The Legal News.

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USELESS PROLIXITY.

It is a little singular that the needless and troublesome verbosity, which so long characterized English forms, still clings to the conveyancing of so progressive a state as New York. A New York conveyancer, in a letter to a contemporary, points out the magnitude of the evil. "On all transfers of real estate," he says, "a serious charge is incurred for the recording of the ponderous, verbose and tautological formulas which are used in our deeds and mortgages, and which have nothing to justify them but their antiquity. It is not too much to say that if any one of our competent lawyers were himself buying or lending money on real estate, he would have no hesitation in adopting a form of conveyance compressed in its language to one-tenth the length of the forms now in general use." The same writer adds: "It is believed that nowhere outside of the city of New York is to be found this ridiculous adherence to the antiquated forms of conveyance which prevailed in Great Britain before the era of legal reform in that country. Everywhere but in this city and vicinity, conveyances are simple in form, and fully protect the rights of parties under them. 'A warranty deed with full covenants,' so dear to the New York lawyer, contains a wilderness of words which is unknown elsewhere. The unseemly length of these conveyances calls for immediate reform, and the Bar Association of New York could not engage in a better or more useful work than in giving full ventilation to the subject. The good sense of the legal reformers in England, nearly a half century ago, found a simple way of ridding themselves of this same evil; they boldly cut the Gordian knot, and framed a deed and mortgage, which it was declared should have the same effect as if they had contained all the old cumbrous phraseology then in use. A similar course pursued here in the enactment of a proper statute by the Legislature would leave the old lawyer without an excuse, compel him to give up the cherished idols of the past, his persistent worship of which has been at so large a cost. A reform like this would greatly reduce the fees in the offices of the County Clerk and Register, and render them less attractive to the politician."

In the Province of Quebec, the cadastral system has done something to shorten deeds of conveyance and mortgage; but we cannot truthfully pretend that our forms are as simple as they might be. A great deal of useless verbiage still clings to them, and not only adds unnecessarily to the expense, but retards the registration of the documents.

SOCIAL SCIENCE ASSOCIATION.

The 22nd annual congress of the British Social Science Association was appointed to be held at Cheltenham, from Oct. 23 to Oct. 30, under the presidency of the Right Hon. Lord Norton, K. C. M. G. In the department of "Jurisprudence and amendment to the law," the following special questions were to be considered:—"1. The codification of the criminal law, with special reference to the Attorney-General's Bill; 2. Simplification of the evidence of title to real property by record of title or otherwise; 3. Whether the extinction of all customary and other special tenures and the limitation of the leasehold terms are not desirable; 4. Should the summary jurisdiction of magistrates be further extended? 5. The consideration of the proceedings of the Stockholm International Prison Congress."

AIDS TO THE VOICE.

Mr. Gladstone is noted for the attention which he pays to his voluminous correspondence, and for the freedom with which, in his replies, he expresses opinions on a great multiplicity of subjects. One of his latest epistolary efforts refers to the management of the voice in public speaking. The remarks of the ex-Premier on this subject are of a practical turn and may be of service to some of our younger readers. In acknowledging the receipt of Dr. Shuldam's recent treatise on "clergyman's sore throat," Mr. Gladstone says:—"No part of your work surprised me more than your account of the various expedients resorted to by eminent singers. There, if anywhere, we might have anti-

cipated something like fixed tradition. But it seems we have learned nothing from experience, and I can myself testify that even in this matter fashion prevails. Within my recollection an orange, or more than one, was alone, as a rule, resorted to by members of Parliament requiring aid. Now it is never used. When I have had very lengthened statements to make, I have used what is called egg-flip—a glass of sherry beaten up with an egg. I think it excellent, but I have much more faith in the egg than in the alcohol. I never think of employing it unless on the rare occasions when I have expected to go much beyond an hour. One strong reason for using something of the kind is the great exhaustion consequent on protracted expectation and attention before speaking."

REPORTS AND NOTES OF CASES.

COURT OF QUEEN'S BENCH.

Montreal, Sept. 21, 1878.

Present:—DORION, C. J., MONK, RAMSAY, TESSIER and CROSS, JJ.

THE LONDON AND LANCASHIRE LIFE ASSURANCE Co., (defendants in the Court below), appellants; and LAPIERRE, (plaintiff below), respondent.

Insurance—Sum insured in Excess of Insurable Interest—Recovery of Premiums.

A creditor obtained an insurance on the life of his debtor, for an amount greatly in excess of his real interest. Both the creditor and the agent of the insurance company were ignorant that such extra insurance was invalid. *Held*, that the insured was entitled to recover the excess of premium paid on the larger sum, and that in the absence of proof to the contrary, the Court would assume that the premium for the smaller sum was proportional to that paid for the larger sum.

The Respondent Lapierre, being a creditor of one Cadotte, applied for an insurance on his life. Lapierre's interest was only $700, but he was induced by the Company's agent to insure for $10,000. After paying some premiums at this rate, he learned that he could not recover more than his real interest, and thereupon he claimed the excess of premium which he had paid over and above the premium for an insurance of $700. The company declining to repay the premium, the present action was instituted. The Superior Court, Torrance, J., considered that the plaintiff would have been entitled to a return of the excess of premium, if he had proved the precise amount of such excess; but dismissed the action, "seing that plaintiff hath made no proof of the premiums which the defendants would be entitled to for an insurance on the life of his debtor for $700, the amount of his debt, and seeing that the court hath not before it any evidence of the precise amount unduly and erroneously paid by plaintiff to defendants."

In Review, this judgment was reversed, Mackay, J., dissenting. The Court held that the company having charged $781.92 premium on $10,000, it was a mere question of calculation what the premium should be on the real interest $700, and that the plaintiff was entitled to recover the difference.

From this decision the company appealed.

The Court of Appeal confirmed the judgment, holding that the insurance for $10,000 was the result of ignorance of the law on the part both of the insured and the company's agent, and that if the premium on the $700 was not a proportionate part of the premium on $10,000, it was incumbent on the company to have established it by evidence.

Judgment confirmed.

J. C. Hatton, for appellant.

Archambault & David, for respondent.

THE TRUSTEES OF THE MONTREAL TURNPIKE ROAD (defendants in the Court below), appellants; and DAOUST (plaintiff in the Court below), respondent.

Turnpike Road—Damages—Liability of Trustees.

The plaintiff sustained damage through the bad state of a temporary road used during the obstruction of the turnpike road by works over which the trustees of the road had no control. *Held*, that the trustees having collected toll from the plaintiff were directly liable to him.

The plaintiff, a carter, complained that while passing along the Lower Lachine road in October, 1876, with a vehicle drawn by a valuable mare, the road in one place was in such bad order that the carriage sank on one side up to the axle tree, and the horse was seriously injured by falling on a rock. He claimed $111 damages, and the court below, finding the plain-

tiff's case substantially proved, allowed him $60. The Trustees appealed, representing that the accident occurred on a temporary road which had become necessary in consequence of the Lower Lachine road being cut by the Aqueduct, and that the city corporation under whose direction the work was being done should be responsible for this. The majority of the Court of Appeal affirmed the judgment, holding that the trustees having collected toll from the plaintiff for passing along the road, became directly responsible to him for the proper condition of the road. Ramsay and Cross, JJ., dissented.

Judgment confirmed.

John Monk, for appellant.
Wurtele, Q. C., counsel.
Doutre & Co., for respondent.

WHITMAN v. CORPORATION OF THE TOWNSHIP OF STANBRIDGE.—In our note of this decision, p. 474, the ground of the dissent of Mr. Justice Cross was imperfectly stated. His Honor differed on the ground that adjoining proprietors are by law bound to fence front roads, and that the only demand made in the case was for damages caused by not fencing, and for cost of fencing.

NOTES OF CURRENT FOREIGN LAW.

REVUE DE DROIT INTERNATIONAL ET DE LÉGISLATION COMPARÉE.—Gand. Vol. IX, No. 4; Vol. X, No. 1.

The closing number of the *Revue* for 1877 contains a larger variety than usual of topics interesting to the student of comparative jurisprudence. Three articles are devoted to the law of as many states.

"The new Project of an Italian Penal Code compared with some foreign Laws, and examined from a theoretical Point of View." By A. Rolin, an advocate of Ghent, and secretary of the Institute of International Law.

"Austrian Legislation in 1876." By Dr. A. Geyer, professor in the University of Munich.

"Law Reform in Egypt; a Report to the Minister of Foreign Affairs of Greece." By M. N. Saripoulos, advocate at Athens.

There is also an article by the editor-in-chief, Dr. G. Rolin-Jacquemyns, on the "Relations of the Institute of International Law to the Central Committee of the Society of the Red Cross."

The longest article, and no doubt the most valuable, although its subject has less interest just now for American lawyers than for those of Europe, is on "The Law of Booty in general, and especially the Law of maritime Prize," by Professor Bluntschli, of Heidelberg. This is an abridged and free translation from the recent work of the distinguished author, entitled "Das Beuterecht im Krieg und das Seebeuterecht insbesondere." The French version fills (with its conclusion in the following number) seventy-two pages of the *Revue*, and its conclusions are summed up as follows by the author himself, after a rapid survey of the gradual ameliorations which in the course of ages have been wrought out in the laws of war and booty:

"No distinction between war upon land and war upon sea, with regard to their effect upon private property, can be justified on principle. The rule governing all wars alike is that the contest is between States, and not between individuals; that its results affect public rights, and do not strike private rights except through the sovereign power, on which these rights depend; and, consequently, that private property is entitled to the same respect at sea as upon land. Although merchant ships may reinforce the navy, or transport troops, and, therefore, each belligerent has an interest alike in taking them from his enemy and in using them himself, still this does not justify the capture of such ships, but only a temporary seizure, with subsequent restitution and indemnity."

With the tenth volume of the *Revue* a change is made which we hope will commend it more than ever to American lawyers. It will hereafter appear bi-monthly, or six times a year, in numbers of from ninety-six to one hundred and twenty-eight pages. While making international and comparative law its chief object, it seems to be the purpose of the editors to pay more attention than heretofore to general jurisprudence. Professor Arntz, of Brussels, will take editorial charge of whatever pertains to the civil law, especially as now received by the great civil-law peoples of Europe — France, Germany, Italy, etc. Professor Rivier will take charge of the Roman law in its original form, and of the history of the law, including legal biography. Those who have seen the admira-

ble little *précis* of the Roman law, historically treated, which M. Rivier prepared a few years ago for his pupils, will need no other assurance of his eminent fitness for the task assigned him. Mr. Westlake, of Lincoln's Inn, who has from the beginning been one of the editors, will take charge of all that relates to English and Scotch law, and that of the English colonies. It may be presumed that the United States are still counted among the latter so far as their jurisprudence is concerned, for we find no mention of them in this division of topics.

Among the other improvements promised, not the least is a more regular appearance of the numbers of the *Revue*, which have heretofore come out at very uncertain periods, and, usually, long after their date. We are promised all the numbers of Volume X before the end of January, 1879. But at this writing, in September, only the first of them has reached us. Its principal contents, besides the conclusion of Dr. Bluntschli's article, already mentioned, are the following :

"A Chronicle of International Law for 1877 and the first Part of 1878." pp. 5-59. "Rules of International Freight Traffic upon Railroads." By Dr. Bulmering, of Wiesbaden (pp. 83-100), with an additional note by Professor Asser, of Amsterdam. There is also a brief obituary notice of Count Sclopis, and a number of book reviews.

Revue Générale du Droit, de la Législation, et de la Jurisprudence. Paris. Année III. May-June, July-August, 1878.

The number for May-June opens with an article, by Sir Henry Maine, on "The legal Organization of the Family among the Southern Slaves and the Rajpoutes." The author notices at some length one of the most ancient institutions of the Aryan race—house-community. It still exists in the provinces of Turkey in Europe, and is identical with the Roman *gens*, the Keltic *sept*, the Teutonic *parenté*, and the *joint family* of the Hindoos. The article is translated from the *Nineteenth Century*.

This is followed by a plea for a liberal interpretation of articles in the French Civil Code relating to the legal community of husband and wife. This article, entitled "The Theory of Deductions" (*Prélèvements*, is written by Daniel de Folleville, professor in the Faculty of Law at Donai.

"Political and administrative Teaching" is a long, and in some respects able, discussion of the best method of securing thorough preparation for the diplomatic and civil service in France. Strong ground is taken against special schools under State control, like the military institutions. The repressive power of the State system and the danger to liberty are urged as sufficient reasons for discarding everything like the German system. The plan, which, with some qualifications, is approved, adds sections of administrative and political science to the regular schools of law. The proposed course would include administrative law, comparative constitutional law, political economy and finance, the law of nations, and diplomatic history. By engrafting these branches upon existing schools, and making a thorough acquaintance with them essential to entrance to the public service, a broad education would be secured, and the danger of a prejudiced and domineering "class" avoided.

The second article in the July-August number is an argument, by Julien Brigault, in favor of international rogatory commissions for the purpose of obtaining testimony in criminal cases, of witnesses residing in foreign countries. This is shown to be in accordance with the spirit of international law, and to be attended with few practical difficulties. Such commissions must, however, rest entirely upon treaty stipulations, and are of comparatively recent origin. So late as 1876 Great Britain refused to incorporate a concession to this end in a treaty with France, because there was no warrant for such procedure in English law.

Journal du Droit International Privé et de la Jurisprudence Comparée. Paris. Année V. Nos. III-IV and V-VI. 1878.

The chief feature of this journal, as in former years, continues to be its admirable collection of the recent decisions of almost all the courts of Europe upon questions of private international law. Those of the French courts are arranged, in each bi-monthly number, in the form of a "Dictionary of French Jurisprudence in Reference to International Law." The cases are alphabetically arranged, as in an American digest, and an analytical table at the end of

each year makes each volume of the work in fact an annual digest of the most valuable decisions of this kind. The manner in which the cases are stated deserves all praise. The points decided are given, wherever possible, in the language of the court—that fact being carefully noted by quotation marks. This, with the clear, succinct, official style of the French judges, enables the editor to give, in a very few pages, a more satisfactory account of the case decided, and the reasons of decision, than can often be obtained from our verbose reports. The decisions from other countries than France are arranged in some cases alphabetically, but more frequently in the order of dates of decision, and are often accompanied by valuable notes. Those of the English courts deserve careful study in comparison with the originals. It is to be regretted that the Council of Reporting could not make each of its reporters, whose work is thus condensed, study the *Journal* carefully, and thus learn to dispense with the load of trivial and unimportant facts which form as great a blemish upon recent English reports as a superabundance of ill-considered *dicta* do in the American. In the first double number (January-February) of the current year there is a "Bibliography of Private International Law," or list of books and articles relating to that subject, in its largest acceptation, published in Europe and the United States during the year 1877. The list contains fifteen titles upon international law in general, seventeen upon the public branch, and sixty-one upon the private branch, of the subject. Most of the latter, however, are only articles, of which the *Journal* itself contributes no small share. In the same number is an article on the "Execution of Foreign Judgments in England" (pp. 22-37), by J. G. Alexander, of Lincoln's Inn. In the following numbers are articles on the same subject in Russia (pp. 139-145), by Professor Martens, of St. Petersburg, and in Italy (pp. 234-247), by Professor Pasquale Fiore, of Turin. Another article, which may have a timely interest for some American readers, as well as others, is on the "Seizure in Course of Transit, or in the Exposition, of Goods belonging to Contributors to the present grand Exposition at Paris." (No. III-IV, pp. 81, 110, and No. V-VI, pp. 187-225). Our older readers will remember the litigation of this kind which followed the unlucky New York Exhibition of 1851. A novel feature of the *Journal*, appearing for the first time in the current volume, is a collection of "Practical Questions and Answers in Private International Law." The questions are put by various correspondents, and brief answers, not extending to the length of a formal article, are furnished by a number of the most distinguished contributors, among whom we notice the name of Hon. Wm. B. Lawrence, the well-known publicist of Newport, Rhode Island.

The V-VI contains an article upon the "Theoretical Basis of Private International Law," this being the introductory lecture with which Professor Brocher, one of the editors of the *Journal*, opened the course in his department at the university at Geneva. It is a presentation of the nationality theory of private international law. It is not admitted that this law rests upon comity; its foundations lie in the very nature of law. There is an instinct which recognizes the existence of the rules which should be followed. It has, also, an historical origin and growth. In ancient times peoples were dispersed in vast nationalities, or in rival municipalities; and hatred and contempt for strangers were universal. But in the Middle Ages we find the germ of a better state of things; numerous small states were so situated and connected that it was impossible for each to consider itself as isolated. There was, in fact, a superior nationality which did not allow them to be complete strangers, though it did not compel them to submit to uniform rules.

We have, then, the law of nationality, as opposed to the law of domicile; the former derived from the strong personal ties which attach families and individuals to their country, the latter derived from the territory in which the individual happens to be. The deduction is drawn that nations should not consider their powers merely, but should rise to the higher plane of duty, and, in treaties, recognize the needs and common interests of all peoples.

In approving the nationality theory, the learned lecturer recognizes the difficulty of its application to criminal law, but suggests that the criminal should be compelled to submit either to the law of his own country or to the law of his asylum.

RIVISTA PENALE DI DOTTRINA, LEGISLAZIONE E GIURISPRUDENZA. Rome. Vol. IV, No. 4.

In the only number which has yet reached us of this review of criminal law about thirty-five pages are occupied with a digest of recent Italian decisions, in the same form with that of the journal above mentioned. The verbal extracts from the courts' opinions are placed, however, in notes occupying a very large portion of each page; and as the type is small, though clear, we are thus furnished with a very satisfactory collection of criminal decisions, well worth the attention of all students of criminal law who can read Italian. "An account of the Prisoners' Friend Society of Rome" (*La Società di Patrocinio pei Liberati dal Carcere dalla Provincia di Roma*), with its constitution and some other documents relating to its work, will also be found [pp. 322–336] in this number, besides a couple of critical articles upon the new penal code of Italy.

KRITISCHE VIERTEL JAHRSCHRIFT FUR GESETZGEBUNG UND RECHTSWISSENSCHAFT. Munchen. New Series, Vol. 1, No. 3.

Theories of law have been divided by Bierling—whose work (*Zur Kritik der juristischen Grundbegriffe. I. Theil.* Gotha, 1877) is reviewed by Geyer in this number of this the most interesting of all German legal periodicals—into two great classes; those which find the obligatory force of the law in the character of the legislator, and those which find it in the nature of the law. Each of these is again divided into three groups of theories. The first into (1) the theocratic or religio-political, (2) the natural-absolute, (3) the idealistic group. (The last partakes of the nature of the second class, but belongs here because it assumes the existence of a *Volksgeist*, distinct from all individual minds, and acting in and through the legislator.) Bierling criticises these, and holds (*a*) that the decision of the question as to the binding force of law cannot be found in any quality of the legislator as prior to, or above, the law; and (*b*) that the theories of this class all logically lead to the conclusion that what makes the law law is its recognition by the members of the community as the rule of their common life. Or, as the definition is more fully given by B. in another passage, which is worth quoting chiefly for the prominence it gives to the element of recognition (*anerkennung*): "A legal rule is distinguished from all other rules by this, and this only: that it is uniformly recognized by the members of a certain community or body of men as the rule of their common social life." This "recognition," however (as B. goes on to say), is not to be confounded with a compact. It does not imply a conscious voluntary act, as compact does; it is not a single act expressive of the common will, but an habitual course of conduct with reference to the legal rules so recognized. Neither does it, like a compact, imply at least two distinct contracting parties. It is a constant, uninterrupted, habitual respect for, or sense of obligation toward, or subjection under, certain principles or rules. The recognition of a law, as such, implies that these rules or principles are accepted by the majority of the members of a certain community or political body as the norm and rule of their common social and political life. All this may be accepted, so far as it treats of the importance of recognition as a constitutive element of law, whether we agree or not in B.'s further effort to show that the rules of private corporations, etc., are "*Recht*" in the same sense with the laws of a State.

B.'s second class embraces the theories which find the constitutive element of law, (*a*) either in its origin from a common will or a common conviction, or (*b*) in its character as enforceable, or (*c*) in the ethical nature of its rules. Under *a* he includes all theories of social compact—that of the popular sovereignty (the sovereignty of a majority of the citizens), the doctrines of the historical school, and that which treats law as a natural organism.

J. A. SEUFFERTS' ARCHIV. FUR ENTSCHEIDUNGEN DER OBERSTEN GERICHTE IN DEN DEUTSCHEN STAATEN. Neue Folge, III Band. Der ganzen Reihe, 33. Band. III. Heft. Herausgegeben von A. F. W. Preusser. Munchen; Druck und Verlag von R. Oldenbourg.

Readers of the recent *Pandecten*, and similar works by German jurists, must have been struck with the remarkable change in the authorities they quote. Down to the time of Savigny and Puchta, the long lists which composed the "literature" of their notes were made up entirely of speculative works, monographs, articles from the legal periodicals, etc. A reference to the report of an actual case was rarely ever found

in their pages. It was not that no such reports existed, although it has more than once been gravely stated by writers whose knowledge of continental law was derived entirely from such works as we have mentioned, that this was the case, and that "Reports" were unknown outside of English law. Collections of such cases have been made for centuries in France and Germany, and some of them have obtained very great reputation. But it was not the fashion to quote them as authority for doctrine. False theories of law, and a misapprehension of an often-quoted passage of the digest—*legibus, non exemplis, est judicandum*—stood in the way. But of late these difficulties seem to have been removed. The student of Windscheid's *Pandecten* will find, on almost every page, references to some of the thirty volumes of the *Archiv* mentioned above. And this substitution of a case in which the doctrine has been subjected to the test of actual life, and proved by its adaptation to life's wants, instead of resting merely upon speculative opinions, cannot fail to prepare the way for a sounder and more trustworthy theory of legal rights and obligations. It is remarkable, too, that the civilians are beginning to make scientific use of reported cases just at the same time that our common lawyers are learning that case law must borrow some aid from scientific jurisprudence, to save it from breaking down under the weight of its own accumulations. In the growing use by each school of the other's methods we see, not only a proof of that increasing uniformity of substantive law among civilized nations which has often been remarked, but also the most hopeful promise of better methods of legal reasoning in future, alike upon the Continent, in England, and upon this side of the Atlantic.

None of the German collections of reports are better adapted to interest and profit the American lawyer than the *Archiv*. It contains within the compass of a single yearly volume (published in four numbers) a selection of decisions from all the German courts. The opinions are carefully abridged, usually in the language of the judges, and the only criticism that occurs to an American reader is that the cases are not always stated with sufficient fullness to make them useful as precedents. But for use in this country this will hardly be a defect. Regarded only as a collection of *dicta* upon interesting points of law by the ablest judges of Germany, it is well worth the study of our lawyers, who will be surprised to see how large a proportion of the questions most litigated among ourselves at present are passed upon by the German courts, in a form scarcely disguised by the practice and terminology of another system. Thus, we find in the present number, in quick succession —although we open the book almost at random—a case upon the ownership of double-windows, considered as fixtures or appurtenances to a house; upon the liability of a carrier for the negligence of his driver when a passenger has thereby been permanently disabled: upon the liability of an employer for the damage done to a neighbor by the person whom he has engaged to erect a house; upon the liability of owners in common to each other for the expense of rebuilding; upon the effect of a covenant not to convey, made by a person otherwise the full owner; upon the existence of a right of way where a third parcel of land partially separates the dominant from the servient estate; upon the measure of damages where growing crops were destroyed by sparks from a locomotive (holding that the railroad company must pay the full value of the ripened crop); upon the liability of the owner of runaway horses for the harm done by the people whom they frighten; and upon the liability of a railroad company for the permanent harm done to a passenger's health by the fright he experienced at the time of a severe accident.

DER GERICHTSSAAL. Stuttgart. Vol. XXX, Nos. 2 and 3.

The second number of the current volume contains an article on "Crimes and Offences against Morality," by Dr. Pillnow, of Bromberg (pp. 106-159). The subject is divided with reference to the provisions of the German Criminal Code, but its interest for an American reader is certainly not diminished by a close adherence to the text of positive law. The grounds of morality are duly aided, with quotations from Sophocles and Aristotle in the original Greek, and Augustine in Latin. But these unaccustomed ornaments should not prevent the common lawyer from recognizing in the article an acute and valuable discussion of the essential elements which constitute a class of offence very imperfectly discussed by our

own writers. Whether the increasing tendency of our courts and people to overlook such offences, or at least to refrain from criminal prosecutions, is not better service to the cause of morality than the public trial of disgusting crimes, reported with all their revolting features by the press, is a different question. But there can be no objection to a purely scientific examination of their criminal character, like the present. — *Wm. G. Hammond, LL.D., in Southern Law Review.*

CURRENT EVENTS.

ENGLAND.

THE TICHBORNE CLAIMANT.—The London *Times* states that the Claimant, whose health has been suffering from his close confinement at the Portsea Convict Prison and his unceasing application to his sewing machine, is now employed upon light labor at the extension works in connection with Portsmouth Dockyard. At first he was made useful in brickmaking, but the extreme publicity of the work attracted more visitors than were convenient, and he has been since told off to a somewhat remote part of the yard, near the Inflexible dock, where he is employed in preparing the stocks of offal timber for the periodical dockyard sales. He is much thinner than at the time of the trial, and the convict garb has well nigh deprived him of all individuality.

THE ASSAILANT OF THE MASTER OF THE ROLLS.—The Rev. Mr. Dodwell, the clergyman who fired a pistol in the face of the Master of the Rolls, has written from Broadmoor Asylum to the Kensington Guardians, complaining of the treatment he has received in that institution. The letter was written to the Guardians as they were the persons who had to defray the cost of his maintenance as a criminal pauper lunatic. It was resolved to forward the letter to the Home Secretary, accompanied by a protest against the parish having to pay for the punishment of Mr. Dodwell in the present form when the highest medical authorities had declared that he was not insane.

BANKRUPTCY IN ENGLAND.—Another wail comes from the Comptroller in Bankruptcy as to the predilection shown for liquidations by arrangement. He says that "out of more than 60,000 cases, nearly 52,000 have been under the liquidation clauses of the Act; and that while the annual number of bankruptcies has somewhat decreased, there has been such a continued and rapid increase in the number of liquidations that there were nearly twice as many insolvencies in the year 1877 as in the year 1870." "If," he observes, "the majority of creditors have exercised the powers vested in them with reasonable discrimination, the small number of hostile adjudications, compared with the very large number of amicable arrangements under both the Acts of 1861 and 1869, would prove that during the last sixteen years very few creditors in England have had cause to be dissatisfied with the conduct and state of affairs of their debtors." Clearly the "arrangement" suits somebody. Whether the claims of justice are satisfied is another matter, and the Comptroller evidently thinks this is open to question.

STATISTICS OF LUNACY.—It appears from the annual report of the Commissioners in Lunacy, recently issued, that the total number of registered lunatics, idiots, and persons of unsound mind in England and Wales on January 1 last was 68,538, being an increase of 1,902 on those returned for January 1, 1877. The number of male lunatics was 31,024, and of female lunatics 37,514. The pauper lunatics numbered 60,846, and 7,692 are described as "private patients." This last class includes the soldiers, sailors, and criminal and other lunatics maintained at the expense of the State.

IRELAND.

MR. JUSTICE KEOGH.—The insanity and death of this unfortunate gentleman have recalled to mind an extraordinary speech made in 1852 by his uncle, Mr. James Kelly, of Swinford, County Mayo, Ireland, which created some excitement at the time. Kelly, says a contemporary, was a man of great attainments and vast humor, but as mad as a March hare. He was fond of public speaking, his speeches being generally broad burlesque. In 1862, when Keogh—who with John Saddler had pledged himself in the most solemn manner not to accept office at the hands of any Ministry until certain measures, notably the Ecclesiastical Titles Bill, were conceded—accepted the Solicitor-Generalship from the Aberdeen Administration, meetings were held

in Roscommon, his native county, and Mayo, at which condemnatory resolutions were passed. Kelly addressed a large meeting on the green at Castlebar as follows:—

"MR. CHAIRMAN AND GENTLEMEN,—Who am I? What am I? What is my family? Who are the Kelleys of Swinford? Let me tell you briefly. Since the days of Cromwell—it is quite unnecessary in this assemblage to say bad luck to him—the Kelleys and the Keoghs, and Roscommon, to whom they are unhappily related, have suffered every species of torture and confiscation at the hands of the British Government. The minions of Downing street have plied my family with every instrument of cruelty known to their accursed law. Through their craven vassals at the Castle we have been served time and again, aye, a hundred times in our history, with *subpœna duces tecums*, with the villainous *ne exeat regno*, and even with the brutal *capias ad satisfaciendum* (exclamations of 'Lord save us!') until the big heart of the Kelleys is all but broken. Gentlemen, where are my ancestors? Standing here this night, I would not belie them; and I solemnly declare in the presence of the dead, as it were, and mindful even to jealousy of their reputation, that the shores of Botany Bay and Spike Island are littered with their forgotten bodies. My brother's nephew, Dan Fitzgerald—Lord rest his soul—you all know what became of him. On the perjured evidence of an informer, supported by a disgusting contempt for *alibis* on the part of Judge Lefroy, he was doomed to die for, as alleged, being concerned in the murder of a Scotch land agent. Gentlemen, I am proud to say he died like an Irishman only can die. The landlord, Mr. Browne, of Castlemountgarrett, went to see him in the condemned cell in the jail beyond, and says he 'Danny, so they're going to hang you?' 'I'm told so,' said my brother's nephew. 'Danny,' said Mr. Browne, 'I'll get up a petition for the commutation of your sentence and send to the castle.' 'Castle be ———' cried Dan—he's dead and I would'nt belie him—'Castle be ———' says he, 'I'll be under no compliment to the British Crown!' And, gentlemen, he died like a patriot Irishman on the gallows tree. But I ask you to turn your eyes from that heart stirring spectacle to the spectacle Ireland is now witnessing with horror. My own nephew is the principal in this case. He has, indeed, placed himself under a compliment to the Crown. [Here Kelly covered his face with his hands and sobbed for some minutes, the crowd uncovering.] Gentlemen, I am in solemn, serious earnest now. It is a hard matter for a man to curse his own flesh and blood, but I want you to hear what crazy Kelly, of Swinford, has to say concerning his nephew, Solicitor-General Keogh: I curse him for all time. May he die like a dog without the sacraments. A curse be on him and his forevermore. May the grass wither under his feet and water boil in his polluted mouth. The curse of a betrayed people rest on him. May the plagues of heaven consume him, and all the torments of hell pursue him now and hereafter. Gentlemen, I am not a prophet, but the son—the mad son, if you will—of a prophetess. My poor old mother, now nearly a hundred years old, said to me yesterday: 'James, mark my words. Lord Castlereagh cut his own throat. Keogh will cut somebody else's. He will die a madman with blood on his hands cursing and blaspheming the Church. He is a big man to-day and wears a silk gown, but he will spend his last days in a strait-jacket, and his eternity in hell.' That is what my mother says, and God send that it may be fulfilled."

Kelly died in a Dublin mad-house in 1857.

UNITED STATES.

WHO ARE VAGABONDS?—The legislature of Illinois recently passed a measure which gave police magistrates the option, upon the conviction of any one as a vagabond, to fine him $100 or to send him to the house of correction for sixty days. The act went into operation, and soon the county jail was thronged with "vagabonds." Some of them objected, and by the use of the convenient *habeas corpus* writ, were enabled to dispute the validity of the law. It has been held unconstitutional, as depriving a man of his liberty without giving him a trial at the hands of his peers. The Judge who gave the decision, an ex-member of the Supreme Court, expressed the wish that the Supreme Court as a body might pass upon the question. The legislature, in the Act referred to, gave a very comprehensive definition of vagabonds. It enacted as follows:—"Vagabonds shall include

all persons who are idle and dissolute, and who go about begging; all persons who use any juggling or other unlawful games or plays, runaways, pilferers, confidence men, common drunkards, common night-walkers, lewd, wanton, and lascivious persons, in speech or behaviour; common rioters and brawlers; persons who are habitually negligent of their employment or their calling, and do not lawfully provide for themselves, or for the support of their families; and all persons who are idle and dissolute, and who neglect all lawful business, and who habitually mis-spend their time by frequenting houses of ill-fame, gaming or tippling shops; all persons lodging in or found in the night time in out-houses, sheds, barns, or unoccupied buildings or lodging in the open air, and not giving a good account of themselves, and all persons who are known to be thieves, burglars or pickpockets habitually found prowling around any steamboat landing, railroad depot, banking institution, broker's office, place of public amusement, auction room, store, shop, or crowded thoroughfare, car or omnibus, or any public gathering or assembly, or lounging about any court room, private dwelling or outhouse, or found in any house of ill-fame, gambling house, or tippling shop." It has been sarcastically observed that under these specifications, about four-fifths of the men in Chicago are in peril of conviction as vagabonds.

GENERAL NOTES.

Duns in British India. — The Mahratta mode of recovering debts is curious. When the creditor cannot get his money, and begins to see the debt is rather desperate, he sits *dhurna* upon his debtor; that is, he squats down at the door of the tent, and becomes, in a certain mysterious degree, the master of it. No one goes in or out without his approbation. He neither eats himself, nor suffers his debtor to eat; and this famishing contest is carried on till the debt is paid, or the creditor begins to *feel* that want of food is a greater punishment than the want of money. This curious mode of enforcing a demand is in universal practice among the Mahrattas; Scindiah himself, the chieftain, not being exempt from it. The man who sits the *dhurna*, goes to the house, or tent, of him whom he wishes to bring to terms, and remains there until the affair is settled; during which time, the one under restraint is confined to his apartment and not suffered to communicate with any persons but those whom the other may approve of. The laws by which the *dhurna* is regulated are as well defined and understood as those of any other custom whatever. When it is meant to be very strict, the claimant carries a number of his followers, who surround the tent, sometimes even the bed of his adversary, and deprive him altogether of food; in which case, however, etiquette prescribes the same abstinence to himself; the strongest stomach, of course, carries the day. A custom of this kind was once so prevalent in the province and city of Benares, that Brahmins were trained to remain a long time without food. They were then sent to the door of some rich individual, where they made a vow to remain without eating until they should obtain a certain sum of money. To preserve the life of a Brahmin is so absolutely a duty, that the money was generally paid; but never till a good struggle had taken place, to ascertain whether the man was staunch or not; for money is the life and soul of all Hindoos.—*Smith's Journeys.*

Centenarians in Canada.—Mr. Wm. J. Thoms, whose name is very widely known as a keen critic of the records of the alleged centenarians, has received from Dr. J. C. Taché, deputy head of the census department of Canada, the report of an enquiry into eighty-two cases of alleged centenarianism. Of the eighty-two, no less than thirty-one claimed to have attained 100 years, nine claimed to be 101, and eleven to be 102; and while only four claim to be 103 and the same number 104, no less than nine put forth the higher pretension of having reached 105. Three claimed to be 106, and the like number 108; only one 109; while four boasted of having reached no less than 110. The three oldest on Dr. Taché's list claim credit for having reached no less than 112, 113 and 120 years respectively. Of these eighty-two cases, Dr. Taché shows that seventy-three have no claim to be considered centenarians, but returns nine as having, in his opinion, claims to be considered as having reached, and, in some instances, outlived a century. Two of the Doctor's subjects, he is

satisfied, reached the ages of 109 and 113; but some of the other claimants had to submit to a remarkable process of rejuvenation, in one case a man who claimed to be 120 proving to be a mere youth of 90. Mr. Thoms' present opinion is that no authenticated case of an individual's living to 110 can be produced, but he is prepared to modify it on satisfactory evidence.—*N. Y. World.*

CORONER'S INQUESTS.—The Attorney-General of the State of Maine makes the following observations and suggestions on this subject: "I doubt if coroner's inquests upon dead bodies are of sufficient use to justify their expense, and inquests are often very expensive. These inquests determine nothing. The suspected party is always apprehended by the officers before the jury render a verdict. The verdict is of no use to anybody. It does not acquit nor convict. It is not a single step toward acquittal or conviction. The testimony taken is only useful to the respondent, as it has to be filed in court, and thus the respondent can learn minutely the evidence and make up a defence to fit it. The officers engaged upon the case always look up evidence, independent of the inquest. I think the State can safely abolish the whole antiquated machinery, and, in place of it, simply authorize the State's Attorneys and Sheriff to take the depositions of witnesses. The testimony could be thus collected with celerity, secrecy, and comparatively little cost. The Attorney could determine whether it was of use to prosecute."

COURT DISCIPLINE IN CALCUTTA.—Calcutta barristers, says the London *Graphic*, who are unmindful of the respect due to the Judicial Bench in a certain Court, undergo a very unpleasant penance. The Judge insists on all barristers who appear in his Court donning full gown, wig, and bands in the hottest weather, and if he finds the least attempt at long-winded discourses or impertinence, he has the punkah stopped immediately—a plan which immediately brings back the suffocating lawyer to a proper frame of mind.

CREMATION.—Cremation became legal in Gotha on the 1st instant, when the process was to have been inaugurated by the burning of the body of a deceased engineer in a handsome building specially erected for such ceremonies.

DIGEST OF ENGLISH DECISIONS.

[Continued from p. 504.]

Passenger.—See *Railway*, 1.

Patent.—See *Trade-mark*, 1.

Penalty.—See *Judgment.*

Pleading and Practice.—See *Attorney and Client*, 1, 2; *Costs; Demurrer; Husband and Wife*, 2, 3; *Partnership*, 1, 2; *Quo Warranto; Solicitor.*

Principal and Agent.—In 1868, the plaintiff, registered owner of a steamship, consigned it to G. in Japan for sale. G., with the plaintiff's approval, employed the defendant to sell the vessel, and a minimum limit of $90,000 net cash was fixed as the price. The defendant tried to sell, but without success, and had some correspondence with G., in which he suggested that he would become the purchaser at the price fixed for cash, and himself run the risk of obtaining more on a resale, by means of giving credit; but no agreement was come to on the subject. March 12, 1869, he wrote that he would take the vessel himself at $90,000. March 17, he sold her to a Japanese prince for $160,000: $75,000 cash, and the balance credit. The sale was the result of negotiations extending over some time. The plaintiff received the $90,000 from the defendant through G., and the defendant finally received the $160,000 in full from the prince. The plaintiff did not know that the defendant was the purchaser, or of the resale, until June, 1869, when the transaction was ended, and he made no claim on defendant until 1873, although they met frequently. *Held*, that the defendant must account to the plaintiff for the profit made by the resale, and that the plaintiff had not forfeited his right to relief by his laches or by acquiescence.—*De Bussche* v. *Alt*, 8 Ch. D. 286.

Privileged Communication.—See *Attorney and Client*, 1, 2.

Privity of Contract.—See *Principal and Agent.*

Proximate Cause.—See *Negligence*, 1.

Quo Warranto.—An officer of a board of health was illegally dismissed from his office. On application for *quo warranto* by him, it appeared that he could be legally dismissed by the authority complained of, and that, as matter of fact, he would be if reinstated; and the rule was refused.—*Ex parte Richards*, 3 Q. B. D. 368.

Railway.—1. Plaintiff, travelling on defend-

ant's road, requested a servant of the road to take charge of and put into his compartment his hand-bag, while he went for some lunch. The servant promised to look after it, put it into the compartment, and turned the key, and, when plaintiff came back, said it was all right. On entering the compartment, plaintiff found the bag was missing. The jury found that the proper place for the bag was in the compartment; that the servant was acting as the servant of the company, and within the scope of his employment; that there was no negligence on the part of anybody; and that the bag was stolen by some one unknown. *Held*, that the plaintiff could not recover. The company was not liable as a common carrier, not having complete control of the goods, nor as insurer.—*Bergheim* v. *The Great Eastern Railway Co.*, 3 C. P. D. 221.

2. 8 Vict. c. 20, enacts that "if any person travel .... in any carriage" .... of a railway company, without paying his fare, "and with intent to avoid payment," .... such person shall forfeit 40s.; that the company may make regulations "for regulating the travelling upon .... the railway," subject to the provisions of the act; that it may make by-laws for the better enforcing of such regulations, provided, "such by-laws be not repugnant to the laws of that part of the United Kingdom where the same are to have effect, or to the provisions of this or the special act; .... and any person offending against any such by-law shall forfeit .... any sum not exceeding £5 .... as a penalty." The respondent company, accordingly, made a by-law as follows: "Any person travelling .... in a carriage .... of a superior class to that for which his ticket was issued, is hereby subject to a penalty not exceeding 40s., and shall, in addition, be liable to pay his fare according to the class of carriage in which he is travelling, ... unless he shows that he had no intention to defraud." Defendant was convicted in a penalty of 10s, under this by-law of riding in a first-class carriage with a second-class ticket, but without intending to defraud the company. *Held*, that the conviction could not stand; for, without deciding whether the by-law was to be construed as exempting from the penalty as well as from the double fare, in the absence of intent to defraud, if the by-law undertook to dispense with proof of intent to defraud, it was *ultra vires*, and void by said 8 Vic. c. 20.—*Bentham* v. *Hoyle*, 3 Q. B. D. 289.

3. A railway company, in undertaking to convey luggage to a station, thereby contracts to keep it safely for such a time after its arrival as is reasonably necessary to enable the passenger to get it and take it away.—*Patscheider* v. *The Great Western Railway Co.*, 3 Ex. D. 153.

Sheriff.—1. A sheriff, with a writ of *fi. fa.*, took a keeper to the debtor's house, showed the writ, and said, if the amount was not paid, the keeper would remain in possession. The debtor paid at once. *Held*, that there had been a seizure, and the sheriff was entitled to poundage.—*Bissicks* v. *The Bath Colliery Co. Ex parte Bissicks*, 3 Ex. D. 177; s. c. 2 Ex. D. 459.

2. A sheriff, under a *fi. fa.* writ, made seizure of goods, and was then paid the amount by the defendant, without sale. *Held*, that there had been a "levy," and he was entitled to poundage. *Roe* v. *Hammond* (2 C. P. D. 300) over-ruled.—*Mortimore* v. *Cragg*, 3 C. P. D. 216.

Shipping and Admiralty.—F. owner of a ship which went ashore on the coast of France during a voyage from India to England, sent agents to the ship, who saved the whole of the cargo transshipped it and forwarded it to England, and thereby earned freight. The average-stater allowed F. a certain sum—partly general average, partly particular average—for his services in the sale of portions of the cargo which could not be identified, as a commission on disbursements in sending out the lighters, &c., and, generally for "arranging for salvage operations, receiving cargo, meeting and arranging with consignees, and receiving and paying proceeds, and generally conducting the business." *Held*, that the amount could not be recovered from the owners of the cargo. There was no contract to pay it. F.'s object was to earn his freight.—*Schuster* v. *Fletcher*, 3 Q. B. D. 418.

Slander.—Where the court has laid down that the occasion on which the words complained of were uttered was privileged, it is for the plaintiff to show affirmatively that the defendant acted maliciously, or from an improper motive, and not from a sense of his duty, and *bona fide*.—*Clark* v. *Molyneux*, 3 Q. B. D. 237.