THE

LEGAL NEWS.

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CURRENT TOPICS AND CASES.

The nomination of Mr. Justice Casault to the chief justiceship of the Superior Court, which became vacant by the death of Sir Francis Johnson, having transferred the residence of the chief justice from Montreal to Quebec, it was necessary to appoint an acting chief justice at Montreal. Mr. Justice Brooks, of Sherbrooke, was the senior English judge of the Superior Court, but it is understood that he was unwilling to accept an appointment which would have necessitated removal to Montreal and continuous residence there. The next in seniority was Mr. Justice Melbourne M. Tait, who has been appointed "to perform the duties of chief justice in the district of Montreal, as it is comprised and defined for the Court of Review." The appointment, according to the announcement in the Official Gazette, bears date the 27th of October. Mr. Justice Tait, who has been nearly eight years on the bench, was first named judge for the district of Bedford and subsequently transferred to Montreal. The present appointment has been received with emphatic expressions of approval from all sections of the bar, and we have no doubt that this feeling of satisfaction will increase rather than diminish as long as the position is filled by

the learned acting chief justice. We presume that, in accordance with the precedent already made in the case of Mr. Justice Casault, Mr. Justice Tait will be knighted at an early date.

While the late Mr. Justice Aylwin was sitting in the criminal court, the proceedings were interrupted on one occasion by the music of a band on the Champ-de-Mars, where one or more battalions of regulars were at drill. The learned judge dispatched the crier, Mr. McLaughlin, to present his compliments to the commanding officer, and request a discontinuance of the music, — a request which after a few minutes was complied with. The late Chief Justice Johnson, during the reconstruction of the court house, frequently sent orders to suspend work which was interrupting the proceedings, and on one occasion ordered the crier to bring before the court a workman who persisted in hammering while judgments were being delivered. The expense of the reconstruction, it has been stated, was considerably increased by these forced suspensions of work, which at times were extremely inconvenient to the contractors. Similar incidents, it appears from the *London Law Journal*, have occurred in England and elsewhere. Sir James Hannen, when sitting as vacation judge, had to stop the builders engaged in repairing the Royal Courts. Chief Justice Higginbotham, of Victoria, in 1887 committed a builder who, after an order from the court to desist, persisted in carrying on a business involving a considerable amount of hammering in a yard adjacent to the Criminal Court in Melbourne (*In re Dakin*, 13 Victoria L. R. 522). His opinion in support of the decision is elaborate and exhaustive of the cases on contempt. His decision was sustained on appeal by the full court as a judgment which, after a careful examination of the authorities, came to the conclusion that the fact that the noise is caused in the exercise of a lawful trade is no answer where an order to desist during

the sittings of the court interfered with has been made and served, and that the existence of an alternative remedy by information or indictment for nuisance on the contempt is no answer to proceedings for summary committal, and they added that if law courts in a particular place interfere with neighbouring businesses, that is the fault of the authority which constructed them, and not of the judges (13 Victoria L. R. 539-547). This decision, the *Law Journal* says, is thoroughly in accord with the law of England, and a similar case arose recently at the Old Bailey. The Common Serjeant and his grand jury were disturbed by workmen hammering girders in some new buildings near the Court. He threatened to commit the foreman of the works unless the noise were stopped; but stayed his hand on finding that the operation in progress was critical and must be finished. Thus he may be said to have suggested a new qualification to contempt of Court—viz. that a noise made in completing works necessary for the safety of the public or the workmen engaged, even if it disturbs a court and is done in disobedience to an order of the Court, is not punishable as being done under inevitable necessity. Oswald on Contempts, p. 27, lays down the principle that it is a grave contempt of court to persist in causing any noise, even outside the precincts of the court, which interrupts its proceedings.

Mr. Justice Cave, of the English bench, expressed himself somewhat strongly, on a recent occasion, with regard to the efforts of policemen to extract confessions from persons accused of crime. His Lordship said: "It is the duty of police constables not to get evidence by cross-examining a prisoner and asking questions, but to depose to the facts. I have a great distrust of these things, and the system is carried on in this country to a very wrong extent. It is monstrous the way in which the police constables in this country try to extract confessions out of prisoners." On the other side of the English channel

the judges do this sort of work, and we are inclined to think that prisoners, if they had a choice, would prefer to be left to the tender mercies of the constables. But it must be added that Mr. Justice Cave is undoubtedly right.

The year 1894, already marked by the disappearance of several prominent figures at the bar, has not approached its close without a further depletion of the ranks. The late Mr. Mercier, Q.C., would have occupied a higher position at the bar if his attention had not been so continuously devoted to matters political. He was, however, an incisive speaker, well versed in the principles of the law, and a man of great capacity for work. The late Mr. Joseph Duhamel, Q.C., had at one time a very extensive practice in the Circuit Court, and was one of the few lawyers who appeared to grow rich at the bar. He was endowed with a vigorous constitution and immense energy, and his death at the early age of 57 was somewhat of a surprise to his *confrères*. Coroner Jones of Montreal, was not a member of the bar, but deserves notice as one of the oldest, if not the oldest coroner in the world. He was born in 1808, appointed coroner in 1837, and filled the office for 57 years, his official life dating from the beginning of the present reign. He was a gentleman of kindly disposition and generous impulses, and he always endeavored to discharge his at times painful duties with as little offence or annoyance as practicable.

SUPREME COURT OF CANADA.

OTTAWA, 31 May, 1894.

Quebec.]

GOVERNOR & COMPANY OF ADVENTURERS OF ENGLAND v. JOANNETTE.

Game laws—Arts. 1405—1409, *Rev. Stats. P. Q.—Seizure of furs killed out of season—Justice of the Peace—Jurisdiction—Prohibition—Writ of.*

One F. X. J., game-keeper, seized certain boxes of furs on

board the schooner "Stadacona," in the boundaries of the City of Quebec, after having taken out a search warrant issued by the judge of the Court of Sessions of the Peace. While the examination of the furs was going on at the police court the appellants took out a writ of prohibition, and the writ was made absolute by the Superior Court, but subsequently quashed on appeal to the Court of Queen's Bench (appeal side). The judge of the Sessions swore the experts before confiscation, to report on the condition of the furs at the time they were seized by the game-keeper.

Held, affirming the judgment of the Court below, (R. J. Q., 3 B. R. 211) that under art. 1405, read in connection with art. 1409 R. S. P. Q., the game-keeper is authorized to seize furs on view on board a schooner, even without a search warrant, and to have them brought before a justice of the peace for examination.

2. That the judge of the Court of Special Sessions of the Peace, having jurisdiction to try the alleged offence of having furs killed out of season, a writ of prohibition is not an appropriate remedy for any irregularity in the procedure.

Appeal dismissed with costs.

G. Stuart, Q. C., for appellants.

Languedoc, Q.C., for respondents.

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5 November, 1894.

Quebec.]

E. LARIVIÈRE v. THE SCHOOL COMMISSIONERS OF THE CITY OF THREE RIVERS.

Bond in appeal—School mistress—R. S. P. Q., sec. 2073—Fees of office—Future rights—R. S. C. ch. 135, sec. 29 (b).

E. Larivière, a school mistress, by her action claimed $1243 as fees due to her in virtue of sec. 68, ch. 15, C. S. L. C. (now sec. 2073 R. S. P. Q.), which were collected by the school commissioners of the City of Three Rivers while she was employed by them. At the time of the action the plaintiff had ceased to be in their employ. The Court of Queen's Bench for Lower Canada (Appeal side), affirming the judgment of the Superior Court, dismissed the action.

On a motion to the Supreme Court of Canada to allow bond in appeal, the same having been refused by a Judge of the Court

below, the Registrar of the Supreme Court, and a Judge in Chambers, on the ground that the case was not appealable,

Held, that the matter in dispute did not relate to any office or fees of office within the meaning of sec. 29 (*b*) of the Supreme and Exchequer Courts Act, c. 135.

2. Even assuming it did, that there being no rights in future involved, and the amount in dispute being less than $2,000, the case was not appealable.

3. The words "where the rights in future might be bound" in said sub-sec. (*b*) of sec. 29, govern all the preceding words, "any fee of office," etc. *Chagnon* v. *Normand* (16 Can. S. C. R. 661), & *Gilbert* v. *Gilman* (16 Can. S. C. R. 189) referred to.

Motion refused with costs.

Ritchie, for motion.
McDougall contra.

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1 May, 1894.

Exchequer.]

BULMER v. THE QUEEN.

Crown domain—Disputed territory—License to cut timber—Implied warranty of title—Breach of contract—Damages—Cross appeal —Supreme Court Rules, 62 *and* 63.

The claimant applied to the Government of Canada for licenses to cut timber on ten timber berths situated in the territory lately in dispute between that Government and the Government of Ontario. The application was granted on the condition that the applicant would pay certain ground-rents and bonuses, and make surveys and build a mill. The claimant knew of the dispute, which was at the time open and public. He paid the rents and bonuses, made the surveys and enlarged a mill he had previously built, which was accepted as equivalent to building a new one. The dispute was determined adversely to the Government of Canada at the time six leases or licenses were current, and consequently the Government could not renew them. The leases were granted under sections 49 and 50 of 46 Vic., ch. 17, and the regulations made under the act of 1879, provided that "the license may be renewed for another year subject to such revision of the annual rental and royalty to be paid therefor as may be fixed by the Governor in Council."

On a claim for damages by the licensee,

Held, 1. Orders in Council issued pursuant to 46 Vic., ch. 17, secs. 49 and 50, authorising the Minister of the Interior to grant licenses to cut timber did not constitute contracts between the Crown and proposed licensees, such Orders in Council being revocable by the Crown until acted upon by the granting of licenses under them.

2. That the right of renewal of the licenses was optional with the Crown, and that the claimant was entitled to recover from the Government only the moneys paid to it for ground rents and bonuses.

The licenses which were granted and were actually current in 1884 and 1885, confer upon the licensee "full right, power and license to take and keep exclusive possession of the said lands, except as thereinafter mentioned for and during the period of one year from the 31st of December, 1883, to the 31st December, 1884, and no longer."

Quære, though this is in law a lease for one year of the lands comprised in the license, was the Crown bound by any implied covenant to be read into the license for good right and title to make the lease and for quiet enjoyment?

Held, also, that a cross appeal will be disregarded by the Court when rules 62 and 63 of the Supreme Court Rules have not been complied with.

Appeal dismissed without costs.

McCarthy, Q. C., & Ferguson, Q. C., for appellant.
Robinson, Q. C., & Hogg, Q. C., for respondent.

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21 May, 1894.

British Columbia.]

THE SHIP "MINNIE" v. THE QUEEN.

Seal Fishery (North Pacific) Act, 1893—56-57 *Vic. (U. K.) ch.* 23, *secs.* 1, 3 *and* 4—*Judicial notice of order in council thereunder—Protocol of examination of offending ship by Russian war vessel, Sufficiency of—Presence within prohibited zone—Bona fides—Statutory presumption of liability—Evidence—Question of fact.*

The Admiralty Court is bound to take judicial notice of an order in council from which the Court derives its jurisdiction, issued under the authority of the Act of the Imperial Parliament, 56 and 57 Vic. c. 23, The Seal Fishery (North Pacific) Act 1893, without proof.

A Russian cruiser manned by a crew in the pay of the Russian Government, and in command of an officer of the Russia navy, is a "war vessel" within the meaning of the said order in council, and a protocol of examination of an offending British ship by such cruiser signed by the officer in command, is admissible in evidence in proceedings taken in the Admiralty Court, in an action for condemnation under the said Seal Fishery (North Pacific) Act, 1893, and is proof of its contents.

The ship in question in this case having been seized within the prohibited waters of the thirty mile zone round the Komandorsky Islands, fully equipped and manned for sealing, not only failed to fulfil the *onus* cast upon her of proving that she was not used or employed in killing or attemping to kill any seals within the seas specified in the order in council, but the evidence was sufficient to prove that she was guilty of an infraction of the statute and order in council.

Judgment of the court below affirmed.

Appeal dismissed with costs.

Belyea for the appellant.

Hogg, Q. C., for the respondent.

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21 May, 1894.

British Columbia.]

MYLIUS v. JACKSON.

Pleadings—Sufficient traverse of allegation by plaintiff—Objection first taken on appeal.

The plaintiff, by his statement of claim, alleged a partnership between two defendants, one being married whose name, on a re-arrangement of the partnership, was substituted for that of her husband without her knowledge or authority.

Held, reversing the judgment of the court below, that denial by the married woman that "on the date alleged or at any other time she entered into partnership with the other defendant" was a sufficient traverse of plaintiff's allegation to put the party to proof of that fact.

Held, also, that an objection to the insufficiency of the traverse, would not be entertained when taken for the first time on appeal, the issue having been tried on the assumption that the traverse was sufficient.

Appeal allowed with costs.

Belyea, for appellant.

Chrysler, Q. C., for respondent.

Ontario.] 31 May, 1894.

ELLICE v. HILES.

ELLICE v. CROOKS.

Municipal Corporation—Drainage—Action for damage—Reference —Drainage Trials Act, 54 Vic., ch. 51—Powers of referee— Negligence—Liability of municipality.

Upon reference of an action to a referee under The Drainage Trials Act of Ontario (54 V., c. 51), whether under sec. 11 as an action for damages from construction or operation of drainage works, or sec. 19 as a case in which, in the opinion of the court, the proper proceeding is under the act, the referee has full power to deal with the case as he thinks fit, and to make, of his own motion, all necessary amendments to enable him to decide according to the very right and justice of the case, and may convert the claim for damages under said sec. 11, into a claim for damages arising from construction of the work under a valid by-law, under sec. 591 of the Municipal Act.

In a drainage scheme for a single township, the work may be carried into a lower adjoining municipality for the purpose of finding an outlet without any petition from the owners of land in such adjoining township to be affected thereby, and such owners may be assessed for benefit. *Stephen* v. *McGillivray* (18 Ont App. R. 516), and *Nissouri* v. *Dorchester* (14 O. R. 294) distinguished.

One whose lands in the adjoining municipality have been damaged cannot, after the by-law has been appealed against and confirmed, and the lands assessed for benefit, contend before the referee that he was not liable to such assessment, the matter having been concluded by the confirmation of the by-law.

A municipality constructing a drain cannot let water loose just inside or anywhere within an adjoining municipality without being liable for injury to lands in such adjoining municipality thereby.

Where a scheme for drainage work proves defective and the work has not been skilfully and properly performed, a proper route not chosen, it is not continued to a proper outlet and is left unfinished for a long time in an adjoining municipality, where it is carried to find an outlet so that the water is turned loose, and came upon lands therein, the municipality constructing it are

not liable to persons whose lands are damaged in consequence of such defects and improper construction as tort feasors, but are liable under sec. 591, Municipal Act, for damage done in construction of the work or consequent thereon.

The referee has no jurisdiction to adjudicate as to the propriety of the route selected by the engineer and adopted by the by-law, the only remedy, if any, being by appeal against the project proposed by the by-law.

A tenant of land may recover damage suffered during his occupation from construction of drainage work, his rights resting upon the same foundation as those of a freeholder.

Wilson, Q. C., and *Smith, Q. C.*, for appellants.

Christopher Robinson, Q. C., for respondents.

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9 October, 1894.

Ontario.]

ALLISON v. MCDONALD.

Mortgage—Collateral security—Joint debtors—Discharge.

Two partners borrowed money, giving as security a mortgage on partnership property and a joint and several promissory note. The partnership having been dissolved, the mortgagee gave the members of the firm who continued to carry on the business, and who had assumed the liabilities, a discharge of the mortgage on his undertaking to pay back the money borrowed, which he failed to do, but mortgaged the property again, and finally became insolvent, and absconded. An action having been brought against the retiring partner on the note,

Held, affirming the decision of the Court of Appeal (20 Ont. App. R. 695), which reversed the judgment of the Divisional Court (23 O. R. 288), that the plaintiff could not compel the retiring partner to pay the mortgage debt, without being prepared on payment to re-convey the lands mortgaged, which he had incapacitated himself from doing. His action, therefore, was rightly dismissed.

Appeal dimissed with costs.

Aylesworth, Q. C., for appellant.

John A. Robinson, for respondent.

9 October, 1894.

Ontario.]

WALSH v. TREBILCOCK.

Criminal law — Betting on election—Stakeholder in bet between individuals—R. S. C. c. 159, *s.* 9*—Accessory—R. S. C. c.* 145 *—Recovery from stakeholder—Parties in pari delicto.*

W. and another made a bet on the result of an election for the House of Commons, and each deposited the sum bet with T. By the result of the election, W. lost his bet and the money was paid by T. to the winner. W. then brought an action against T. for the amount he had deposited with him claiming that the transaction was illegal and the contract to pay the money void.

Held, reversing the decision of the Court of Appeal (21 Ont. App. R. 55) Taschereau, J., dissenting, that T. in becoming the depository of the money was guilty of a misdemeanour under R. S. C. c. 159, s. 9 (Crim. Code, sec. 204); that W. was an accessory by R. S. C. c. 145; and that the parties being *in pari delicto*, and the illegal act having been performed, W. could not recover.

Appeal allowed with costs.

Meredith, Q.C., for appellant.

Aylesworth, Q.C., and *McKillop*, for respondent.

ELECTRIC STREET RAILWAYS—ADDITIONAL BURDEN.

The case of *Detroit City Ry.* v. *Mills*,[1] decided by the Supreme Court of Michigan, and very recently affirmed by the case of *Dean* v. *Ann Harbor St. Ry Co.*,[2] almost convinces one of the perfect elasticity of the common law. But in spite of the court's appeal to the progressive tendency of the times, common experience and observation arouse a feeling of dissent from the proposition that "the use of a street by an electric railroad, with poles and overhead wires, is not an additional servitude for which abutting owners may demand compensation."

It seems well established that at the present time an ordinary

[1] 48 N. W. Rep. 1007.

[2] 53 N. W. Rep. 396.

steam railroad imposes a new burden, [1] and that a horse railroad does not; [2] and the distinction, which is one of degree, turns on the different effects produced on the streets occupied by the railroads, and on the beneficial use of abutting property. In allying the legal position of the electric railroad to that of the horse railroad, the Michigan court seems to have made assumptions and statements of fact which will not bear close examination. Grant, J., tells us that electric cars are not more noisy, do not cause greater obstruction or hindrance, impose no greater burden, except by their poles, than horse-cars; and that they do not occupy more space than horse-cars with the horses that draw them. From these propositions we must, with all deference, dissent. The noise and jar of the ordinary electric cars, often joined in trains, the speed with which they run, the danger of driving along and upon the tracks, or even across them, the risk of injury or death from contact with broken wires, the unsightliness of the poles and cars and cross-wires and guard-wires and trolley-wires, are all matters of common knowledge.

That telegraph and telephone poles are an additional servitude is fairly well settled, [3] the cases to the contrary, such as *Pierce* v. *Drew*, [4] in Massachusetts, being based on highly artificial analogies between the ancient and modern use of highways for purposes of communication. To avoid this class of decisions, the Michigan court would say, with the Supreme Court of Rhode Island, [5] that telegraph and telephone wires are only very

[1] Mahon *v.* Ry. Co., 24 N. Y. 658; Kucheman *v.* Ry. Co., 46 Ia. 366; Chamberlain *v.* Ry. Co., 41 N. J. Eq. 43; Terre Haute, &c., Ry. Co. *v.* Scott, 74 Ind. 29; Indianapolis Ry. Co. *v.* Hartley, 67 Ill. 439; Stetson *v.* Ry. Co., 75 Ill. 74; Imlay *v.* Ry. Co., 26 Conn. 249; Adams *v.* Ry. Co., 18 Minn. 260 (see also 22 Minn. 149); Cox *v.* Ry. Co., 48 Ind. 178; Carson *v.* Ry. Co., 35 Cal. 325 (see also 41 Cal. 256); Blerch *v.* Ry. Co., 43 Wis. 183; Laurence Ry. Co. *v.* Williams, 35 Ohio St. 168; Williams *v.* New York Central Ry. Co., 16 N. Y. 97; etc. See also cases and authorities cited in Taggart *v.* Ry. Co., 19 Atl. Rep. 326.

[2] Elliott *v.* Fairhaven Ry. Co., 32 Conn. 579; A. G. *v.* Met. Ry. Co., 125 Mass. 515; 2 Dillon on Mun. Corp., 868, and cases cited in notes; Shea *v.* Ry. Co., 44 Cal. 414; Citizens' Coach Co. *v.* Camden H. R. Co., 33 N. J. Eq. 267.

[3] See 2 Dillon on Mun. Corp., § 698*a*, and cases cited.

[4] 136 Mass. 75.

[5] Taggart *v.* Ry. Co. (R. I.), 19 Atl. Rep., 326.

indirectly used to facilitate the use of streets for travel and transportation, whereas the poles and various wires of the electric railroad are distinctly ancillary to the use of the streets as such. This distinction is, as Judge Dillon remarks, "so fine as to be almost impalpable." [1]

It is said that the streets of a city may be used for any purpose which is a necessary public one, and the abutting owner will not be entitled to new compensation, in the absence of a statute giving it. As it stands, this statement can scarcely be maintained. Granting that the abutting owner dedicates to the public the whole beneficial use of part of his land for the purposes of a street, his property rights of light, air, and access free from danger to his remaining land, still subsist. Surely the need of the public for steam railroads is much greater than its need for electric railroads; yet steam railroad corporations would not be allowed to run their trains on public streets merely as a new method of using an old easement, and if they would lay their tracks across lands not belonging to them, they must obtain the right to do so by purchase or condemnation, into which consequential damages enter as an element. The need of the public is to be considered when the right to take the property is under consideration, and not when the courts have to decide whether compensation shall be allowed.

If the public needs a new method of transportation, the public can and should pay for private property rights destroyed or impaired in establishing that new method of transportation.—*Harvard Law Review.*

GRAND JURIES.

From time to time a desire is manifested to abolish grand juries. When a case is committed for trial it seems unnecessary to have a fresh investigation, and at present grand juries have a way of ignoring bills relating to certain offences which shows small respect for the committing justice, and indicates a special view of morality which may be termed grand jurors' ethics. And many grand jurors see and protest against the waste of time involved in re-hearing cases *in camera* and *ex parte* which have already been heard on both sides in a petty sessional Court. But

[1] 2 Dillon on Mun. Corp., p. 898, *n.*

there is still something to be said for the old law, which has secured that no man can be put on his trial for a serious crime without the assent of twelve laymen unaffected by fear or favour towards him or the Crown; and it is in any event desirable to retain to prosecutors the right of going before the grand jury where the magistrates have dismissed the charge. In some colonies the grand jury has been superseded *in toto* by the Attorney-General; in others, such as Victoria, most prosecutions are instituted by leave of the Attorney-General; but where magistrates refuse to commit for trial, or the Attorney-General will not act, the High Court can intervene, and a grand jury receive and pass a bill of indictment. In this country it would be an improvement on the present system (but not easy to arrange) if the functions of the grand jury were confined to voluntary bills so long as they are allowed to continue, and cases within the Vexatious Indictments Act, which ought to be extended to all offences. In this event the grand jury could be summoned only when wanted.

Reference has been made to the history of grand juries and the date of the severance of the functions of grand and petty juries. Whether the two were at any time the same (see Reeves and Finlason, 'Criminal Law,' vol. ii. p. 163), or the second was developed on the abolition of trial by ordeal (at the instance of the Lateran Council) or the disuse of wager of law and trial by battle, is a matter which we will not now discuss. But this much is clear, that the grand jurors were regarded as they are still styled, jurors *for* our lady the Queen (*pro rege*), in distinction to the petty jury summoned at the election of the prisoner, who under the old system was on arraignment asked how he would be tried, and replied, 'By God and my country.' The first words in this formula are possibly a survival of terms used with reference to the ordeal; but the words '*my* country' identify the visne (*vicinetum*) or special venue to which the writ of *facias venire juratores* had to be awarded, and doubtless suggested the inference, but do not prove, that the petty jury were a kind of witnesses for the prisoner. Indeed, the usage, if not the law, points to a different view of the constitution of the petty jury, and we may call attention to the valuable contribution by Mr. L. O. Pike (in his introduction to the Year book, 14 & 15 Edw. III.) towards ascertaining the real constitution of the petty jury, and the causes of the final separation of the grand and petty jurors. His conclusions may be thus summed up: It is certain that indictors

or members of the grand jury commonly sat on the jury which tried the accused—*i.e.* that the offender could be tried by his accusers, or a jury consisting partly of his accusers, and that the right of challenge for cause, though it existed in capital cases, was not absolute. In 1340 a commission of oyer and terminer was issued to try Chief Justice Willoughby and other justices for acting in the exercise of their offices unfaithfully and deceitfully towards the king and his people, a precedent which might have been of some interest in the recent case of *Anderson* v. *Gorrie*. At the trial of Willoughby it was laid down by Mr. Justice Parning that in cases of indictment there should be upon the jury to try the accused both 'indictors' and others, and that in the interest of the king care should be taken to have indictors on the jury. But this statement of the law led to the enactment of 25 Edw. III., stat. 5, c. 3, which entitles the accused to challenge fo cause any indictor (*i.e.* member of a grand jury or coroner's jury) who is put upon the inquest or petty jury. This Act is forgotten but unrepealed, and unaffected by the County Juries Act, 1825 (6 Geo. IV., c. 50), and it may be regarded as putting an end to any tendency to confuse the functions of the jury of accusation and jury of trial; but it does not absolutely disqualify a grand juror from sitting on the petty jury; nor would his presence invalidate the verdict (*Regina* v. *Edmunds*, 1 St. Tr. (N.S.) 785, at 883).—*Law Journal* (*London*).

GENERAL NOTES.

WOMEN AS BARRISTERS.—A bill has been read a second time in the House of Representatives in New Zealand, admitting women to practise at the bar, and at the same time reducing examination fees to a minimum, and providing that examination papers shall be set in English only.

FOREIGN DIVORCE LAWS.—Nearly a year ago circulars were sent by Lord Rosebery to English representatives abroad asking that information might be supplied to the House of Commons respecting the laws of divorce in the most important of our colonies, as well as in foreign countries. Some very curious answers have been received, and an entertaining Blue-book, just issued, is the result. In America very curious differences exist in different States; 'it is extremely difficult to give even an outline of the marriage laws prevailing in this country,' remarks our

representative, as there are forty-seven sovereign States, each claiming exclusive control over the matter of the marriage of its citizens. Hence it comes that in Montana and Washington twenty-one is the earliest marrying age for a man and eighteen for a woman, while in New Jersey or Connecticut the ages are respectively fourteen and twelve. All that a schoolboy in Washington, therefore, has to do in order to wed a school-girl friend is to induce her to lay her skipping-rope aside for a time and fly with him over the border into a more complaisant State. In Sweden and Norway weddings in church are exceptional, and you are not bound to give the officiating clergyman any fee whatever. In Switzerland the only fee is one to cover expense of the publication of notice of marriage in a local newspaper and registration, and you can be married at any hour you please. In Greece a bishop's license costs three drachmas, or half-a-crown, and the registration five drachmas. In Belgium they make a little charge for a 'marriage pamphlet' presented to the parties, and for stamps, but even these are dispensed with if the parties make a declaration of poverty. On the subject of the grounds of divorce very great divergences occur between the laws of different nations. In France to call a wife 'canaille' before her children justifies a decree of divorce, as also does a wife's 'refusal to obey her husband when it is a question of a theatrical engagement.' A husband can also be divorced for ill-treating his mother-in-law or his step-children. In spite of the proverb about the advantages of commencing matrimony with a little aversion, it is the law in Germany that 'insuperable aversion' may become a ground of divorce if both parties consent and there are no children. Roumania distinguishes itself by an enactment that a divorce can be pronounced if the tribunals are satisfied that 'existence in common is impossible.' In Massachusetts and Mississippi, 'the habitual use of opium or like drug' is held a sufficient excuse for untying the marriage knot; and in some States, as West Virginia, marriage will be annulled if one of the parties is a negro and the other a white person. As to the cost of divorce, the cheapest and simplest kind in the States costs about 100 dollars; in Germany it varies from 7*l.* 10*s.* up to 45*l.* In Russia, Consistorial Courts pronounce in divorce cases, and the expense is great. Saxony's modest figure is from 2*l.* 10*s.* up to 5*l.*—*Westminster Gazette.*