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AUGUST, 1895.

The Barrister.

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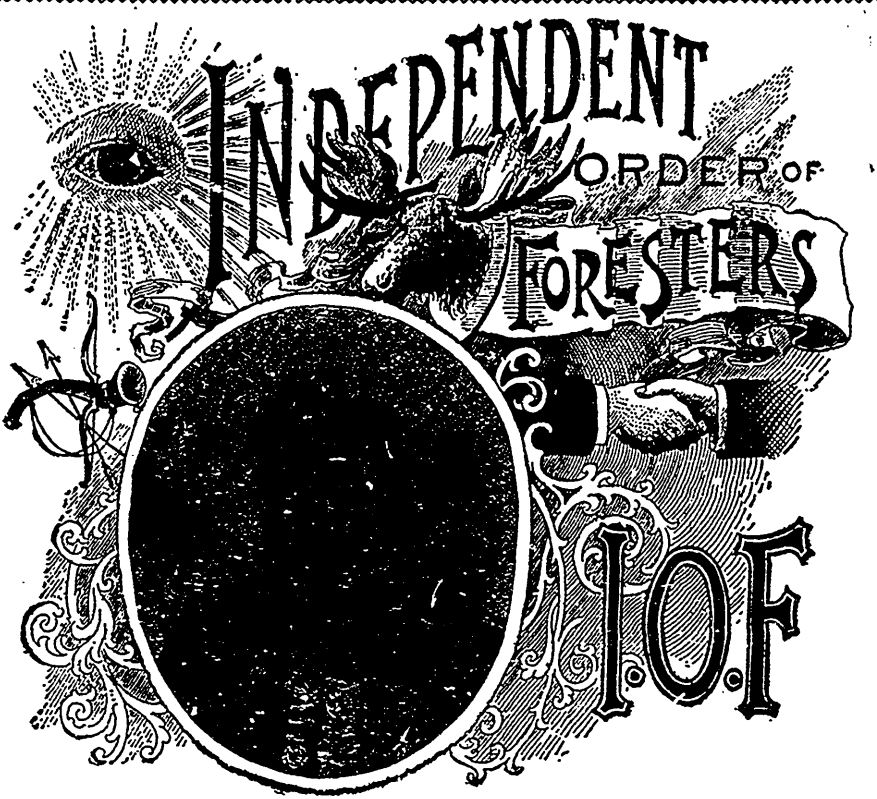

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EVERYBODY who knows anything about insurance acknowledges that the Independent Order of Foresters is far and away the **Best** Fraternal Benefit **society in the World.** It was founded in Newark, New Jersey, on the 17th June, 1874, and has spread all over the United States and Canada, and is rapidly spreading in Great Britain and elsewhere.

The Unexampled Progress and Prosperity of the Independent Order of Foresters

is shown by the following figures:

	No. of Members.	Balance in Bank.		No. of Members.	Balance in Bank.		No. of Members.	Balance in Bank.
October, 1882	880	$ 1,145 07	January, 1888	7,811	$ 86,102 42	January, 1894	54,481	$858,857 89
January, 1883	1,134	2,709 58	January, 1889	11,618	117,599 88	February, "	55,149	875,860 06
January, 1884	2,216	13,070 85	January, 1890	17,026	188,130 86	March, "	56,559	876,230 08
January, 1885	2,558	20,992 30	January, 1891	24,456	283,967 20	April, "	58,330	911,920 93
January, 1886	3,648	31,082 52	January, 1892	32,303	408,798 18	May, "	59,607	923,707 04
January, 1887	5,804	60,325 02	January, 1893	43,024	580,597 85	June, "	61,000	951,571 02

Membership 1st July, 1894, about 61,000. Balance in Bank, $951,571.62.

The total number of applications considered by the Medical Board for the year ending 31st December, 1892, is 18,247, whom 17,028 were passed, and 1,219 rejected.

The cause of this unexampled prosperity and growth of the I. O. F. is due to the fact that its foundations have been laid on a **Solid Financial Basis,** and every department of the Order has been managed on business principles, thereby securing for all Foresters large and varied benefits at the lowest possible cost consistent with **Safety and Permanence.**

At date all Benefits have been paid within a few days of filing the claim papers, amounting in the aggregate to the princely sum of **Two Millions Two Hundred and Thirty-four Thousand Four Hundred and Twenty-four Dollars.** Notwithstanding the payment of this large sum, as well as all the management expenses, including large sums for planting the Order in New Territory, there remains the handsome cash balance in the treasury, as noted above, of the sum of **Nine Hundred and Fifty-one Thousand Five Hundred and Seventy-one Dollars and Sixty-two Cents.**

Look at this list of the Benefits which you may obtain for yourself by becoming a Forester:

FOR YOURSELF.—1. The fraternal and social privileges of the Order 2. Free medical attendance. 3. Total and Permanent Disability of $500, $1,000, or $1,500. 4. A benefit for your old age of $100, $200, or $300 a year. 5. An Endowment Benefit, payable on reaching your expectation of life, of $1,000, $2,000, or $3,000. 6. Sick Benefits of $3 to $5 per week.

FOR YOUR FAMILY.—1. Funeral Benefit, $50. 2. Insurance Benefit of $1,000, $2,000, or $3,000.

The cost of admission to the Order in most Courts is only $7 to $9, according to the amount of insurance taken, besides medical examination fee, which is $1.50 if you are taking only $1,000 of insurance, and $2 if taking $2,000 or $3,000. **Agents wanted in Canada, the United States, and Great Britain and Ireland.**

For further information, apply to

ORONHYATEKHA, M.D., S.C.R., Toronto, Canada. HON. D. D. AITKEN, M.C., S.V.C.R., Flint, Mich. JOHN A. McGILLIVRAY, Q.C., S. Secretary, Toronto, Canada. JAMES MARSHALL, Gen. Manager, Great Britain, 172 Buchanan-street, Glasgow, Scotland, or to REV. W.J. McCAUGHAN, Gen. Manager, Belfast, Ireland.

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The Barrister.

VOL. I. TORONTO, AUGUST, 1895. No. 9.

EDITORIAL.

ACCORDING to statistics the courts of France dispose of 750,000 law suits every year; England 1,125,000; Italy 1,400,000; Germany 3,300,000, while United States outdoes them all with a grand total of 5,500,000 law suits every year. It will be seen from this that United States is the eldorado for lawyers, and yet in the city of Toronto there are nearly three times the number of lawyers according to population that there are in the city of Chicago. Toronto has more lawyers than any city in the world of its size, and still they are crowding in from the country, feeling that there is still any amount of room at the top. Hope appears to be a perennial fountain in the bosom of most struggling barristers. They are like Dicken's immortal Pipo forever living on "great expectations."

*

IT is said that French lawyers are forbidden by the rules of their Bar Associations from riding in omnibuses. They must either take a cab or walk, evidently law is not looked upon as an ordinary business in France as it is in Canada and the United States.

It is often being urged that our judiciary is not well enough paid, and possibly it is not, but at the same time it is well to remember that it is the best paid judiciary in the world outside of England. In France the President of the Court of Cassation which is the highest judicial position in the Republic, receives only 30,000 francs or $6,000 a year, while our chief justice receives $8,000 a year. Other salaries in France range from $5,000 a year to $1,000 for an appeal judge in the provinces. The President of the Paris Court of first instance receives only $4,000 a year.

*

WE are surprised to learn that the new woman has had a hard fight in the state of New Jersey to become a full fledged lawyer and only succeeded last month after repeated failures. We thought that Ontario was rather backward in the new woman movement, but have come to the conclusion that while not leading the van, Ontario is in the procession.

*

WE quote in another part an address of Miss Marion H. Drake, a

member of the Chicago bar, on the lawyer as a philanthropist which we believe will be interesting to our many readers on account of the subject matter and also as a warning to the young men who are now entering on law to prepare themselves for the intense struggle which will take place when women begin in earnest to overrun law. It is interesting to know that as far back as 1360 the feminine lawyer held an important place for at that period a handsome young woman, Professor Calderini, took the chair of jurisprudence in the University of Bologna, and held it six years with such ability that another charming woman, Professor Novella, was chosen as her successor. Portia, the charming and learned woman lawyer of the "Merchant of Venice," was doubtless drawn from life.

*

SIR Frederick Pollock, *Corpus* Professor of jurisprudence at Oxford, in an address before the Harvard Law School Association dwelt on the unity of the bar in England and America. He said he felt more at home as a lawyer in America than in Scotland and spoke of the persistence of the unity of the common law on both sides of the Atlantic in spite of the shock of the political separation. In closing he expressed the hope that the unity of the law in England and America would grow closer and closer, and suggested that to this end some way might be devised of having the highest court of the one country obtain the opinion of the highest court of the other on questions of great importance in legal principle, and so we might "live in hope of our system of judicial law being confirmed and exalted in a judgment seal, more than national in the tribunal, more comprehensive, and more august than any the world has yet known." With the same common law as their fundamental principles we feel sure that in the future England and United States will legislate more and more on parallel lines. In this connection it is important to note two cases which have recently been decided by the supreme court of United States as to the validity, and conclusiveness of foreign judgments. Hilton v. Guyot and Ritchie v. McMullin. In both cases the subordinate federal courts had sustained the judgments of the foreign courts, but while the Supreme Court affirmed one it reversed the other. The case of Hilton v. Guyot, the most important, involved the validity of a judgment of a French court. A French firm had obtained a judgment against an American firm doing business in Paris. Subsequently a record of the French judgment was sent to this country and suit was brought upon it in the United States court. It was contested upon the grounds that the plaintiffs and their witnesses in the French court were allowed to give testimony without being put under oath; that the defendants had no opportunity to cross-examine them; that many documents and letters were admitted in evidence which would not have been admitted in the courts of the United States, and that the defend-

ants were not allowed to inspect the plaintiffs' books and verify certain statements that had been made. The additional point was made that the French courts exercised no comity toward the American courts when judgments were taken and sued upon there, and that the same rule should be applied to French judgments by American courts. It was furthermore alleged by the appellants that many of the accounts and statements introduced in evidence in the French courts were false and fraudulent. Judgment was given for the French firm in the United States Circuit Court at New York. The Supreme Court upon appeal wrestled with the problem as though it were a difficult one. After the first argument, a reargument was ordered and the court waited a year before rendering its decision, and it was reached by a simple majority, the court standing five to four, the judgment of the lower court being reversed. Justice Gray, who read the opinion, said the general rule was, as laid down in the old books, both English and American, that the existence of a foreign judgment was *prima facie* evidence of the justice of the claim upon which it was founded; but the question was, how far should it be deemed to be conclusive? In the case under consideration the parties affected charged that fraud had been perpetrated in procuring the judgment. The laws of France gave no weight to judgments of courts in this country against citizens of that republic, especially if the correctness and virtue of the judgment are attacked, as they had been in this case, without an examination of all the facts connected with the proceedings. The operation of this law, the justice said, should be mutual; and international comity did not require courts of the United States to go further in that respect than the tribunals of other nations. This particular judgment, if the offers of proof which the defendants made, and which the court below rejected, were substantiated, could not be enforced in France nor in England, nor in any civilized country in Europe. If this suit had been brought in any other country, he said, the judgment would have had to be examined, and its value should be recognized in the United States only so far as France exercises judicial discretion in similar cases.

*

THE other case referred to—Ritchie v. McMullin—involved the conclusiveness of a judgment of a Canadian court; but in this case there was no allegation of fraud but only of error on the part of the court and the Supreme Court held that this did not constitute sufficient foundation for a review and affirmed the decision of the Circuit Court for the Northern District of Ohio, holding the Canadian judgment conclusive. The doctrine to be derived from the two cases appears to be that while judgments of foreign tribunals are *prima facie* conclusive in the United States, they are not so where there is a claim that they were obtained by fraud, particularly in the case of countries which do not recognize the principle of international comity.

WE notice that the American Bar Association is to hold its annual meeting at Detroit, the last week in this month, when hundreds of lawyers from all over the United States will assemble and devise ways and means to further the great profession of law, and to help forward the movement for uniform legislation in the different states. We would ask all our readers to watch the proceedings in Detroit, if they will do so we feel sure they will draw inspiration from it, and will agitate for a Bar Association here. Provincial and Dominion Bar Associations would be the greatest benefit lawyers and in fact the whole country could have. We ask each and every reader once more to give this their undivided attention.

SHORT NOTES ON ENGLISH CASES.

HOUSE OF LORDS.

BROCKLESBY v. Temperance Building Society, L. R. A. C. part 2, p. 173.—Where a principal entrusts an agent with securities and instructs him to raise a certain sum upon them, and the agent borrows a larger sum upon the securities and fraudulently appropriates the difference (the lender acting *bona fide* and in ignorance of the limitation) the principal cannot redeem the securities without paying the lender all he has lent although the agent has obtained the loan by fraud and forgery, and although the lender did not know that the agent had authority to borrow at all, and made no inquiry. The appellant a solicitor in partnership with his son owed the Union Band of London £750 for which the bank held as security a mortgage of freehold property at Wimbledon from Corke to the appellant, and the title deeds of a leasehold house in Holloway belonging to the appellant. Being desirous to pay off this debt and also to borrow £1500, he was advised by his son that Ashby & Co's Bank would lend the required amount upon the securities held by the Union Bank. Thereupon the appellant gave his son documents as follows:

9 WALBROOK, LONDON,
30th May, 1891.

The manager, Union Bank of London, Chancery Lane.

Dear Sir.—Please permit the bearer to see my securities and oblige.

Yours truly
GEO. J. BROCKLESBY.

On the 3rd of June he gave his son the following:—

9 WALBROOK, LONDON, E. C.
3rd June, 1891.

The manager, Union Bank of London, Chancery Lane.

Please hand to the bearer of this (on payment of the balance of my loan and interest) the deeds deposited by me with you as security for the loan.

Yours truly
GEO. J. BROCKLESBY,

The next day he gave him the following:

9 WALBROOK, LONDON, E. C.
4th June, 1891.

To the manager Union Bank of London, Chancery Lane.

Dear Sir.—Please give bearer (Ashby's Hampton Count Bank) inspection of my

deeds and on their paying the amount due thereon hand the securities over to them, they having arranged to lend me a further sum of £1500, which I require by the 1st July next.

Yours faithfully.

GEO. J. BROCKLESBY.

The son then opened an account in the name of his father's firm with the London and South West Bank, forging his father's signature for the purpose, obtained from the London and South Western Bank £3,500 paid off the £750 due to the Union Bank, handed £1500 to his father (representing to him that it was lent by Ashby & Co.,) and kept the rest. To effect this he showed the Union Bank the documents of the 30th of May and the 3rd of June, and obtained from them the title deeds which he deposited with the London and South Western Bank forging his father's signature to an equitable charge in favor of that bank upon the Wimbledon properties. Being afterwards pressed by the London and South Western Bank for repayment of their loan the appellant's son obtained an assignment from Corke of the equity of redemption of the Wimbledon property, and forged the appellant's signature to a deed transferring to himself the appellant's mortgage on that property. He then obtained £3000 from the Temperance Permanent Building Society upon the security of a mortgage from himself of that property, and £600 from the Nineteenth Century Building Society upon the security of a mortgage of the Halloway property, forging the appellant's signature to the mortgage deed. With these sums of £3000 and £600, the appellant's son paid off the debt to the London and South Western Bank, and obtained the title deeds held by them handing the Wimbledon deed to the Temperance Society and the Holloway deeds to the Nineteenth Century Society. There was no evidence that any of the documents of the 30th of May, the 3rd of June or the 4th of June respectively were shown to or brought to the knowledge of the London and South Western Bank or the Temperance Permanent Building Society, or the Nineteenth Century Building Society. The son having absconded and his frauds being discovered, the appellant brought an action against the two building societies, claiming to redeem the mortgages on payment to the societies, or such one of them as might be entitled thereto of the sum of £2250 the amount he had authorized the son to borrow with interest, and a declaration accordingly. Wright J, held that the secieties should recover the full amount loaned and interest. This judgment was affirmed by the Court of Appeal. The Privy Council affirms the decision of the Court of Appeal.

*

WHITE v. Mellin, L. R., part 2, 1895, p. 154. An action will not lie for a false statement disparaging a trader's goods where no special damage is proved. Where an action will not lie for defamation an injunction will not be granted. The defendant sold the plaintiff's "Infants Food" affixing to the plaintiff's wrappers a label stating that the defendants "food for infants and invalids" was far more nutritious and healthful than any other. It was not proved that the statement was untrue or that it has caused any damage to the plaintiff. Held reversing the decision of the Court of Appeal, and restoring that of Rome J., (1894) 3 chy., 275, that no action would lie, and that no injunction to restrain the defendant ought to be granted.

COURT OF APPEAL.

CAN a cargo owner treat the abandonment of a ship by master and crew as a determination of the contract to carry his cargo, and if the ownership afterwards recovers the ship and cargo from the salvors, is the cargo owner liable for the freight?—Arno, The, L. T. 191.—The Court of Appeal (Esher, M.R., Kay, Smith, L.JJ.) held that he was right in treating it as a determination of his contract of affreightment, and that he was entitled to have his cargo delivered to him without payment of the freight for its carriage.

WILL an action lie for obstructing a passage of air over back yards of dwelling-houses?—Chastey v. Ackland, L. T. 192.—The Court of Appeal held, not unless there has been some covenant, express or implied, that such obstruction should not take place. Said Lindley, L. J.: "To diminish the flow of air is not actionable as a nuisance." He further remarked: "It has been decided that a right to air is not an easement within sect. 2 of the Prescription Act; but in spite of this, a right to have air come over another's land, in some definite direction to some particular place, can I apprehend, be established by what is called immemorial user, or by user which may have had for its origin some lost grant of agreement binding on the owners of the servient tenement. In the present case immemorial enjoyment is not alleged, no doubt because the plaintiff's house is not sufficiently old. Then, as to the lost grant or binding agreement to allow air to come freely to the back of the plaintiff's house over the defendant's land, the plaintiff does not prove enjoyment of air coming in any definite direction over the servient tenement, and to burden the servient tenement to the extent necessary to protect the plaintiff from the diminishing of the free passage of air to the yard at the back of his house is, I think, contrary to the authorities, and would be to stretch the doctrine of lost grant further than principle warrants it."

*

Is a libelious letter written by a Secretary of State in the course of his duty actionable?—Chatterton v. Secretary of State in Council, L. T. 192. —The Court of Appeal (Esher, M. R., Kay and Smith, L.JJ.) held that on the ground of public policy document itself could not be used in evidence in the action, nor could secondary evidence of it be given, and that therefore the action was not maintainable.

*

WHEN A. leases to B., and B. covenants to repair, and B. underleases to C., and C. covenants to repair, but does not covenant to indemnify B. in respect of his liability to A., and C. lets the premises fall into disrepair, what is the measure of damages for breach of C.'s covenant with B.?—Ebbetts v. Conquest, L. T. 192.—Lindley, L. J., said that, applying the rule of Hadley v. Boxendale, as C. knew full well of B.'s liability to A., if the premises were not kept in repair, the damages were the difference between the value of B.'s reversion with the covenant to keep in repair performed, and its value with that covenant not performed. Had there been by C. a covenant to indemnify B., larger damages might have been obtained. *e.g.*, the costs of an action brought by A. against B.

*

IF X. gives property to A. absolutely, and then the will states, "I wish A. to bequeath the property to B," does A. take absolutely, or does he take for life only, and then as trustee for B.?—Hamilton, *re* Trench v. Hamilton, L. T. 111. The Court of Appeal held that he takes absolutely. To hold otherwise would be to strain the words of the will and to defeat the testator's intention.

*

Is it actionable for the subscribers to the Exchange Telegraph Co., they being under covenant not to do so, to communicate the "tape" prices to other persons?—Exchange Telegraph Co. v. Gregory & Co., L. T. 193.—Mr. Justice Mathew held that it was, and granted an injunction to restrain defendants not only copying the prices in the plaintiff's newspaper, which had been started to gain great copyright protection, but also copying the "tapes."

*

Is a bequest of money in trust that the income may always be used in the purchase of a "cup," to be awarded at the discretion of the trustees to the most successful yacht of each season, good or bad?—Nottage, *re*, Jones v. Palmer, L. T. 112.—In other words, is such a bequest charitable or not? If not, it must be void as infringing the perpetuity rule. Kekewich, J., held that the bequest was void, as he could not hold that it was beneficial to the community in such a way as to constitute a charity.

SUPREME COURT OF CANADA.

TOWNSHIP OF OSGOODE v. York.—Municipal law.—Ditches and Watercourses Act, R.S.O., 1887, c. 220.—Owner of land.—Meaning of term "owner." By sec. 6 (*a*) of the Ditches and Watercourses Act, Ont. R.S.O., 1887, ch. 220 any owner of land to be benefited thereby may file a requisition with the clerk of a municipality for a drain, provided he has obtained "the assent thereto of (including himself) a majority of owners affected or interested." C. who was in occupation of land by permission of his father, who had the legal title therein, filed a requisition for a drain through said lands and a number of other lots, among them being lots of which Y. was assessed as owner. Before the proceedings were begun by C., however, Y. had conveyed portions of his land to his two sons. Permission for the drain having been granted, and an award having been made by an engineer and confirmed by a judge, Y. and his sons brought an action to have the construction of the drain prohibited on the ground that the assent of the majority of owners had not been obtained. It was admitted that if C. was an owner under the Act, and the sons of Y. were not, there was a majority. Held, affirming the decision of the Court of Appeal (21 Ont. App. R. 163) which had reversed the judgment of the Divisional Court (24 O. R., 12) that the assessment roll was not the test of ownership under the statute; that the owner therein meant the holder of a real and substantial interest; that C., a mere tenant at will, was not an owner; and that the two sons of Y. were having the title in fee of a part of the land affected or interested. *Quære.* C., who filed the requisition, not being an owner, would the proceedings have been valid if there had been a sufficient majority without him, or must the person instituting the proceedings be, in all cases, an owner under the statute? Appeal dismissed with costs.

*

TOOTH v. Kittridge.—Statute of Limitations.—Partnership dealings.—Laches and acquiescence—Interest in partnership lands. A judgment creditor of J. applied for an order for sale of the latter's interest in certain lands, the legal title to which was in K., a brother-in-law and former partner of J. An order was made for a reference to ascertain J.'s interest in the lands and to take an account of the dealings between J. and K. In the Master's office K. claimed that in the course of the partnership business, he signed notes which J. endorsed and caused to be discounted, and had charged against him, K., a much larger rate of interest thereon than he had paid, and he claimed a large sum to be due him from J., for such overcharge. The master held that as these transactions had taken place nearly twenty years before, K. was precluded by the Statute of Limitations and laches and acquiescence from setting up such claim. His report was overruled by the Divisional Court and Court of Appeal on the ground that the matter being one between partners, and the partnership affairs never having been formally wound up, the statute did not apply. Held, reversing the decision of the Court of Appeal and restoring the master's report, that K.'s claim could not be entertained; that there was, if not absolute evidence, at least a presumption of acquiescence from the long delay; and that such presumption should not be rebutted by the evidence of the two partners considering their relationship and the apparent covenant between them. Appeal allowed with costs.

*

MICHIGAN CENTRAL RY. CO. v. Wealleans.—Railway Company.—Lease of road to foreign company.—Statutory authority. In 1882 the Canada Southern Railway Company, by written agreement, leased a portion of its road to the Michigan Central for a term of 21 years. While the latter company was using the road, sparks from an engine set fire and destroyed property of W., who brought an action against the two companies for the value of the property so destroyed. An insurance company which had paid

the amount of a policy held by W. on the property so destroyed was joined as a plaintiff. At the trial, plaintiffs were non-suited in favor of both defendants, it being admitted that the fire was not caused by negligence, and the Divisional Court sustained such non-suit, holding also that the insurance company had no *locus standi*. On further appeal the Court of Appeal dismissed an appeal by the insurance company and by the plaintiff as against the C. S. Ry. Co., but allowed the plaintiff's appeal as against the Michigan Central, holding that the C. S. Ry. Co. had statutory authority to make traffic arrangements only with a foreign company, and could not give the tter running powers over its road. The Michigan Central then appealed to the Supreme Court. Held, reversing the decision of the Court of Appeal (21 Ont. App. R. 297), that under 25 V., c. 48, s. 9, an Act relating to the C. S. Ry. Co., and sec. 60 of the Railway Act of 1879, the C. S. Ry. Co. could lawfully lease its road to a foreign company, and the injury to W.'s property having occurred without any negligence on the part of the officers or servants of the Michigan Central, which was lawfully in possession of the road of the C. S. Ry. Co. under said agreement, the Michigan Central was not liable for such injury. Appeal allowed with costs.

*

TOWN OF CORNWALL v. Deroche.—Municipal Corporation.—Negligence.—Repair of street.—Accumulation of ice.—Defective sidewalk. D. brought an action for damages against the Corporation of the Town of C., for injuries sustained by falling on a sidewalk where ice had formed and been allowed to remain for a length of time. Held, Gwynne, J., dissenting, that as the evidence at the trial of the action showed that the sidewalk, either from improper construction or from age and long use, had sunk down so as to allow water to accumulate upon it, whereby the ice causing the accident was formed, the corporation was liable. Held, per Taschereau, J.—Allowing the ice to form and remain on the street was a breach of the statutory duty to keep the streets in repair, for which the corporation was liable. 21 Ont. App. R., 279, and 23 O. R., 355, affirmed. Appeal dismissed with costs.

*

HEADFORD v. McClary Manufacturing Co.—Negligence.—Workman in factory.—Evidence.—Questions of fact.—Interference with, on appeal. W., a workman in a factory, to get to the room where he worked, had to pass through a narrow passage, and at a certain point to turn to the left while the passage was continued in a straight line to an elevator. In going to his work at an early hour one morning, he inadvertently walked straight along the passage and fell into the well of the elevator which was undergoing repairs. Workmen engaged in making such repairs were present at the time, with one of whom W. collided at the opening, but a bar that was usually placed across the front of the shaft was down. In an action against his employers in consequence of such accident, held, affirming the decision of the Court of Appeal, 1 Ont. App. R., 164, and of the Divisional Court. 23 O. R., 335, Strong, C. J., *hesitante*, that there was no evidence of negligence of the defendants to which the accident could be attributed, and W. was properly nonsuited at the trial. Held, per Strong, C.J., that though the case might properly have been left to the jury, as the judgment of non-suit was affirmed by two courts it should not be interfered with. Appeal dismissed with costs.

*THE PSYCHOLOGY OF A JURY IN A LONG TRIAL.**

TAKE twelve men of active life, confine them in a court room six hours a day, and expect them to observe closely, remember and reason soundly on the evidence offered, with no guide except some general principles of law and equity. They are also expected to exercise judgment and discrimination of facts, that require training in the most favorable surroundings. In reality the ordinary jury is selected from active working men unused to confinement, and unable to think and reason continuously on any topic outside of their every day life.

They are untrained to discern the probable facts in a contested case, and understand the real from the apparent in the arguments of counsel. The confinement of the court room, its bad, vitiated atmosphere, with the changed diet of hotels in a long trial, make them still more unfit. A grouping of some facts will make clear the purpose of this note. In a recent murder trial seven farmers on the jury were confined five days in the court room and hotel. They all suffered from indigestion, and two of them were ill in bed for some weeks after. One of these men was a Second Adventist, and the counsel referred to the certainty of the sudden coming of the end of the world, and the strict accountability of each one, and urged an acquittal of the prisoner, which was done. The effect of confinement, over-eating, and bad, poisoned air, with mental strain to accommodate themselves to the unused requirements of the position, react on the brain, making its operations more unstable and uncertain. After the third or fourth day the judgment of an average juror dwindles into caprice and changeable whims. A certain number will become possessed with a dominant idea concerning the case, which will grow under any circumstances irrespective of all reason or judgment. It becomes literally an "abscession," that is, not changed, although another view may be accepted for present purposes. Others will be thoroughly confused and mentally demoralized, and incapable of coming to any conclusion. The evidence will be a chaotic mass, from which they are unable to extricate themselves. The longer the trial the more bewildered they become, and at last follow the lead of the majority in despair of anything better. Another class becomes more and more indifferent to the merits of the case, as their physical condition deteriorates; their only interest is to reach the end of the trial; like the former class, they sit listless, neither seeing nor hearing anything with intelligence. At the close they join the majority in any verdict. Another class of superficial, vain men, take great satisfaction in the power this position brings them, and are governed in their judgments by the flattery of counsel. When told they have judgment, and will decide in such a way, they follow this advice, evidently. There are always men with a mental "twist" or bias in the average jury. In good surroundings, and in good health this would be concealed, but after a day or more in the court room it becomes a dominant factor. Strong religious, temperance and political views introduce themselves, whenever a man

* T. D. Crothers, M.D., read before the Psychological Section of the Medico-Legal Society, New York.

becomes at variance with his surroundings, and its natural physical and psychical influences. Lowering and changing the degree of health and functional activities makes him more intolerant of the divergent views of others. After the second or third day of the trial, appeals to these conceptions, and efforts to make some facts apply along these lines, are always effectual. Emotional, impulsive men, who are controlled largely by the surroundings, are always objects of concentrated interest by shrewd lawyers. In the first part of the trial they are not so influential as later, when the mental status has dropped down; then they may become infused with certain conceptions of the case, particularly for punishment or acquittal. The morals of a jury on a long trial are lowered markedly near the end of the case. If undue influence is used or if such influences are purchased, the time to do this is when the effects of confinement, bad air, food and derangement of the physical system appear. However honest a jury of average men may be, a change of surroundings and physical vigor will react on their conceptions of right and wrong, and strangely incapacitate them. If any of the jury are invalids, or have been confined with dietetic or neurotic diseases, in the past, the changed conditions of the jury room are very likely to bring out some entailments of this condition, still further complicating their mental soundness. Pessimistic men who are in ill health, are always ready to recognize guilt and inflict punishment in every case. Their ideas of justice are always based on vengeance and punishment. The suspicion of crime is always a reality and evidence to the contrary is deception. Many of these men in excellent physical surroundings would act and reason with fairness, but change the surroundings and degree of health and they are unsound and unreliable. The psychology of a jury on a long trial, furnishes a range of facts that, when understood. the verdict of these men could be predicted with great certainly, no matter what the evidence may be.

PROGRESSIVE CONSERVATISM.

Law, as an abstract principle, uncontrolled by elements which war against good government, is conservative. It is without sentiment or feeling, or prejudice or passion. It is calm and indifferent and cold. It underlies all relations between man and man, between man and men, and between the individual and the state. The simplest of all principles, it is considered by many to be the most complex.

This conservatism is not stagnation, nor fixedness nor unchangeableness. On the contrary, it is progression, in the truest and most healthful sense in which the word progression can be used. It is governed by the principles that control progresssion in the natural world, the principles of evolution. These include natural selection, the struggle for existence and the survival of the fittest.

The theory of evolution finds no stronger confirmation than in the exactment of laws, when the law-making power is intelligent and incorruptible. Necessity always exercises its inexorable

demand in nature by the creation or development from existing materials of the things needed, and its demand is met by repeated failures and the production of undeveloped and worthless forms. The die is many-sided, and must be thrown many thousands of times before the required figure is uppermost; but it is always loaded, however lightly, and the final successful throw is never the result of chance. The under surface, which controls the result, is the conservative force, apparently silent, inactive and unyielding. But in the enactment of constitutions and laws, and in the efforts made for modifications necessary to meet the constantly shifting conditions of society, the forces which must be overcome are not the stolid and indifferent forces of nature, which are obstructive simply because they exist, but there intervenes an active and progressive principle and to preserve the honest, manly conservatism of the law, will, in the future, require the exercise of great wisdom and cool and deliberate judgment upon the part of those who are entrusted with the grave responsibilities of legislation. The theory of the survival of the fittest, unless men of integrity and intelligence shall be willing to devote a large portion of their time to the transaction of public affairs, will degenerate into a principle which means the survival of the strongest, and finally into the survival of the most unscrupulous and corrupt.

The most powerful of all influences necessary to preserve the conservative evolutionary principles referred to, is intelligence. If as much care was taken in the selection of legislators as an individual or private corporation takes in the selection of employees, the meeting of a legislature would be cause for congratulation and hope and its adjournment cause for regret; but when men are chosen who would not recognize the constitution if they should stumble over it on the steps of the capitol, who receive their opinions from hired lobbyists, and have to be "retained" before they can investigate important questions; in other words, when institutions for feeble-minded, and the penal institutions of the state are deprived of their natural inmates, in order that legislative halls may be filled, there is great danger that progressive conservatism, the sheet anchor of representative government, will not be able to hold the great ship in the storms which are to come.

Through all the trials and vicissitudes of representative government, the hopeful look to the courts, as the faithful turn their faces towards Mecca. The responsibility resting upon members of the legal profession as advocates and counselors and judges, is the most solemn responsibility which anyone can be called upon to assume. The crowding of the profession, the commercial and trade-like character of those who call themselves lawyers, and the impudent clamoring for office by impecunious, venal and ignorant men, cannot fail to retard the growth of progressive conservative principles which underlies the enactments of legislatures and the decisions of inferior and superior tribunals. That we have so far escaped the consequences which must follow from these sources, is cause for profound congratulation.

A great enemy of the principles of progressive conservatism as applied to the decisions of courts, is the blind admiration and unreasonable adherence to precedents; but while this is an enemy, it is not greatly to be feared, for the impelling force is far greater than the retarding. Every decision of every court should be a bantling, cast upon the rocks,

to be nurtured by the she-wolf, and not taken into the palace and clothed in purple and fine linen. If possessed of elements of strength and virility it should live; but if puny and imbecile, it should die and be forgotten. There are many lawyers, and some judges, especially of inferior courts, whose minds are never refreshed by the entrance of an original thought or inspiration, but they must wait for inspiration from some decision of some court, and it may be that a careful analysis of such decision would disclose the fact that it was as closely allied in principle to the question under consideration as the president of the Peace Congress is to the King of the Cannibal Islands. There are others who know what is right, but lack the courage to pronounce a just judgment, because confronted by a decision of another court which they receive as authority. If such decision were criticised as it should be, and condemned as unworthy to survive, it could not long interfere with the natural and conservative evolution which is going on with such apparently unseen, yet with such certain forward movement. If the decision of the supreme court is wrong in principle, it should not be followed. If when weighed in the balance, it is found wanting, if, when tried in the furnace, it is proven to be impure, it should be returned to the shop from whence it came. It is not authority, it is simply precedent.

To receive every precedent as authority would be in effect to seal up the fountain of judicial learning and to accept mediocrity as wisdom, to close the mouth of fearless criticism and to make lawyers and judges mere parrots, to require of the present that it shall repeat not only the wisdom, but also the follies of the past.

All of nature's processes are slow, but its work is complete. The operations of man are rapid, and his labors are imperfect. That which was built yesterday will be torn down to-morrow, unless the foundation is firm and the superstructure enduring. The great enemy of steadfastness is haste; the companion of haste is overwork, and overwork means a dull brain and an unsteady hand. Byron may have dashed off an impassioned and brilliant poem in a single night; but every line of the Elegy of Gray carries with it the impress of the author's familiar companionship.

Sooner or later the judges must be free to tear down that which has been carelessly built, and erect a modern structure, suited to the changed conditions and imperative demands of the present life.—CHARLES FLOWERS, in *Michigan Law Journal.*

EMOTIONAL ADVOCACY:

SIR FRANK LOCKWOOD, Q.C.

FORENSIC FIREWORKS.

REFERRING to the hideous tragedy of the Wilde Case, the writer of notes from London in the Scottish Law Review passes a cutting criticism on the conduct of the prosecution by the ex-Solicitor-General:

Disagreement of second time, or an acquittal even, would not have astonished anyone who is aware of the opposition a too zealous and passionate advocate for the prosecution may raise in the minds of a jury. After the scenes which occurred

in Court, there was a very marked tendency to a sympathy with Wilde which had not shown itself before, and a feeling that, on the whole, an acquittal was more likely than not to be the result. Sir Frank Lockwood cannot be congratulated on his advocacy, for he put his own case in a peril from which it barely escaped. It seems as though, as law officer, he deliberately adopts the methods of the French prosecutor, and will not follow the restrained and dispassionate procedure which is the tradition of the English bar.

The memory of the Read trial is still fresh. It was the first trial in which he appeared for the Crown, and he exposed himself to severe criticism then for making use of the tactics which he has again adopted in the Wilde case. Too great eagerness to secure a verdict of guilty is repellant to the British jury, and it is indicative of the strong ase against Wilde that this feeling did not ultimately gain the ascendency. . . . The half is greater than the whole when we calculate the effect of the rhetoric and excited declamation of a prosecutor straining every nerve to procure a conviction. Sir Frank Lockwood is a noted *nisi prius* advocate, with whom it has become a second nature to look upon winning a verdict as a piece of successful professional rivalry with a competing brother advocate; and it does not appear that he is as conscious as he ought to be of the painful feelings aroused by this intrusion of the personal element into the solemnity of proceedings where the question at issue is the life or death, or, it may be, something of still greater moment, of an unhappy wretch who stands at bay fighting to the last gasp like a hunted beast. It is not pleasant to hear the war-whoops of an advocate in such circumstances. The brutality of the mob which cheers when the black flag is hoisted, or dances excitedly on the streets as it did at the news of Wilde's conviction, needs no stimulus from a Crown prosecutor. Frequenters of the Old Bailey, if they have not become hardened by too much experience of that terrible Court, recall with a creepy feeling the deadly impassivity and frigidity with which Mr. Poland used to weave the meshes round the doomed prisoner. There was something so like the absolute precision and certainty of machinery, such an utter apparent absence of any kind of emotion in the conduct of his cases, that one was oppressed with the almost non-human character of it, and longed for some display of ordinary feeling. But one might wait through the longest day in vain. Mr Poland has left no disciple of this school equal to himself; and, indeed, he seems to have been succeeded by a band of emotional prosecutors, such as the ex-Solicitor-General, Mr. Charles Mathews, and Mr. C. F. Gill, who all, in some degree, do what Mr. Poland cannot for a moment be imagined doing, play to the gallery. The earlier style appeared in some ways cruel, but the later is less becoming and fitting for the "indifferent" administration of the criminal law.

THE LAWYER AS A PHILANTHROPIST.

Miss Marion H. Drake, a member of the Chicago Bar and a former graduate of the Chicago College of Law, upon being introduced, at the Chicago College banquet, by Mr. Toastmaster Seligman, was received with round after round of applause. Miss Drake said:

Mr. President, Gentlemen and Ladies:

We may surmise, but can never positively know whether the future inhabitants of our dear old mother earth will call your nineteenth and twentieth century era the progressive age, the woman's, the electrical, or the scientific age. No movement can be dignified by the name of an "age" until it has attained its height, declined, and brought to a period. Therefore let us hope that the reign of human brotherhood, the threshold of which is barely crossed, may never start on the downward pathway to the title "Age of Philanthropy." Never have the needs of the poor been so persistently presented to the rich. Never have the rich taken such pains to seek out the poor. The spirit of modern charity is personal contact, the human relationship, universal brotherhood, and is abroad in the land. There are quantities of benevolent work to be done. What is the lawyer, out of the depths of his knowledge of human society, doing for his fellow men?

He may deal with his clients in a capacity so purely personal that the results will never extend beyond the benefit gained by the particular client, or he may perform professional duties of such a character that the consequence will be widespread. Services affecting only the immediate client claim a word. In charging for the prosecution of a damage claim for bodily injury, a lawyer has it in his power to merit the high title of philanthropist or to pocket the greater portion of the settlement or judgment. When he thus overcharges, do the cries of suffering, memory of his clients' broken limbs and life-long misery, accompany the hoarding or spending of such blood money?

The future presents even greater possibilities for the philanthropist lawyer than the past, and it is well to pause occasionally and consider whether the lawyer is fulfilling his highest public duty.

All human beings have a right to a reasonable amount of happiness, happiness purely physical, which includes an abundance of light, air, warmth, food and clothing and the happiness of moral and mental enjoyment. Until all possess these natural rights, we do not need a student of sociology to tell us that we have no right to rest content in the enjoyment of these and far greater blessings; but they do remind us occasionally that in the midst of our proud civilization, in districts within a stone's throw of the route daily traversed by many of us, there are abiding places lacking the first elements of a home. We study with curiosity the development of human dining propensities from the earliest gathering of fruits and nuts and the feeding of nomadic tribes upon their flocks and herds, down to the discussion of a simple seven or eight course law school banquet, but in our midst a mother stitches in a dingy sweat shop from early morning until late at night and when her little child runs in from the street crying with hunger, she stops only long enough to tear a piece of bread from a coarse loaf and toss it to the child The little one sits down to eat upon a pile of clothing, or wanders out.

into the more cheerful highway. A dining room table is unknown. Children's tender spines may be bent, delicate limbs may become shrunken and distorted by laborious factory labor; long hours of unhealthy work in poorly ventilated sweat shops may weaken lungs until it is impossible to inhale sufficient fresh air to make the cheek glow and the heart beat with a sense of human freedom. Men, women and children may be seen daily in the northwestern and southwestern parts of our city, trudging five weary miles to their down town labors and back again at night, for want of five cents car fare. Human frames cannot endure this strain for many years, and when the breaking down time comes the healing hand of the physician is stretched forth, kind charity is offered, the intricate human mechanism may be repaired, but, alas, can never again be made perfect! And here, we see the need of wise legislation, for that which can not be cured ought to be prevented in the future. To legislate successfully for the unfortunate, bills must be drawn by lawyers who so thoroughly understand constitutional law that when the act is finally tested in the Supreme Court it will not fail because it is unconstitutional.

Charity had its origin in the church, but specialized benevolent associations succeed to the work of the church, and these in turn are superseded by State control. Thus more and more it is in the hands of lawyers to set in motion vast philanthropic schemes upon which will depend the happiness of the greatest number.

I cannot close, fellow alumni, without calling your attention to the kind philanthropists who have made us the recipients of rich treasures—our faculty! Men who have stepped down from the calm, cold, clear air of the mountain peaks of wisdom and have brought with them some of that bracing air found only in the quietude and sublimity of great heights; who have not been content, like the Brahmin priests, to remain among the glistening snows, rare sunsets and majestic grandeur of their Himalayas, absorbing peace and calm for their own spirits, but have daily directed the fervid, passionate, eager, restless mind of the law student. This they have done, not with chilling criticism, but with such ready sympathy and kindly interest that at the end of the first year our wings fluttered against the heavy clouds obscuring the snow-capped peaks, visions of which we caught through the rifts during the second year, only to find at the end of the third year that in that great, rare, clear, high atmosphere of the perfect law the harmonies are greater and richer, because struck from grander octaves.

COURTESY IN COURT.

A quarrelsome attorney and a scolding judge go hand in hand in degrading the dignity of a court. "He couldn't say anything else, and he swore," is Byron's suggestive comment on the discomfited debater. Of what need is there for a judge, who has the power of a monarch to enforce his orders, to scold and bellow and bluster? The calm, self-contained demeanor of the Bench, courteously but firmly laying down the rule, enhances respect and enforces obediences without

question. When the court says what it means, and means what it says, and stops, who shall say it nay?

Of what need also, is there for an attorney to menace his adversary with angry personalities and billingsgate? If it is the law he is contending for, why should he make a prize ring of the court? If he is confident that the law is with him he can afford to be courteous and calmly appeal to the court. If he is contending against the law, then, indeed, his pugilistic manners become him and betray him.

We recall a picture of a court scene, that comes to us betimes with much pleasure, of wo distinguished attorneys who had grown grey in battles at the bar, and who were pitted together in an intense contest over an important case. But it was a case of most consummate courtesy, not of angry vituperation. Each was too wise to lose his composure or to be outgeneraled by the sauvity of his adversary. At a stage of the case one was on his feet addressing the court in behalf of a point, when his adversary arose and took issue with his statement of a fact. "I am exactly correct," he rejoined." "You are absolutely wrong," said his adversary; and standing face to face within a few feet of each other, each, with a smile upon his face, looked the other in the eyes silently for a full minute, neither blinking or relaxing the beaming good humor of his expression. It was a silent, superb contest of courtesy—a picture for an artist—in which the court, the jury, and the spectators looked on with undisguised merriment, while not a word was spoken and the two veterans stood trying placidly to look each other out of countenance.

How much better this than the more frequent picture of two angry attorneys facing each other with the glare and scowl of the wild beast, and vieing with each other in the manners of the blackguard and bully.

Dignity is one of the elements that should pervade the atmosphere of a court room if our judicial tribunals shall have the reverence of the people. Dignity is an essential attribute of the judge if he shall maintain for the Bench the respect of the bar. Dignity is a necessary part of the demeanor of an attorney who wishes to preserve a proper sense of respect for the profession.

Let all things be done decently and in order.—*West Va. Bar.*

ESSENTIAL QUALITIES OF THE LAWYER.

The following is an extract from a speech of the Hon. Sterling B. Toney of Louisville, Ly., delivered before the State Bar Association of Alabama:

The two essential qualities that constitute the majesty of a true lawyer's character are capacity and integrity. Everyone who takes the oath of admission to the bar stands pledged to society that he possesses those qualifications. The bench and bar are guarantors upon his pledge, and upon the truth of the bond rests the dignity and honor of the profession. Splendid talents, brilliant acquirements, without integrity, indeed, should be a disqualification for membership at the bar; while *a converso* moral character without learning in the law is wholly unavailing. I express the feelings and sentiments of the legal profession

when I protest to-day against the lax and loose methods of admission to the bar now prevailing in many States of the union. The admission of men without capacity and integrity has a direct tendency to compromise our noble profession in the eyes of the world by destroying public confidence in the administration of justice. The path of the law is a long and perilous pilgrimage; its prizes are splendid but distant; they cannot be won in a day. A lawyer's life is a grand intellectual Derby day, extending, as Blackstone tells us, over twenty years.

"Viginti annorum lucubrationes."

Energy and ambition properly directed, properly inspired, may hasten the march of events, yet we all know that the garlands and rich rewards of the law, like the Olympic palm can not be won without the dust and heat of a mighty race. A lawyer cannot be made in haste, nor in a day. You remember the reply of young Hayseed to his rustic progenator, who had put him in the office of a justice of the peace to study law. The boy came home next day; the proud father asked his hopeful how he liked the law. "Well, dad," said he, "I'll tell ye the law ain't what it is cracked up to be, nohow, and I'm sorry I've learnt it."

Gentlemen, there is no profession, calling, or vocation in which integrity of character in its members is so vitally essential as that of law. The administration of justice is a delusion and a snare where the high priests in her temples are lacking in learning, capacity and integrity. The lawyer whose representations in addressing the court are received with distrust in respect either of his intentional suppression of the truth or misstatement of the facts, is a blot and a scar upon the profession. Whenever members of the bar are distrusted by the court, or the court is regarded with suspicion by the bar, the profession stands dishonored in the eyes of all honorable men. An unreliable bench, an unscrupulous bar, are the worst curse that an angry heaven can visit upon a sinful people.

SENTENCE OF PONTIUS PILATE.

The following is a correct transcript of the sentence of Pontius Pilate, the most memorable judicial sentence which has ever been uttered by human lips:

"Sentence pronounced by Pontius Pilate, intendant of Lower Galilee, that Jesus of Nazareth shall suffer death by the cross. In the seventeenth year of the reign of the Emperor Tiberius, and on the 25th of March, in the most holy city of Jerusalem, during pontificate of Annas and Caiphas, Pontius Pilate, intendant of the Province of Lower Galilee, sitting in judgment in the presidential chair of the praetor, sentences Jesus of Nazareth to death on a cross, between two robbers, as the numerous testimonies of the people prove that (1) Jesus is a misleader; (2) He has excited the people to sedition; (3) He is an enemy of the laws; (4) He calls himself the Son of God; (5) He falsely calls himself the King of

Israel; (6) He went to the temple followed by a multitude carrying palms in their hands."

It likewise orders the first centurion, Quirilius Cornelius, to bring Him to the place of execution, and forbids all persons, rich or poor, to prevent the execution of Jesus.

The witnesses who have signed the execution against Jesus are: (1) Daniel Robani, a Pharisee; (2) John Zorobabel; (3) Raphael Robani; (4) Capet. Finally it orders that the said Jesus be taken out of Jerusalem through the gate of Tournea.

There seems to be no historical doubt as to the authenticity of the above document, and it is obvious that the reasons of the sentence correspond exactly with those recorded in the gospels.

The curious document was discovered in A. D. 1280 in the city of Aquill, in the kingdom of Naples, in the course of a search being made for the discovery of Roman antiquities, and it remained there until it was found by the commissioners of art in the French army of Italy. Up to the time of the campaign in Southern Italy it was preserved in the sacristy of the Carthusians, near Naples, where it was kept in a box of ebony.

Since then the relic has been kept in the Chapelo Caserta. The Carthusians obtained, by petition, leave that the plate might be kept by them as an acknowledgement of the sacrifices which they had made for the French army. The French translation was made literally by members of the commission of art. Denon had a fac simile of the plate engraved, which was bought by Lord Howard, on the sale of his cabinet, for 2,890 francs.

DURESS.

Duress, at the common law, is of two kinds—duress by imprisonment and duress by threats. Some of the definitions of duress per minas are not broad enough to include constraint by threat of imprisonment. But it is well settled that threats of unlawful imprisonment may be made the means of duress, as well as threats of grevious bodily harm The rule as to duress per minas has now a broader application than formerly. It is founded on the principle that a contract rests on the free and voluntary action of the minds of the parties meeting in an agreement which is to be binding upon them. If an influence is exerted on one of them of such a kind as to overcome his will and compel a formal assent to an undertaking when he does not really agree to it, and so make that appear to be his act which is not his, but another's, imposed on him through fear, which deprives him of self-control, there is no contract, unless the other deals with him in good faith, in ignorance of the improper influence, and in the belief that he is acting voluntarily. To set aside a contract for duress it must be shown, first, that the will of one of the parties was overcome, and that he was subjected to the power of another, and that the means used to induce him to act were of such a kind as would overcome the mind and will of an ordinary person. It has often

been held that threats of civil suits and of ordinary proceedings against property are not enough, because ordinary persons do not cease to act voluntarily on account of such threats. But threats of imprisonment may be so violent and forceful as to have that effect. A contract obtained by duress of unlawful imprisonment is void, and if the imprisonment is under legal process, in regular form, it is nevertheless unlawful as against one who procured it improperly for the purpose of obtaining the execution of a contract and a contract obtained by means of it is void for duress. So it has been said that imprisonment under a legal process, issued for a just cause, is duress that will avoid a contract if such imprisonment is unlawfully used to obtain the contract. And, again, it has been held that threats of imprisonment to constitute duress must be of unlawful imprisonment. But the question is whether the threat is of imprisonment which will be unlawful in reference to the conduct of the threatener, who is seeking to obtain a contract by his threat. Imprisonment that is suffered through the execution of a threat which was made for the purpose of forcing a guilty person to enter into a contract may be lawful as against the authorities and the public, but unlawful against the threatener, when considered in reference to his effort to use for his private benefit processes provided for the protection of the public and the punishment of crime. One who has overcome the mind and will of another for his own advantage, under such circumstances, is guilty of an abuse of laws which were made for another purpose, and he is in no position to claim the advantage of a formal contract obtained in that way on the ground that the rights of the parties are to be determined by their language and their overt acts without reference to the influences which moved them.

There are a few cases which tend to sustain a different contention, but the views above expressed rest on sound principles, and are in conformity with most of the recent decisions in such cases both in England and America.—*American Lawyer.*

BRIEFS FROM EXCHANGES.

Beauty of the Bench.

A PRETTY GIRL ONCE SAT WITH CALIFORNIA'S SUPREME COURT.

"FEW people are aware that a woman once sat on the supreme bench in California," said ex-Secretary of State Thomas Beck. A look of incredulity overspread the features of his listeners.

"It is a fact, nevertheless,' continued Mr. Beck. "It was in—well, never mind the year, but I was then secretary of state, the court was being held in Sacramento. Judge Wallace was on the bench, and among those in the capital city during the session was Col. Shafter and a number of his officers. The colonel was accompanied by his daughter, a very young, bright and handsome girl.

"One morning at the breadfast table in the Golden Eagle hotel Justice Wallace said: Miss Shafter I feel quite slighted. Since you have been in Sac-

ramento you have not deigned to visit me. Won't you come up this morning and sit with us in banc? My colleague, Judge Crocker, is absent, and you might as well occupy his seat.'

"'Oh, yes, I'll come,' returned Miss Shafter, and the subject was dropped, and I am sure that Judge Wallace never dreamed that the invitation would be accepted.

"About an hour afterwards, Miss Shafter, accompanied by one of the officers of her father's staff, came to my office and said that she wanted to go to the Supreme Court. Would I take her? With pleasure. And away we went. A young attorney was arguing a case when we entered the court. He did not notice us as we quietly seated ourselves and went on with the most brilliant eloquences. Judge Wallace laid his hand on the arm of the empty chair and nodded to my companion to take it.

"'Shall I go up?' she said to me.

"'Why, certainly,' I responded. "It would be discourteous to the bench not to do so.'

"She hesitated a little but as Judge Wallace regarded her with a smiling invitation and patted the chair provokingly, she arose and firmly and with the grace of a queen walked up the aisle to the platform. The judges arose and gravely bowed. Wallace stepped forward, and, extending his hand, escorted her to the vacant chair, and each justice was presented to her in turn and shook the tiny hand of their dainty associate. Miss Shafter was quite equal to the occasion, and, bowing, took her seat and let the case proceed. The young attorney, though, lost his head, and afterwards lost his case. Whether he wished to make an impression on the new associate or whether the strangeness of the proceedings rattled him I never learned, but he got badly tied up in his peroration.

"What did Judge Wallace do? Why, at the dinner that evening he conferred with the new judge and insisted upon her occupying the seat on the bench next day. After dinner he asked me to take a walk with him. 'Beck,' said he, 'if you do not bring that girl into court in the morning I'll have proceedings instituted to declare your position vacant."

Napoleon.

THIS great law giver had some funny ideas about lawyers and law-suits. The latter, he said, were "an absolute leprosy, a social cancer. My code had singularly diminished law-suits, by placing numerous cases within the comprehension of every individual. But there still remained much for the legislator to accomplish. Not that I could hope to prevent men from quarrelling,—this they have done in all ages; but I might have prevented a third party in society from living upon the quarrels of the other two, and even stirring up disputes to promote their own interest. It was therefore my intention to establish the rule that lawyers should never receive fees except when they gained cases. Thus what litigations would have been prevented. On the first examination of a cause, a lawyer would have rejected it had it been at all doubtful. There would have been no fear that a man, living by his labor, would have undertaken to conduct a law-suit from mere motives of vanity; and if he had, he himself would have been the only sufferer in case of failure."

These are despotic ideas, and go far to demonstrate that lawyers flourish only under free institutions. It is only a

step from this to the despotism of Persia, under which the emperor's physician is slain unless he cures the sick emperor. Napoleon was wise to depress our profession, for if he had not done so we should doubtless have deposed him. But he had not learned to distinguish between superfying the law, and degrading and hampering its administrators. His code did the former; the latter was consistent with the arbitrary rule that muzzled the press and interdicted free speech.

Proof Positive.

And you say that you are innocent of the charge of stealing a rooster from Mr. Jones?" asked the Arkansas judge of a meek looking prisoner.

"Yes, sir, I am innocent—as innocent as a child."

"You are confident that you did not steal the rooster from Mr. Jones?"

"Yes, sir; and I can prove it."

"How can you prove it?"

"I can prove that I didn't steal Mr. Jones' rooster, Judge, because I stole two hens from Mr. Graston the same night, and Jones lives five miles from Graston's."

"The proof is conclusive," said the judge. "Discharge the prisoner."

You Won't Strike a Man When He's Down.

CURRAN, the Irish barrister, was a man of great magnetic force. His oratorical powers were of the most splendid style, and his wit, pathos and sarcasm irresistible. He is said to have received a call before he had left bed one morning, from a man whom he had roughly, and with a great deal of insolence, cross-examined the day before.

"Sir," said the irate man presenting himself in Curran's bedroom, and arousing the barrister from slumber to a consciousness that he was in a very awkward position, "I am the gentleman you insulted yesterday in court, and in the presence of the whole country, and I have come to thrash you soundly for it." Thus suiting the action to the word, he raised a horsewhip to strike Curran, when the latter quickly said:

"You don't mean to strike a man when he's down?"

"No, bedad—I'll just wait till you've got out of bed, and then I'll give it to you."

Curran's eye twinkled humorously as he replied:

"If that's the case,—, I'll lie here all day."

So amused was the Irishman at this flash of wit, that he dropped his whip, and with a hearty roar of laughter, asked Curran to shake hands with him.

His wit, at times was extremely bitter, as when asked by a young poet, whom he disliked:

"Have you seen my 'Descent into Hell?' he replied:

"No; I should be delighted to see it."

At other times his humor was warm and delightful, as for example, when his physician one morning observed:

"You seem to cough with more difficulty?" he replied:

"That is rather surprising for I have been practising all night."

A Smart Witness.

Mr. Jones loaned Mr. Smith's horse, which died while in his (Smith's) possession. Mr. Jones brought suit to recover the value of the horse, attributing his death to bad treatment. During the course of the trial a witness (Brown) was called to the stand to testify as to how Mr. Smith treated horses.

Lawyer (with a bland and confidence invoking smile.)

"Well, sir, how does Mr. Smith generally ride a horse?"

Witness (with a very merry twinkle in his eye, otherwise imperturbable.)

"Astraddle, I believe, sir.

Lawyer (with a scarcely perceptible flush of vexation on his cheek, but still speaking in his blandest tones). "But, sir, what gait does he ride?"

Witness. He never rides any gate, sir. His boys ride all the gates."

Lawyer (his bland smile gone and his voice slightly husky).

"But how does he ride when in company with others?"

Witness "Keep up, if his horse is able, if not he goes behind."

Lawyer (triumphantly, and in a perfect fury). "How does he ride when alone, sir?"

Witness. "Don't know: never was with him when he was alone."

Lawyer. "I have done with you, sir."

Quips and Quirks.

"ONE of the funniest things that ever happened during my connection with the Georgia judiciary was when I was first elected solicitor," said Judge Griggs, of Atlanta.

"The demands of my position frequently put me in the attitude of prosecuting a friend. It was hard, but I did it.

"An ex-sheriff of a county in my circuit—a fellow that I had known and liked for a long while—was prosecuted for making away with some money. It was an ugly charge. The evidence was conclusive against him.

"When I went down to court he came staggering into my room about two-thirds drunk: 'Jim,' he said, these infernal scoundrels are trying to prosecute me—perfect outrage. I told 'em just wait 'till I saw Jim Griggs and we'd fix it—I told 'em we'd let 'em know how to prosecute. And we will; won't we, Jim?'

"I looked at him very gravely and said: 'Tom, I've got a dead case against you. I'm going to prosecute you, convict you and send you to the penitentiary. You are guilty. You got the money, and I've got the evidence to prove it.'

"He looked at me in perfect amazement. He was dumbfounded. He said I didn't mean it. I told him I did. He straightened himself up and marched out without a word.

"His case was the first one called after dinner. The Judge asked if he had counsel. He said no, and didn't want any. He spoke in a half drunken fashion. 'But,' said the Judge, 'you are charged here with a serious offence, and if you have no money to employ a lawyer I'll appoint one for you.'

"The defendant didn't like it. He arose with difficulty. He steadied himself against a table, and speaking in a maudlin fashion, said:

"'Yer honor, I said I don't want no counsel, and I don't want none. I meant what I said. I don't want—hic—take no 'vantage of ze state. State ain't got no counsel—what der I want with any?'"

SAYS Bridget to Pat: "And how do ye loike bein' on the jury, Pat?" Says Pat: "It's somewhat confinin'." "Yes," adds Bridget, "and it's harrd wurrk, too." "Well," says Pat, "it's aisy enough decoiding which soide is right when only one of thim's Oirish, but whin they're both Oirish, bedad, it's the very divil."—*Household Words.*

QUOTED LAW FROM CESAR

And Convinced the Judge of an Acquittal.

A STORY OF LAW IN THE SOUTH.

Ex-United State Circuit Judge John W. C. Jones tells a good story on himself of how he came to be a profound lawyer.

A party of lawyers were telling yarns in the rotunda of the Palmer House, at Chicago the other day, and when Judge Jones' turn came, he told this one:

"I want to tell you of the greatest legal victory of my life," said the Judge, as he lighted a cigar and propped his feet against the wall. "It was down in Newberry, south Carolina, during the trying period just after the war. I was at that time a practicing lawyer—that is I practiced when I had any cases to practice with. One day old 'Uncle Zeke,' one of the old negroes of the settlement, came into my office and said:

"'Mars Jones, I wants you to cl'ar me. I'se gwine to be 'rested fer stealin' three pullets out ob Mars Cullom's coop.'

"'Well Zeke,' I asked, 'did you really steal the pullets?'

"'Mars John, I just tuk 'em.'

"'Did any one see you?' I asked.

"'Yar, boss,' said the old negro, disconsolately, 'two ole white buckrats.'

"'Well, Zeke,' I replied, 'I can't do anything for you under the circumstances.'

"'Now Mars John,' said old Zeke, "here's leben dollars. I jist you to try."

"Well, I consented to try. The case was to be tried before an old magistrate named Robbins. He was totally uneducated and was, moreover, a perfect dictator, and no negro ever came before him who was not fined the maximum penalty and sent to his field to expiate the crime in the sweat of his brow.

"The magistrate heard the case. Every possible proof was brought to show that Zeke stole the pullets. There could be no doubt of it from the testimony. I did not put a single question to any of the witnesses, but when the testimony was all in, I arose and in a most dignified manner addressed the magistrate:

"May it please your honor, it would be useless for me to argue the position he holds, and before one who would adorn the Superior if not the Supreme Court bench of this grand old commonwealth; and if I may say that those who know you best say that you would grace the Supreme Court of the United States, the highest tribunal in the land. It would be useless to dwell upon the testimony, you have heard it and know the case as I do. However, it may not be out of order for me to call your Honor's attention to a short passage in the old English law which clearly decides this case, and which, for the moment, your Honor may have forgotten.'

"Then I fished down in my pocket and drew forth, with a great flourish, an old copy of 'Julius Caeser.' I opened it with great dignity to the first page and read the first line which is familiar to every schoolboy, '*Omnis Gallia in partes tres divisa est.*'

"'That decides the case,' said I, throwing the book upon the table. 'That clearly acquits the defendant.'

"With great dignity and solemnity I then took my seat. The old magistrate was completely non-plussed. He looked at me a moment quizzically, and scratched his head; then turning to Zeke, he raised himself to his full height and said:

"'Zeke, I know you stole the pullets, but by the ingenuty of your lawyer I've

got to let you go. Git out!' said he, as he planted his No. 10 in the seat of Zeke's trousers, 'and if you ever come here again, lawyer or no lawyer, you git six months.'"

A YOUNG lawyer was appointed to defend a negro who was too poor to hire counsel of his own. After the jury was in the box the young lawyer challenged several jurymen who, his client said, had a prejudice againt him.

"Are there any more jurymen who have a prejudice against you?" asked the young lawyer.

"No, boss, the jury am all right, but now I wants you to challenge de jedge. I has been convicted under him several times already, and maybe he is beginnin' to hab prejudice agin me."

The young lawyer, this being his first case, took the advice of his client, and, addressing the Court, told the judge he could step aside.

*

It has been announced from high medical authority that kleptomania is more prevalent among women than the male sex. The experts declare it a disease which is a sign of hysteria and physical weakness. How the medical world is taking the responsibilities of the moral world! After awhile people will not see the absurdity of the negro's plea in a recent arraignment in a Virginia court for chicken stealing. The negro had been listening to a long examination from the overseer about hypnotism, kleptomania, and the like. So the answer was: "De chicken done hypnotize me, jedge, and then kleptomania stole on."

A MAN arrested and locked up for being full can always be bailed out.

Judge Underwood of Georgia, like other judges sometimes gave chances to juries which were not the product of reflection. On one occasion he was presiding at Calhoun, in the Cherokee Circuit, for a brother Judge, his own circuit being the Rome Circuit. A case of some little consequence was being tried before him, Col. E. J. Kiker representing the plaintiff. The Judge adopted fully Col. Kiker's view of the case, and so charged the jury. The jury, however, took a different view and returned a verdict squarely in the teeth of the charge. Brother Kiker immediately moved for a new trial, of course having the greatest confidence that it would be granted. Several days thereafter, the motion having been perfected, it was assigned for argument, and Brother Kike arose and read his motion for a new trial, basing it entirely upon the fact that the jury had found contrary to the Judge's charge. Said Judge Underwood after the charge was read, "Brother Kiker, did I charge that?" "Yes sir, you did, and you have so certified, and the jury found for the defendant," said Col. Kiker gleefully and triumphantly, thinking there was nothing to do but take an order setting aside the verdict. "Well then, Brother Kiker," said the Judge, "if I charged that in this case, and the jury found against it, all I have got to say is, that the jury had more sense that I did, and I congratulate them that their good sense went to such an extent as to prevent them from being mislead by the Court into a wrong verdict. I don't care to hear from the other side. I over-rule the motion for new trial."—*Green Bag.*

*

Mr. James Hyde, once a lawyer in a small town on Long Island, tells a good story about himself. He says:

"It was when I used to practice law in a little town near the centre of the state. A farmer had one of his neighbors arrested for stealing ducks and I was employed by the accused to endeavor to convince the court that such was not the case. The plaintiff was positive that his neighbor was guilty, because he had seen the ducks in the defendant's yard.

"'How do you know they are your ducks?' I asked.

"'Oh, I should know my own ducks anywhere!' replied the farmer, and he gave a description of their various peculiarities whereby he could readily distinguish them from others.

"'Why,' said I, 'those ducks can't be of such rare breed! I have seen some just like them in my own yard.'

"'That's not at all unlikely,' replied the farmer, 'for they are not the only ducks I have had stolen lately.'"

*

"Have you ever been in prison?" asked a badgering lawyer of a modest witness, whom he was trying to bully.

The witness did not answer.

"Come, now, speak up, no concealment. Have you ever been in prison, sir?"

"Yes, sir, once," answered the witness, looking modestly down to the floor.

"Yes, I thought so. Now when? When were you in prison, sir?"

"In 1863."

"When, sir?"

The witness hesitated.

"Come, own up, now, no dodging," screamed the lawyer. "Now, where were you in prison, sir?"

"In———in——— in———"

"Don't stammer, sir, out with it; where was it?"

"In———in Andersonville, sir."

There was a moment's pause. Then the lawyer, who was an old soldier, put his hand to his forehead as if a pistol shot had struck him, while the tears came to his eyes. Then jumping forward, he clasped his arms around the witness' neck and exclaimed:

"My God! I was there myself."

*

"What time of night was it when you saw the prisoner in your room?" asked the defendant's attorney in a recent suit.

"About three o'clock."

"Was there any light in the room at the time?"

"No sir, it was quite dark."

"Could you see your husband at your side?"

"No sir."

"Then, madam," said the attorney triumphantly, "please explain how you could see the prisoner; and could not see your husband."

"My husband was out of town, sir."

*

It was on the coast belt of South Carolina during reconstruction times. Mr. Bissell, a large rich planter, had lost several hogs, found the thief, a black man, had him arrested by a colored trial justice in Colleton county, and the day for trial was at hand. Defendant demanded a jury. The justice was full of the importance of the case: Mr. Bissell was a rich man, and "dis case gwine to git in de papers." The justice charged the jury, sent them out into the woods to decide upon their verdict; in half an hour the jury returned, notified "de cort," and handed the verdict in. This was as follows: "We find Mr. Bissell guilty." The Court, on reading it, replaced the spectacles it had taken off, and said, "Now look here, gentlemen, dis ting won't do. What you find Mr. Bissell guilty bout? Him lose he hog, and dis defendant, Joe, tuck 'em or ain't tuck um; what you gots to do wid

Mr. Bissell? You got no sense anyhow; you jest go right straight back in dem woods and you bring in de right werdict, or I'll put de las one o' you in jail. Go tarrogate again." The jury retired, and in another half hour returned, handing in as their new verdict, "We finds Mr. Bissel guilty of accusin'." The Court said, "I spicious bout dis werdict, but lem stan; you shant git no coss, nohow; en don't come to dis cort gen yah? Nigger got no sense nohow."—*Green Bag.*

*

The way in which the very learned lawyer is sometimes discomfited by a humorous turn to the testimony is illustrated by the following, told recently by a Mississippian:

"Once I was employed to defend a man charged with biting another man's ear. Upon the eve of the trial the father of the defendant associated with me as counsel a young lawyer just out of Harvard. I was only a plain country lawyer, and the old man thought he would feel safer with a college man for the orator.

"The principal witness was a negro He saw the fight in which the mayhem occurred. I got the darkie to admit that the men were tumbling about on the ground in a newly cleared field, where there were a lot of small stumps sharpened at the top. 'Yasser,' de top er dem stumps was sharp as knife-blades.'

"'And might the plaintiff have struck his head against one of those sharp edges and cut off his ear.'

"'Yesser, he moulder.'

"'That's all,' said I.

"'But the college graduate thought I hadn't gone quite far enough. He jumped up and said:

"'Hold on. One more question. Do you not actually believe that is the way Mr. Johnson lost his ear?'

"'Well, ser,' said the witness, dubiously; 'I moughter thought dat ef I hadn't seen yuther man spittin' de year outer his mouth.'"

*

In no civilized country on the globe, certainly in no European country, are the requirements for the admission to the study of law so low as in United States. In no European country is the required preliminary training for a lawyer for his public functions so utterly neglected as in our own. In Continental Europe what is the equivalent of our collegiate education is a necessity prerequisite to professional study, and the only road to the bar is through the university which is a professional school for the four learned professions—law, medicine, theology and philosophy. In England, while a college or university education need not necessarily precede professional study, yet if the candidate is not a university graduate or has not, by examination, brought himself within certain excepted classes, he must show his fitness for legal study by passing a satisfactory examination in the "English language, the Latin language and English history." Such examination is conducted by a joint board appointed by the four Inns of Court. Although it is possible in England for a man of very moderate acquirements to enter the lower grade of the profession, and although such a man occasionally attains the rank of barrister, yet there is an unwritten law recognized by the public and the bar, that he should be a university man. For the highest success at the English bar, a university education is regarded as an essential.—*Ex.*

AUTUMN ASSIZES.

Town.	Date. (Jury.)	Judge.	Date. (Non-Jury.)	Judges.
Barrie	Oct. 29.	Meredith, J.	Sept. 24	Rose, J.
Belleville	Sept. 10.	Armour, C.J	Oct. 22.	Meredith, C.J.
Berlin	Oct. 22.	Robertson, J.	Oct. 22	Robertson J.
Brampton	Sept. 17.	Robertson, J.	Sept. 17	Robertson. J.
Brantford	Oct. 22	Rose, J	Sept. 24.	Ferguson, J.
Brockville	Oct. 22	Armour, C.J	Sept. 17	Chancellor,
Cayuga	Nov. 5	MacMahon, J.	Nov. 5	MacMahon, J.
Chatham	Oct. 15.	MacMahon, J.	Sept. 11.	Meredith, J.
Cobourg	Sept. 17.	Ferguson, J.	Oct. 20.	Robertson, J.
Cornwall	Oct. 8.	Armour, C.J.	Sept. 10.	Meredith, C.J.
Goderich	Sept. 17.	Rose, J	Nov. 12	Street, J.
Guelph	Oct. 8.	Meredith, J.	Nov. 12	Falconbridge, J.
Hamilton	Oct. 8.	Meredith, C.J.	Nov. 12	Rose, J.
Kingston	Oct. 29.	Meredith, C.J.	Sept. 24.	Street, J.
Lindsay	Oct. 1.	Meredith, C.J.	Nov. 19	Meredith, J.
London	Oct. 1.	MacMahon, J.	Nov. 5	Meredith, J.
L'Orignal	Sept. 9	MacMahon, J.	Sept. 9	MacMahon, J.
Milton	Sept. 10.	Robertson, J	Sept. 10.	Robertson, J.
Napanee	Nov. 5	Meredith, C.J.	Nov. 5	Meredith, C.J.
Orangeville	Sept. 24.	Robertson, J.	Sept. 24.	Robertson, J.
Ottawa	Sept. 12.	MacMahon, J.	Oct. 15	Rose, J.
Owen Sound	Sept. 10.	Ferguson, J.	Oct. 8.	Chancellor.
Pembroke	Oct. 1	Falconbridge, J.	Oct. 1	Falconbridge, J.
Perth	Oct. 8.	Falconbridge. J.	Oct. 8.	Falconbridge, J.
Peterborough.	Sept. 24.	Chancellor	Oct. 22.	MacMahon, J.
Picton	Nov. 5	Rose, J.	Nov. 5	Rose, J.
Port Arthur	Dec. 9.	Meredith, J	Dec. 9.	Meredith, J.
Rat Portage	Dec. 4.	Meredith, J	Dec. 4.	Meredith, J.
Sandwich	Sept. 17.	Falconbridge, J.	Oct. 22.	Ferguson, J.
Sarnia	Sept. 24.	Meredith, J	Oct. 22.	Chancellor.
Sault St. Marie	Dec. 14	Meredith, J	Dec. 14.	Meredith, J.
Simcoe	Nov. 5.	Chancellor	Oct. 8.	Street, J.
St. Catharines	Sept. 10.	Chancellor	Oct. 29.	Falconbridge, J.
Stratford	Oct. 1	Street, J	Nov. 19	Ferguson, J.
St. Thomas	Sept. 3	Armour, C.J	Oct. 15	Street, J.
Toronto ... 1st week	Oct. 15.	Meredith, J	Sept. 17	Meredith, J.
do ....2nd do	Oct. 21.	Falconbridge, J.	Sept. 23.	Meredith, C.J.
do ....3rd do	Oct. 28.	Rose, J.	Sept. 30	Robertson, J.
do ....4th do	Nov. 4	Robertson, J.	Oct. 7	Rose, J.
do ....5th do	Nov. 11.	MacMahon, J.	Oct. 14.	Falconbridge, J.
do ....6th do	Nov. 18.	Chancellor	Oct. 21	Street, J.
do ....7th do	Nov. 25.	Ferguson, J	Oct. 28.	MacMahon, J.
do ....8th do	Dec. 2.	Armour, C.J.	Nov. 4	Armour, C.J.
do ...9th do	Dec. 9.	Street, J.	Nov. 11	Ferguson, J.
do ...10th do			Nov. 18	MacMahon, J.
Walkerton	Oct. 8.	Robertson, J.	Sept. 17.	Armour, C.J.
Welland	Oct. 29.	Ferguson, J.	Oct. 29.	Ferguson, J.
Whitby	Nov. 12.	Robertson, J.	Oct. 10.	Street, J.
Woodstock	Sept. 24.	Falconbridge, J.	Oct. 15.	Armour, C.J.

TORONTO CRIMINAL.

1st week	Ferguson, J. Nov. 5.	4th week	Chancellor Nov. 25.
2nd week	Armour, C.J. Nov. 11.	5th week	Falconbridge, J. Dec. 2.
3rd week	Robertson, J Nov. 18.	6th week	Rose, J Dec. 9.

Lord Clare one day brought a Newfoundland dog upon the bench, and began to caress the animal, while Curran was addressing the court. Of course the latter stopped.

"Go on, go on, Mr. Curran," said his lordship.

"Oh, I beg ten thousand pardons, my lord," returned the advocate; I really thought your lordship was employed in consultation."

*

THE prosecuting attorney had been particularly obnoxious to the witness. He had fiendishly pied over her life until desperation had quickened her feminine instinct.

"You are the wife of the prisoner, are you not?

"I am."

"You knew he was a criminal when he married you?

"Not on that account, sir."

"But you knew he was a professional burglar?"

"I did."

"Then why did you marry him?"

"Well, sir, I presume it's important that you should know why I married this man, even though there may be no reasonable ground for that presumption. I'll tell you! It was in the evening of my spinsterhood; nothing had appeared on the horizon of my life in years, not even a man of your mental splendor. Hope had starved on the wastes of celibacy. Finally this man came along, and with him a lawyer. I had to choose. Well, I did just what any respectable woman would have done."

*

"I am too much of a gentleman, sir, to tell you what I think of you here," exclaimed the irate politician, "but if ever I catch you at Ottawa I'll call you a liar, sir—a liar and a thief."

TORONTO MAN (to visitor)—"Well, what do you think of our city?"

Visitor—"Very nice town, indeed."

"What do you think of our trolley cars?"

"Oh, they're just killin'."