replaced by the following:

"6. All vessels, boats, and other fishing craft, tackle, nets, seines, lines or other fishing apparatus and provisions belonging to any fisherman, and necessary for his subsistence and that of his family or for his fishing operations.

Such effects may, however, be seized and sold for their purchase price, but not between the first day of May and the first day of November.

Alimentary allowances and things given as aliment may always be seized and sold for alimentary debts."

5. This Act shall come into force on the day of its sanction.

CAP. 51.

An Act to amend the law respecting the abandonment of property.

[*Assented to 21st March*, 1889.]

Her Majesty, by and with the advice and consent of the Legislature of Quebec, enacts as follows:—

1. Article 5960 of the Revised Statutes of the Province of Quebec is amended by replacing in the last clause thereof, the words "and all proceedings subsequent to the issue of the warrant are had in the Superior Court," by the following words: "and all proceedings subsequent to the issue of the warrant up to the distribution of the moneys arising from the sale are had in the Superior Court.

The distribution of such moneys must be made by the curator in accordance with the provisions of Article 5961."

2. This Act shall come into force the day of its sanction.

CAP. 52.

An Act to amend the Act respecting procedure in certain commercial and other matters requiring despatch.

[*Assented to 21st March*, 1889.]

Her Majesty, by and with the advice and consent of the Legislature of Quebec, enacts as follows:—

1. The following Articles are added after Article 897 of the Code of Civil Procedure as contained in Article 5977 of the Revised Statutes of the Province of Quebec:

"897*a*. Any party may, either in his declaration or in any other pleading, or by a notice served upon the opposite party, declare his option that the case shall be inscribed at the same time for proof and for final hearing immediately after proof; and in such case the cause cannot afterwards be inscribed otherwise.

The party who inscribes a case for proof and final hearing immediately after proof shall give five clear days' notice of such inscription to the adverse party.

"897*b*. The provisions of Articles 89, 90, 91, 92 and 93, apply to all cases governed by the provisions of this chapter.

"897*c*. The Clerk of the Circuit Court has, as respects such cases, the same powers as the prothonotary of the Superior Court."

2. All provisions inconsistent with this Act are amended in consequence.

*DECISIONS AT QUEBEC.**

Married Woman—Debt incurred for her husband—Art. 1301, *C. C.—Onus of proof on*

* 15 Q. L. R.

creditor—Authorization to 'ester en justice' —Art. 176, *C. C.*

Held, 1. Where husband and wife bind themselves jointly and severally for a loan, and it is proved that the husband got the money from the lender and used it himself, the obligation of the wife is null and void.

2. An action against a married woman which does not appear to have been served on her husband, will be dismissed on the ground that she is not assisted or authorized *à ester en justice* as required by Art. 176, C. C.—*Artizans Permanent Building Society* v. *Lemieux*, S. C., Andrews, J., Feb. 2, 1888.

Interdit—Jugement contre—Opposition par curateur—Art. 1053, *C. C.—Frais.*

Jugé, que l'interdit pour ivrognerie est absolument incapable d'ester en justice sans l'assistance de son curateur, et une action portée par tel interdit sans telle assistance doit être renvoyée, mais sans frais.

Que bien qu'une action portée par un interdit sans l'assistance de son curateur doive être renvoyée, les frais de telle action ne peuvent pas être mis à la charge du dit interdit, et le curateur de l'interdit peut s'opposer à la saisie de ses biens pour tels frais, sans qu'il soit nécessaire an préalable de faire annuler le jugement les accordant.—*Heppel & Billy*, en appel, Dorion, J. C., Tessier, Cross, Baby, Church, JJ., 4 mai 1888.

Sale—Price payable in instalments—Interest.

Held, that the covenant, in a deed of sale of an immovable, that the price shall be payable by instalments, without interest, cannot be construed to extend beyond the delay granted for the payment of each instalment, or to deny to the vendor any right to interest until he has put his debtor legally in default to pay. The words "without interest" in such deed mean without interest up to the maturity of each instalment; and after such date legal interest will run.—*Hogan & Clancy*, in appeal, Tessier, Cross, Church, Bossé, Doherty, JJ., Dec. 6, 1888.

Billet promissoire sous croix—Preuve.

Jugé, 1. Que les billets promissoires sous croix, sont, quant à la preuve, soumis absolument aux mêmes règles que ceux, où la signature du faiseur est ecrite par lui-même;

2. Que les règles de la preuve énoncées aux différentes sections du liv. 3, tit. 3, ch. 9, du Code Civil, ne s'appliquent pas aux actions sur billets promissoires pour lesquels il n'y en a pas d'autres que celles énoncées aux articles 2341 et 2342 de ce code;

3. Que l'article 145 du C. P. C. s'ajoute aussi bien à l'article 2341 qu'aux articles 1222, 1223 et 1224 du Code Civil; mais que, l'article 145 du C. P. C. n'attachant aucune présomption d'omission, ni aucune décheance à l'absence d'une dénégation assermentée, la signature devrait, même sans celle-ci, être prouvée;

4. Que, une jurisprudence uniforme et constante, dans toute la province depuis la mise en force du Code Civil, ayant conservé la règle que faisaient la sec. 87 de 20 Vict., ch. 44, et la section 86 du chap. 83 des Statuts Refondus du Bas Canada, l'intérêt public exige qu'elle ne soit pas changée, et que, en l'absence d'une déposition assermentée niant les signatures sur un billet, elles soient prises pour admises.—*Straas* v. *Gilbert*, C.C., Casault, J., 1 fév. 1889.

BURGLARY.

In the case of *Mitchell* v. *Commonwealth*, the Kentucky Court of Appeals (March 12, 1889) held that a cellar under a dwelling-house, though entered only from the outside, is within the statute of burglary. The Court said: "The evidence shows that the property was taken out of a cellar under the dwelling-house, there being no internal communication between them. It was necessary to go out of the house into the yard to enter the cellar. The door to it opens out into the open air. It had no fastenings, but could not be opened without the use of force. It is therefore now urged that the cellar is no part of the dwelling-house, and that the accused, if guilty, is only so of a trespass and petit larceny. There is a diversity of decision as to what does and what does not in law constitute a part of a dwelling-house. Some cases include all within the curtilage, and this, according to Blackstone, appears to have been the common-law rule;

while others are made to turn upon the use. It has been said that burglary may be committed by breaking into a dairy or laundry standing near enough to the dwelling-house to be used as appurtenant to it, or into such outbuildings as are necessary to it as a dwelling. *State* v. *Langford*, 1 Dev. 253. Also by breaking into a smoke-house opening into the yard of the dwelling-house and used for its ordinary purposes. And cases are to be found holding that if an outhouse be so near the dwelling proper that it is used with it as appurtenant to it, although not within the same inclosure even, yet burglary may be committed in it. *State* v. *Twitty*, 1 Hayw. (N. C.) 102. It need have no internal communication with the dwelling proper to give it this character. In *Rex.* v. *Lithgo*, Russ. & R. 357, the breaking was into a warehouse. There was no internal communication between it and the dwelling of the owner, but they were contiguous, inclosed in the same yard and under the same roof, and it was held to be burglary. Mr. East says: 'It is clear that any outhouse within the curtilage or same common fence as the mansion itself must be considered as parcel of the mansion. . . . If the outhouses be adjoining to the dwelling-house and occupied as parcel thereof, though there be no common inclosure or curtilage, they may still be considered as parts of the mansion.' 2 East P. C. 493. It is difficult to lay down any general rule upon the subject, owing to the nice distinctions to be found in some of the cases. It seems to us, however, that both the use and the situation should be considered. Can the place which has been entered, considering both its situation and use, be fairly considered as appurtenant to and a parcel of the dwelling-house, or as the older writers say, 'a parcel of the messuage?' If so, then burglary may be committed by breaking into it. The dwelling-house of a man has peculiar sanctity at common law. It is his castle. The law intends its protection, because it is the family abode. The object is to secure its peace and quiet, and therefore the burglar has always been liable to severe punishment. The law throws around it its protecting mantle, because it is the place of family repose. It is therefore proper, not only to secure the quiet and peace of the house in which they sleep, but also any and all outbuildings which are properly appurtenant thereto, and which, as one whole, contribute directly to the comfort and convenience of the place as a habitation. If this reasoning be correct, then any which are not so situated, or are not so used, should not be regarded as a part of the dwelling, although they may in fact be within the curtilage. If there for other distinct purposes, as for instance, a store-house for the vending of goods or a shop for blacksmithing, and the dwelling is equally convenient and comfortable without them, and they are not in fact a part of it as by being under the same roof, so that the breaking into them will disturb the peace and quiet of the household, then they should not be regarded as a part of it in considering the crime of burglary or the offence named in the statute. *Armour* v. *State*, 3 Humph. 379. If, however, an outhouse, having no internal communication with the dwelling proper, may be considered as so appurtenant to it that burglary may be committed therein, surely it would seem it should be so held as to a cellar under the dwelling, although there may be no means of internal communication between them. It is under the same roof. It is a part of the house in which the occupant and his family sleep. It is essentially part and parcel of the habitation. It is manifest, however, that the statute above cited includes it. It says: 'Or shall feloniously break any dwelling-house, or any part thereof, or any outhouse belonging to or used with any dwelling-house.' The language is quite sweeping; and it is clear it was the legislative intention, in enacting it, to embrace not only every part of the dwelling but every outhouse properly a parcel of and appurtenant to it. It at once strikes the ordinary observer that it was not intended the cellar of a dwelling-house should be excluded from its operation, and to so hold would not only be in the face of the language used but unreasonable."

GENERAL NOTES.

PRICE OF A BOOK.—The *Bulletin de l'Imprimerie* contains the following query, which I think (says the Paris correspondent of the *Bookseller*) likely to interest

your readers : "What was the highest price ever given for any book ? We leave this question to be decided by competent authorities among book-lovers. We may, however, venture to say that we know of one for which a sum of 250,000f. (£10,000) was paid by its present owner, the German Government. That book is a missal, formerly given by Pope Leo X. to King Henry VIII. of England, along with a parchment conferring on that Sovereign the right of assuming the title of ' Defender of the Faith,' " borne ever since by English Kings. Charles II. made a present of the missal to the ancestor of the famous Duke of Hamilton, whose extensive and valuable library was sold some years ago by Messrs. Sotheby, Wilkinson and Hodge, of London. The book which secured the highest offer was a Hebrew Bible, in the possession of the Vatican. In 1512 the Jews of Venice proposed to Pope Julius II. to buy the Bible, and to pay for it its weight in gold. It was so heavy that it required two men to carry it. Indeed, it weighed 325 lbs., thus representing the value of half a million of francs (£20,000). Though much pressed for money, in order to keep up the ' Holy League' against King Louis XII. of France, Julius II. declined to part with the volume."

EXECUTION BY ELECTRICITY.—Judge Childs pronounced the first sentence of death under the new law, at Buffalo, May 14, upon William Kemmler, for the murder of Tillie Ziegler, as follows :—" The sentence of the Court is that for the crime of murder in the first degree, whereof you stand convicted, within the week commencing on Monday, June 24, and within the walls of Auburn State prison, or within the yard or enclosure adjoining thereto, you suffer the punishment of death, to be inflicted by the application of electricity as provided by the Code of Criminal Procedure of the State of New York, and that in the meantime you be removed to, and until the infliction of such punishment you be kept in solitary confinement in said Auburn State prison." It is said that the prisoner's counsel will appeal from the sentence on the ground that the punishment is cruel and unusual, and contrary to the spirit of the Constitution.

MARRIAGE AND DIVORCE IN THE UNITED States.—Mr. Carroll D. Wright has submitted to the United States Congress a special report on the statistics of the laws relating to marriage and divorce in the United States from 1867 to 1886. It appears that while the increase in population from 1870 to 1880 was 29·4 per cent., the increase in divorces was no less than 79 per cent. In the number of divorces during the whole twenty years (1867-86) Illinois takes the lead with 36,072 ; Ohio comes next with 26,637 : Indiana granted 25,193 ; Michigan, 18,433 ; Iowa, 16,564 ; Pennsylvania, 16,020 ; New York, 15,355 ; Missouri, 15,278 ; California, 12,118 ; Texas, 11,472 ; and Kentucky, 10,248. Of the 328,716 divorces granted in the United States for the twenty years covered by the report, 216,733, or 65 per cent. of the whole, were granted to wives, and 111,983 to husbands. The cases of cruelty in which wives sought divorces were as 7 to 1 ; of desertion 1½ to 1 ; and of drunkenness 9 to 1. The husband sought divorce for unfaithfulness of the wife in 38,155 cases, while the wife obtained a divorce in 28,480 cases for unfaithfulness of the husband. The cause for which the greatest number of divorces were granted was desertion, being 126,557, or 38 per cent. of the entire number. Commissioner Wright says that the divorces granted for drunkenness, numbering 13,843, by no means represents the total number in which intemperance is a serious factor. In a few representative counties it was proved that intemperance was a direct or indirect cause in more than 20 per cent. of the whole number of divorces granted in such counties.

WHAT IS IN A NAME ?—Our genial townsman Dan Dougherty has been delighting the Chicago people with his well-told anecdotes, in some of which the joke is decidedly on himself. Here is one of them : " My name has always been against me. A few years ago I was invited to be one of a party of prominent people who made an inspection of the State penitentiary in Pennsylvania. In going through one of the corridors an attendant had occasion, not knowing who I was, to call out the name Dan Dougherty, and in the twinkle of an eye three of the hardest-looking criminals I ever saw popped their heads out and answered 'Here.' " And he added, " There has always been a Dan Dougherty hanged in Pennsylvania every year since I can remember." No wonder he came to New York.—*Tribune.*

MR. GLADSTONE ON DIVORCE. — Mr. Gladstone writes :—"Reflection tends to confirm me in the belief that the best basis for a law is the indissolubility of Christian marriage, that is to say, to have no such divorce or severance that allows re-marriage. Short of this I think it highly probable that the Canadian system, of which I had not previously been aware, is the best, as being attended with the least danger."

JUDGES IN THE UNITED STATES.—Those who wish to learn something about the administration of justice on the other side of the Atlantic cannot do better than read Professor Bryce's excellent book on America. The chapter on the state judiciary is especially interesting to lawyers. The difference between the powers of an English and American judge are very remarkable. According to that learned writer, an American judge " is not allowed to charge the jury on questions of fact, but only to state the law. He is sometimes required to put his charge in writing. His power for committing for contempt of court is often restricted. Express rules forbid him to sit in causes wherein he can have any family or pecuniary interest. In one Constitution his punctual attendance is enforced by the provision that if he does not arrive in court within half an hour of the time fixed for the sitting, the attorneys of the parties may agree on some person to act as judge and proceed forthwith to the trial of the cause. And in California he is not allowed to draw his salary till he has made an affidavit that no cause that has been submitted for decision for ninety days remains undecided in his court." We learn from a note appended to this statement, that " the Californian judges are said to have contrived to evade this." The salaries paid to State judges of the higher courts range from one to two thousand pounds ; in most states they are elected by the people, and they hold office for a short term of years. It is therefore not surprising that the States fail to secure the best legal talent for the bench, and that it is necessary to impose restrictions upon the judges which would be thought degrading in this country.—*Law Times.*