The Legal News.

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The judgment of the Judicial Committee of the Privy Council in *Carter & Molson* and *Holmes & Carter* will be found in the present issue. The opinion of their lordships affirms in substance the decision of the majority of our Court of Queen's Bench. 6 Legal News, 372.

On an application recently in England for a new trial, Lord Chief Justice Coleridge and Mr. Justice Butt refused without hesitation to admit an affidavit made by some of the jury, that in giving their verdict they had misapprehended the issues before them. The Court declared that a jury cannot be allowed to impugn their own verdict. The precedent referred to by the Court was *Clarke* v. *Stevenson*, 2 W. Bl. 803. In *R.* v. *Woodfall*, 5 Burr. 2661, the "Junius" libel case, Lord Mansfield stated that though in cases of doubt as to what passed in giving the verdict, the affidavits of jurors may be read on a motion for a new trial, yet "an affidavit of a juror never can be read as to what he then thought or intended."

The case of *Sharon* v. *Hill* has been proceeding before an Examiner-in-Chancery at San Francisco, but the Examiner has found his task beset by unexpected difficulties. The female respondent, after repeatedly interrupting the proceedings by excited remarks, finally drew a pistol from her satchel and pointed it at the counsel on the other side. The Examiner then suspended the examination and reported the circumstance to the Court. Chief Justice Field, of the United States Circuit Court, held that this was contempt of Court, and it was ordered "that the marshal of the court take all such measures as may be necessary to disarm such defendant, and keep her disarmed, and under strict surveillance whilst she is attending the examination of witnesses before said examiner, and whenever attending in court, and that a deputy be detailed for that purpose."

PRIVY COUNCIL.

LONDON, July 4, 1885.

Coram LORD WATSON, SIR BARNES PEACOCK, SIR RICHARD COUCH, SIR ARTHUR HOBHOUSE.

CARTER (plff. below), Appellant, and MOLSON (contest. below), Respondent.

HOLMES et al. (intervenants below), Appellants, and CARTER (plff. below) Respondent.

Sale—Executors—Insaisissabilité—Substitution—Registration—Rights of Substitutes.

The respondent Molson hypothecated immoveable property which had formed part of his father's estate, and which he held under a deed of sale to him from two of the executors (he being one).

HELD: (*Confirming the judgment of the Court of Queen's Bench, Montreal—6 Legal News* 372) 1. *That where power was given by a will to two of the executors to sell immoveable property belonging to the estate, a sale by two of the executors to one of themselves was void.*

2. *That the effect of the sale to respondent was merely to convey the property to him as his share of his father's estate subject to the conditions of the will, by which the property and revenues were insaisissables.*

3. *That the registration of the deed of sale in which reference was made to the will, was sufficient notice to an onerous creditor of the title under which the respondent held the property hypothecated by him.*

4. *That even if this were not so, the appellant must be held bound by the knowledge which the agent to whom he confided the duty of attending to his interests possessed, that the property was held by respondent under conditions and limitations.*

5. *That dividends of shares of bank stock not identified as part of respondent's share of his father's estate, were seizable.*

6. *That substitutes, who have no interest in the revenues during the institute's lifetime, have no right to intervene in order to oppose the seizure of rents and revenues of property subject to a substitution accruing during the lifetime of the institute.*

PER CURIAM. On the 9th of February 1875, John Thorold Carter advanced $30,000 upon

a mortgage, by which the borrower, Alexander Molson, became bound to repay that sum in six years, and also to pay interest, half yearly, at the rate of 7½ per cent. per annum; and, in security for the due payment of principal and interest, mortgaged and hypothecated a lot of ground and a tenement erected thereon, situated in St. James Street, Montreal. Thereafter, on the 17th of April 1877, in consequence of default in payment of interest, Carter recovered judgment in the Court of Queen's Bench against Molson, founded on his personal covenant in the deed of mortgage, for $31,-125, being the amount of principal and interest due at 1st January 1877. In virtue of that judgment, Carter proceeded to attach, by writ of Saisie-arrêt, the rents of the mortgaged property in St. James Street, which had been let to one Allan Freeman, and also the dividends which had accrued or might accrue upon 148 shares of the stock of Molsons bank, which stood in the books of the bank, in the name of "Alexander Molson, "in trust for Eliza A. Molson *et al.*"

The right of his creditor to attach these rents and dividends was contested by Alexander Molson, upon the allegation that the St. James Street property, as well as the bank stock, formed part of his one-fifth share of the residue of the estate of his late father, John Molson; that, by the will of the deceased, his right to both was *grevé de substitutions*, in favour of his wife and family, and his usufruct was expressly declared to be *legs d'aliment*, and not arrestable for his debts. In the course of the litigation which followed, two separate petitions were presented for leave to intervene, the one by Eliza Ann Holmes, wife of the debtor, in her own right, and the other by the same lady as tutrix *ad hoc* to their minor children, along with their daughter Elizabeth, who had attained majority.

In the Superior Court, Mr. Justice Papineau, upon the 30th June 1881, rejected the contestation of the judgment debtor, with costs, and sustained the right of the arresting creditor, both as to rents and dividends; and, at the same time, in both applications for intervention, the learned Judge decided, with costs, against the petitioners. The Court of Queen's Bench, upon the appeal of Alexander Molson, by their judgment rendered on the 24th March 1883, in substance affirmed the decision of Mr. Justice Papineau, so far as concerned the dividends, which they declared to have been validly arrested in the hands of the bank; but reversed his decision, in so far as it related to the rents of the St. James Street property, and quashed the attachment made in the hands of Allan Freeman. The debtor was condemned to pay to the arresting creditor the costs of the contestation with regard to the bank dividends in the Court below; whilst the creditor was condemned to pay to his debtor the costs of the contestation in the Court below with regard to rents, as well as the costs of the Appeal. By a separate judgment of the 24th March 1883, the Court of Queen's Bench, in the appeals taken by the intervening petitioners, rejected their contestation, and confirmed the decision of Mr. Justice Papineau, with costs.

Against these judgments four separate appeals have been presented to Her Majesty in Council. Mr. Carter complains of the decision of the Queen's Bench, in so far as it reverses the judgment of the Superior Court and quashes his arrestment of the rents of the St. James Street property; Alexander Molson complains of decisions of the Courts below sustaining the writ of Saisie-arrêt as regards dividends arising upon the 148 bank shares; and the intervening petitioners complain of the decision by which their respective contestations have been rejected. These appeals have been consolidated, and heard as one cause, but must now be separately disposed of, inasmuch as they do not depend upon the same considerations either of fact or law.

To begin with the rents of the St. James Street property. It was argued for the appellant Carter that there has been no deed or document registered which constitutes a legal act of substitution, or, in other words, discloses the fact that the title of his debtor to that property is derived by testamentary gift from his father, the late John Molson, and is therefore affected by the conditions and limitations appearing in the will of the deceased. It was said that, *ex facie* of the the register, the property is vested in Alex-

ander Molson, not as a legatee, but as a purchaser for value from the administrators of his father's will; and, consequently, that the appellant, an onerous creditor who advanced his money on the faith of the register, is not affected by the latent conditions of the will. It was also maintained for this appellant that, inasmuch as, by the deed of mortgage of February 1875, Alexander Molson declared that the property well and truly belonged to him, he is now estopped from alleging, in this suit, that it is in reality held by him as an integral part of his share of his father's succession.

In the argument addressed to their Lordships from both sides of the bar, it was conceded that the substitution imposed by the 13th article of John Molson's will upon the share of Alexander Molson, in favour of his widow and issue, cannot receive effect against a creditor in the position of the appellant, unless the substitution be duly registered (C. C., Sects. 938, 939), so as to give him due notice of the interests of the substitutes. Mr. Justice Papineau decided this branch of the case against the judgment debtor, upon the assumption that the will of John Molson had not been registered. That assumption seems to have been based upon a somewhat strict and technical interpretation of an answer made for Alexander Molson to the 13th interrogatory contained in the articulation of facts filed for the appellant on the 16th March 1879. There is ample evidence to show that the will was, in point of fact, duly registered in November 1860; and having regard to the very inartificial and ambiguous character of the interrogatory in question, their Lordships do not hesitate to agree with the Court of Queen's Bench in holding that the registration of the will has been sufficiently established.

In February 1875, when the appellant lent his money to Alexander Molson, there were already two deeds on the register, evidencing the title by which the borrower held the St. James Street property. The one of these was the will of John Molson already referred to, and the other was a deed, dated the 15th June 1871, and registered the 11th June 1872, by which William Molson, and the judgment debtor Alexander Molson, as acting executors and trustees under the will, sold, assigned, and transferred that property to the said Alexander Molson. It does not appear to their Lordships to admit of dispute that all persons who transacted with Alexander Molson on the faith of his being the owner of the St. James Street property were bound to inform themselves of, and must be held to have known, the tenor of these two deeds, because the deed of 15th June 1871 constituted Alexander Molson's immediate and only title to the property, and it sets forth, *in gremio*, that his authors held the property under the trusts of John Molson's will, and had transferred it to Alexander Molson by virtue of a power of sale said to be contained in the will. Accordingly, if it be the case (as the Court of Queen's Bench have held), that the deed of June 1871, though professing to give effect to a transaction of sale, was in reality a conveyance to Alexander Molson of that which had been allotted to him as part of his fifth share of the residue of his father's estate, and that the terms of the registered deeds were sufficient to notify that fact to the appellant, or to put him upon his inquiry in regard to it, it seems to follow that he cannot prevail in this appeal. In that case, the property would be identified, on the face of Alexander Molson's title, with his share of residue under his father's will; and every person dealing with him on the faith of that title would either have the knowledge, or the means of informing himself, that the property, as part of that share of residue, was *grevé de substitutions*, in favour of Alexander Molson's wife and children, and that his usufructuary interest was not arrestable.

The evidence adduced in the Superior Court establishes, beyond all doubt, that there never was any contract, between Alexander Molson and the administrators of his father's will (of whom he was one), for the purchase and sale of the St. James Street property. The property was, no doubt, exposed to public auction, along with other heritable subjects forming part of the residue, and the whole subjects so exposed were knocked down to two gentlemen, other than Alexander Molson, who each represented beneficiaries entitled to one-fifth of residue. But these gentlemen were merely nominal

purchasers. The auction sale was not resorted to for the purpose of selling and dividing the proceeds,—the only purpose for which a sale was authorized by the will,—but for the purpose of ascertaining the value of the subjects exposed, in order to their partition among three of the five residuary legatees. Accordingly these legatees, after the auction sale, at which Alexander Molson was not a buyer, agreed to divide the subjects which had been exposed, not according to the prices at which they had been knocked down, but according to an estimate based on an average of these prices. Upon that footing, the St. James Street property was allotted to Alexander Molson, as part of his share; and there appears to be no ground whatever for supposing that the trustees of the will thereafter sold to him his allotted portion for the amount of the estimate, even if such a sale had been within their power, which it clearly was not.

The deed of 15th June 1871 purports to be a conveyance of the property in question to Alexander Molson, in pursuance of a contract by which the trustees of his father's will had sold it to him for the amount at which its value was estimated for the purpose of partition, as already explained. In point of fact, the deed appears to have been framed by the grantors in flagrant disregard of their duty as trustees, and to have been a colourable and not very creditable device for giving Alexander Molson a larger interest in the property than he was entitled to, and for defeating the intentions of the testator with respect to substitutions and the *insaisissabilité* of his sons' usufruct. Although that is proved, in the estimation of their Lordships, to have been the true nature of the deed of 15th June 1871, it does not follow that the conditions of John Molson's will could be held to affect the property in a question with any onerous creditor of Alexander Molson, to whom the deed itself gave no notice, and who had no knowledge otherwise of its real character. But the deed of June 1871 refers to, and by reference, incorporates certain deeds of transfer and agreement executed by the executors and trustees of the will of John Molson, for the purpose of vesting his share of residue in Alexander Molson, and one of these deeds, dated 15th June 1871, appears to their Lordships to indicate very plainly that the St. James Street property had not been sold for the purpose of dividing the price, but had been allotted to Alexander Molson as part of the *corpus* of his share of residue. At all events, the terms of that deed, and its relative schedules, appear to their Lordships to be quite sufficient to notify to any person dealing with Alexander Molson, on the faith of the deed dated 15th June 1871, and registered 11th June 1872, that the transaction which it professes to embody was, in reality, either a legal partition or an illegal sale.

It is, however, hardly necessary, for the purposes of this appeal, to determine what would have been the effect of these indications of the true character of the so-called deed of sale, derivable from its own terms, upon the rights of a creditor of Alexander Molson, who had no information except that which he had obtained, or might have obtained, through the register. The appellant, Mr. Carter, does not occupy that position. His agent in negotiating and carrying through the loan transaction of 9th February 1875, was the Hon. J. J. C. Abbott, who is proved to have been cognizant of the whole proceedings in the distribution of the residue of John Molson's estate, and to have taken an active part in advising and completing the arrangements by which his fifth share, including the St. James Street property, was transferred to Alexander Molson. The appellant is affected by the knowledge of the agent to whom he confided the duty of attending to his interests, and that knowledge was amply sufficient to inform its possessor that the deed conveying the St. James Street property to Alexander Molson, though professedly a deed of sale, was in substance and reality the transfer of an estate which had been specifically allotted to him as part of his share of residue. In these circumstances, their Lordships are of opinion that the appellant Carter must be treated as having full knowledge that the property was vested in his debtor, subject to all the conditions and limitations imposed by the will of John Molson.

Next, as to the appeal of Alexander Molson with regard to bank dividends. The writ of Saisie-arrêt has only been sustained, as an at-

tachment of the dividends which may become payable to Alexander Molson in respect of the 148 shares in question. The sole ground upon which these dividends are said to be placed beyond the diligence of his creditors is, that the 148 shares either are, or represent, part of 640 shares of the stock of Molson's Bank which were transferred to Alexander Molson, as an integral portion of the fifth share of residue, settled upon him and his wife and family by his father's will. Their Lordships see no reason to differ from the law laid down by C. J. Dorion, to the effect that these dividends would be protected from arrestment by the 18th article of John Molson's will, if it were proved to be the fact that the 148 shares form part of the 640 originally transferred to Alexander Molson by the executors of the will, or were purchased with the proceeds of these original shares. Accordingly the only question requiring to be decided, in this appeal, is one of fact. Their Lordships are willing to assume (although it is unnecessary to decide) that the *onus* of proving that these 148 shares neither are nor represent any part of the residue of John Molson's estate lies upon the arresting creditor. He has proved, by clear and satisfactory evidence, that, at and prior to the 12th May, 1873, Alexander Molson had divested himself of the whole of the 640 shares which had been transferred to him, in 1871, by his father's executors; and that 115 of the 148 shares in question never belonged to his father's estate, having been vested in Alexander Molson before the residue was divided. That evidence, in the opinion of their Lordships, not only establishes the right of Mr. Carter to attach the dividends arising upon these 115 shares, but throws upon the appellant, Alexander Molson, the *onus* of showing that the remaining 33 shares were either part of or purchased with the proceeds of the 640 shares, neither of which facts has he made any attempt to prove.

Then as to the appeals presented by the intervening petitioners. Both of these depend upon precisely the same considerations, and may be disposed of as if they were one appeal. The petitioners have not, and do not assert that they have any direct or legal interest, either in the rents of the St. James Street property, or in the dividends on the 148 bank shares, which accrue and become payable to Alexander Molson during his lifetime. On the other hand, it is not disputed that they have material interests, entitling them to resist any attachment of the *corpus* of the property or of the shares, at the instance of a creditor of Alexander Molson, which might have the effect of defeating their right as substitutes, in the event of Alexander Molson's death. They do not, however, allege that the writ of saisie-arrêt will attach either the *corpus* of the 148 bank shares, or the dividends accruing upon them, after the death of Alexander Molson. All that they do allege is, that these shares, as part of the residue of his estate, are subject to the substitution in their favour contained in John Molson's will, and that the dividends payable to the institute are, in terms of that will, not arrestable. The only interest in respect of which their right to intervene in the present litigation is maintained, is the apprehension that some points may be incidentally decided, between the arresting creditor and Alexander Molson, which may prejudice their rights at some future time. It is not said that any judgment in this suit can possibly enable the creditor to attach the estates which they may eventually take, assuming the substitutions in their favour to be valid; nor is it suggested that anything decided in this suit between the judgment debtor and creditor, with regard to the validity of these substitutions would be binding upon them as *res judicata*. What they do plead is that such a decision might afford an objectionable precedent, if and when they require to assert their rights judicially, and consequently, that they have the right to intervene. That plea appears to their Lordships to be untenable. Section 154 of the Procedure Code, which regulates this matter, gives the right of intervention to the parties who are "interested in the event of a pending "suit." The event of the suit can only refer to the operative decree which may ultimately be given in favor of one or other of the parties to it, and not to the views of fact or law which may influence the Court in giving decree. To admit the appellant's plea would involve the admission of a right to intervene on the part of every person who had an interest in preventing a decision being

given *inter alios*, which might be cited as an authority against him in some other suit. Section 154 appears to have been framed for the very purpose of limiting the right of intervention to those persons who can show that a final judgment may possibly be obtained in the suit, which will enable the party who obtains it to possess himself of their estate, or otherwise to impair their legal rights.

Their Lordships are accordingly of opinion that the judgments appealed from ought to be affirmed, and they will humbly advise Her Majesty to that effect. There will be no order as to the costs of any of these appeals.

Appeal dismissed.

THE ADMINISTRATION OF JUSTICE.

[Continued from p. 280.]

To the American Bar Association:

Beginning with the first step of the complaining party, his complaint, it should be as simple as possible. Its only office is to apprise the other party of what is charged and demanded against him, and to confine the action of the court to the charge made. The next step is the answer. How much time is it reasonable that a defendant should have for answering a charge? And preliminary to that question is another, that is, where is the answer to be made, for if it must be made in open court, the parties will have to wait for its sitting. But if the answer may be delivered in writing at any time, either by filing it with the clerk or giving it to the party, such a time should be fixed as will, on an average, answer the needs of a defendant, so that there shall be as little occasion as possible for an application to enlarge it. Ten days will answer in most cases; twenty days should answer in all but the most exceptional ones. Oral pleadings are not suited to the habits of our people. The time of the suitor has become too much occupied. Written pleadings, rightly conducted, are in fact labor-saving processes. Convenience, as well as certainty, require that both complaint and answer should be formulated and reduced to writing.

The charge and defence being developed, the State is to intervene and dispose of the controversy. Whatever of delay now occurs is the fault partly of the State and its officers and partly of the contestants. The State has an interest in bringing the contention to an end as speedily as possible for the sake of peace, if there were no other reason. But there are other reasons. The mere presence on the record of an undecided case tends in some degree to interfere with the disposition of the other cases, for it stands in the way, and acts as a menace of intrusion into the order of business. Therefore whenever the court is ready, and the parties without sufficient excuse are not ready, the case should be dismissed from the court.

Supposing however both the parties to be ready, the State should be ready also. This is a duty which the body politic owes to all suitors; a duty which however neglected, is none the less imperative and of universal application. The State should never keep the citizen waiting for justice longer than is necessary to bring the judges to their seats. There are two maxims, a strict adherence to which would go far to wipe away the reproach of the law's delay, one that the State should be ready for the trial when both the parties are ready, and the other that if both are not ready when one of them is, the unready one should be put in default, unless he offers an excuse satisfactory to the court, and conformable to previously defined rules. Make the rules for these excuses precise and inexorable. The parties can of course waive them if they choose. But if insisted upon by either, the court should not be permitted to dispense with them any more than it is permitted to dispense with the period of limitation for an action or an appeal. One of the rules should declare that the absence or engagement of counsel elsewhere is not to be accepted as an excuse. To allow it would be to impose a sacrifice which neither the counsel nor the party in the one suit has a right to expect of either counsel or party in the other. And moreover the interests of the public are opposed to it. Neither should the convenience of a party be an excuse. It is especially his business to be in court, when his adversary is there to confront him. No more should the absence of a witness, unless it be shown that the

party offering it has done everything that could be reasonably expected of him to prevent the absence. These may all be rules now, in some courts and places, but they are generally enforced with laxity, if enforced at all.

Suppose the trial once begun, how can it best be brought to an end? By trying the issue as rapidly as may be with safety, and so trying it that the process shall not have to be repeated. Observe the process as it is now presented. No sooner is the trial opened than a wordy debate begins. Question after question is objected to; the objection is discussed for and against; the law reports are brought in and read, that it may be seen what some judge, learned or unlearned, in the same State or some other State, has said on some question, more or less like the present, and all this with the certainty, that if on one or more appeals, other judges think that the question has been improperly admitted or improperly rejected, the whole trial goes for nought, and a new one has to be fought over with perhaps the same experience and the same results. The wonder is, not that so many trials fail, but that any one ever gets through aright. It follows, as might have been expected, that we so often find practical failure in the search for theoretical perfection. It might be well, possibly, if there were time for it, that every question should be discussed until nothing more could be said on either side, but if that were to be done, no patience could survive the trial. The habits now prevailing and growing worse every day must be changed; the wearisome questioning of witnesses must be curtailed; the interminable debates must be stopped; appellate judges must consider more often, not whether a question was theoretically right, but whether its reception or rejection was practically injurious; and especially when a jury is in the box, the court must look to their convenience and spare their time. In short, a radical reform in the methods of trial courts must be somehow wrought out.

This picture of a jury trial, though by no means imaginary, may not answer for all parts of the country, but there is so much similarity that we may safely reason from this specimen. We know that a great deal of time is misspent. First, the unpunctuality of the judge, if unpunctuality there be, as there often is, is a serious grievance. He has no right to trifle with the time of lawyers, suitors and witnesses, and even though he may perhaps have the excuse that he has been detained by judicial duty at chambers, he should remember that one of the first duties of a public officer, especially a judicial one, is so to arrange his engagements that one shall not clash with another, and the public not to be put to inconvenience.

Let us take our seats as spectators of a severely-contested jury trial in a court of general jurisdiction of one of our cities, say in the city of New York, and see how one of them at least is conducted. The hour of the sitting is fixed for eleven o'clock. At that hour a crowd of lawyers, suitors, witnesses and spectators is in attendance ready for the judge. He comes, perhaps punctually, and perhaps not punctually, but after a few minutes, or a quarter of an hour, or half an hour, nobody can foretell which.

At last he appears, and begins by asking what suits are ready, or rather by calling over the calendar, an unintended but real invitation to the parties, one or both of them, not to be ready. This call, and the little debates which follow, take perhaps another half hour; so that the spectators may think themselves fortunate if they see a suit begun as early as twelve o'clock. It is then brought on and the names of the attending jurymen are called as they are drawn one by one from the wheel. Some questioning generally follows; now and then a contest and a side trial over one or more of the names drawn; but at last a jury is completed. Then the case is opened by the plaintiff, and the examination of witnesses begins. When three or four questions have been put and answered, some objection is made; it is duly debated for a few minutes, or it may be for an hour, or even four hours; the judge decides, the question being allowed or disallowed; an exception is noted, and the questioning starts again. In a short time however comes another objection, when the process of debate, decision and exception is repeated, and so on until perhaps the day is spent before the

first witness is dismissed, and an adjournment to the next day is taken. The next day comes and goes, with the like experience, and so another, and yet another, until at last, the testimony being finished, a discussion is opened upon one or more requests to the judge for his charge to the jury; then follows the charge, the exceptions to the charge come after, and finally the verdict, with perhaps fifty or a hundred exceptions on the record.

The trial being ended, a re-examination of all the legal questions that arose can generally be had if either party desires it, and one or the other will desire it, if he thinks he can derive advantage from it. The method of re-examination differs in different States; in some the questions are carried directly to another court; in other States they are re-examined in the same court by other judges or possibly by the same judge. The success of whatever method depends upon the ability of the judges; of the trial judge in the first place, and the re-examining judges in the second. An incompetent judge is an expensive officer. It were better for the State if all the incompetent aspirants for judgeships who beset nominating conventions or executive chambers, were provided for at the public expense in some other way, than that they should be seated upon the bench to harass and bewilder suffering counsel and more suffering suitors.

Whatever may be said in other respects of the institution of the jury for civil cases, it cannot be denied that it is the cause of great delays. This is the effect principally of two causes, one of which is the requirement of unanimity. When the jury is discharged, by reason of disagreement, the case has to be retried. Another and much more considerable cause of delay in the final result is the ordering of a new trial for a misdirection of the court or an erroneous admission or rejection of evidence. This may be obviated to a great extent by requiring the verdict to be special, upon questions submitted by the judge. The result would be that an error of the judge upon a trial would not require a new trial, unless the error related to a finding essential to the judgment; that is, one without which the judgment could not have been rendered. We shall recur to this subject.

Costs, too, have something to do with the delays. Two theories are propounded respecting them; one that they should be made sufficient to cover all the expenses of the successful litigant; the other that they should cover only the fees of the court officers, such as clerks and sheriffs. On one side it is argued that a party who has put his adversary to needless expense and suffered defeat in the suit ought justly to indemnify this adversary; on the other side it is argued that no system of costs will prevent an unjust claim or an unjust defence, and that in most instances they are instruments of oppression, rather than of justice, and if they are made to depend at all upon the discretion of the judge the discretion is dangerous. The choice between the two depends more on experience than on theory. And we think experience has shown that to allow no costs, except the fees of the officers, is better than to attempt an indemnification for the expenses of the prevailing party.

It appears to us that a great deal of time is wasted and no little uncertainty introduced into the law by the habit of delivering long opinions at the time of pronouncing judgment. Any one who will look into the decisions of Lord Mansfield will perceive the difference between the old habit and the new, much to the disparagement of the latter. Our volumes of reports have too many dissertations in the shape of opinions. The inconvenience thence arising is manifold; the time of the judges is wasted; the reports and the cost of the reports are grievously swollen; and worst of all, there is the chance, with reverence be it spoken, that some of the dissertations, if their expansion goes on, may be delivered in clouds of verbosity, covering as with a fog the points to sight and steer by.

We think moreover that giving by statute a preference to certain cases on the calendar is a mistake. The courts may well be trusted for the regulation of their own calendars; and when they find a case to be of such public importance as to require a hearing before all others they will be quite sure so to hear it. Whenever the State enacts that one case shall be heard before another, which stands ahead of it in order, it confesses its own negligence or inability to provide a prompt hearing for all.

[To be continued.]