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THE JUDICIAL APPOINTMENTS.

It is with no ordinary feeling of gratification that we take up the pen to chronicle the appointment of Mr. R. MACKAY, Q.C., and Mr. F. W. TORRANCE, Q.C., to the Bench of the Superior Court. These appointments excited surprise by their very excellence. At a time when the fair fame of the Bench was under a cloud, the elevation of two gentlemen eminently qualified for the office was a thing to be specially desired. The Minister of Justice, in passing by the ranks of mere political adherents, and selecting two gentlemen of great ability, of independent position, sincerely devoted to their profession, profoundly versed in legal science, has entitled himself to the gratitude of the bar. We do not fear to be hereafter called false prophets, in forecasting a noble career for these two judges.

Mr. Justice MACKAY was admitted to the bar on the 20th of December, 1837. He was engaged as counsel before the Seignorial Commission in 1855; and it is unnecessary to add that he has long enjoyed the reputation of a profound lawyer, an ardent student, and a counsel of the highest rank. His *confrères* have testified their high regard by electing him Bâtonnier. His honor never took any active part in political affairs, and did not receive the silk gown till last year. Some of Mr. Justice MACKAY's early contributions to legal literature will be found in the *Revue de Législation et de Jurisprudence*.

Mr. Justice TORRANCE was admitted to the bar on the 26th of June, 1848, and is still young in years. Few, however, have pursued the study of their profession with such constant diligence and singleness of purpose. Mr. Justice TORRANCE has, we believe, filled the chair of Roman Law in the Law faculty of the McGill University since the Faculty was established, and has also during twelve laborious years been one of the most active contributors to the *Jurist*. He received the appointment of Q.C. at the same time as Mr. Justice MACKAY.

We do not speak at greater length respecting these appointments, because we feel assured that eulogy, however well merited, would be distasteful to the gentlemen concerned; and we are, moreover, aware that we are chiefly addressing those to whom the eminent qualifications of the new judges are perfectly well known.

Of Mr. Justice MONK, who has been translated to the Court of Appeals, it may be said that he has rendered many of the most admirable and best considered judgments ever pronounced in our Courts, and also, perhaps, some of the worst. Possessed of abilities far above the common, of imposing personal appearance, a scholar of some depth and versatility, administering justice with rare good temper blended with dignity—Mr. Justice MONK has been a highly popular judge, notwithstanding the drawback of occasional fits of carelessness. In the dignified leisure of the Queen's Bench, his honor will have more opportunity for the elaboration of judgments, such as have often attracted admiration, even when drawn up by him amid the hurry of the Court below. We look for higher things yet from Mr. Justice MONK, and we feel sure that we shall not be disappointed. To fill worthily the chair of Mr. Justice AYLWIN, one of the greatest of Canadian judges, would be an honor not to be lightly esteemed.

THE GENERAL COUNCIL.

We have on our table a pamphlet containing the official reports of the General Council of the Bar of Lower Canada. We see reference therein to an amended tariff for the Superior and Circuit Courts, which, we trust, will soon be promulgated. By some oversight, we omitted to notice in a previous issue that on the retirement of Mr. GONZALVE DOUTRE from the office of Secretary-Treasurer of the General Council, he received the honor of a highly eulo-

gistic resolution, by the Bâtonniers present at a meeting on the 30th of May, conveying to him the thanks of the Council for his laborious and gratuitous services. Mr. DOUTRE was also presented with a silver inkstand, and a copy of the resolution engrossed on parchment. We have already more than once referred to Mr. DOUTRE's extraordinary services to the profession—services continued with unabated ardor even when confined to his room by severe illness. We feel no little gratification, therefore, in announcing that his *confrères* have conferred upon him this mark of esteem. One of Mr. DOUTRE's latest labors is contained in the pamphlet before us, comprising the *Règles de la Profession d'Avocat*, one hundred and sixteen in number. On these Mr. DOUTRE remarks, "Sans vouloir imposer le travail que j'ai fait à ce sujet, je le soumets comme pouvant servir de guide à l'avenir. Chaque application que les Conseils de Section feront d'une de ces règles servira à la confirmer. C'est ainsi que les règles de la profession d'avocat en France ont été confirmées une par une par l'usage et les sentences rendues par les Conseils de Section." Mr. DOUTRE has been succeeded in the office of Secretary-Treasurer of the General Council by Mr. ARCHAMBAULT.

THE JUDGE'S OATH.

The form of oath administered to a *Puisné* Judge on his appointment, which we append, may be of interest to our readers. The words date back to the time of 18 Edward III., A.D. 1344, and may be found in Evans' Collection of Statutes, vol. iii, pp. 7, 8.

"Ye shall swear, That well and lawfully ye shall serve our Lady the Queen and her people in the office of Puisné Judge of Her Majesty's Superior Court for Lower Canada, and that lawfully ye shall counsel the Queen in her business, and that ye shall not counsel nor assent to anything which may turn her in damage or disherison by any manner, way, or court: And that ye shall not know the damage or disherison of her, whereof ye shall not cause her to be warned by yourself, or by other; and that ye shall do equal law, and execution of right, to all her subjects, rich and poor, without having regard to any person: And that ye take not by yourself, or by other, privily nor apertly, gift nor reward of gold nor silver, nor of any other thing which may turn to your profit, unless it be meat or drink, and that of small value, of any man that shall have any plea or process hanging before you, as long as the same process shall be so hanging, nor after for the same cause: And that ye take no fee as long as ye shall be such Puisne Judge of the said Superior Court, nor robes of any man, great or small, but of the Queen herself: And that ye give none advice or counsel to no man, great nor small, in no case where the Queen is party; And in case that any, of what estate or condition they be, come before you in your sessions with force and arms or otherwise against the peace, or against the form of the statute thereof made, to disturb execution of the common law, or to menace the people that they may not pursue the law, that ye shall cause their bodies to be arrested and put in prison; and in case they be such that ye cannot arrest them, that ye certify the Queen of their names, and of their misprision hastily, so that she may thereof ordain a covenable remedy: And that ye by yourself nor by other, privily nor apertly, maintain any plea or quarrel hanging in the Queen's Court, or elsewhere in the country: And that ye deny to no man common right by the Queen's Letters, nor none other man's, nor for none other cause; and in case any Letters come to you contrary to the law, that ye do nothing by such letters, but certify the Queen thereof, and proceed to execute the law, notwithstanding the same letters: And that ye shall do and procure the profit of the Queen, and of her Crown, with all things where ye may reasonably do the same: And in case ye be from henceforth found in default in any of the points aforesaid, ye shall be at the Queen's will of body, lands, and goods, thereof to be done as shall please her, as God you help and all Saints."

The old French version is as follows:

"Vous jurez, que bien & loialment servires a nostre Seignur le Roy et son poeple en loffice de Justice, et que loialment conseilleres nostre Seignur le Roy en sez besoignes. Et que vous ne conseilleres ne assentires a chose que luy purra tourner en damage ou deshériteson per queconque voye ou colour. Et que vous ferrez owel ley et execution de droit as toutez ses subgettez riches et povrez sauns avoir regard a quelconque person. Et que vous ne prendrez per vous ne per autre en prive nen apert don ne reward dor ne dargent ne dautre chose queconque, que a vostre profit pourra tournir, sil ne soit manger ou boire & ceo de petit value, de nul home qui avera plee ou proces pendaunt devaunt vous, taunt come cel proces serra issint pendant, ne apres pur cel cause. Et que vous ne prendres fee, tanque come vous serres Justice, ne robes de nul home graunde ne petit, si non de Roy mesmes. Et qe vous ne dirrez counseil ne avyz a nulle graunde ne petit, en nul cas ou le Roy est partie. Et en cas que ascuns de quel estate ou condition quils soient, veignent devant vous en vos sessions a force & armes ou autrement contre la peas, ou contre la forme del estatut ent fait, pur distourber execution del commune ley, ou pur manascer ley gentz que ils ne purraient pursuir la ley, qe vous ferrez arrester lour corps, & mettre en prison. Et en cas quils soient tielx que vous ne lez poez arrester, qe vous certifies le Roy de lour nouns & de lour misprision hastivement, issint qe il puisse ent ordeigner remedie covenable. Et que vous ne maintiendres, per vous ne per autre en prive nen apert, nul plee ne nul querele pendant en le court le Roy naillours en paiis. Et qe vous ne declarez a nully come droit per lettres du Roy ne de nully autre ne per autre cause queconque. Et en cas que ascuns lettres vous veignent contrariez a la ley, que vous ne ferres riens per tielx lettres, eyens certifies le Roy de ceo, & irrez avaunt, pur faire la ley, nient contresteantz mesmes les lettres. Et que vous ferres & procures le profit du Roy & de sa corone ove toutes les choses ou vous le purres faire resonablement. Et en cas que vous soies trove en defaute desorenevant en nul des pointes avant ditz, vous serres en la volunte du Roi du corpz terres & davoir, de faire eut que luy plerra. Si Dieu vous eide & toutes seyntes."

This was the form recently used here in swearing in the new Judges of the Superior Court, of course, omitting the last three words.

RETENTION OF MONEYS BY INSOLVENTS.

A decision, *In Re Warmington*, rendered by Mr. Justice TORRANCE on the 30th of September, will, we believe, have an excellent effect. One Warmington gave the usual notice of a meeting of creditors to appoint an assignee, and before the meeting took place he received, in the course of business, a sum of $176, a part of which ($143) he refused to pay over to the assignee, when one had been appointed. It was admitted that he had received this sum, but the insolvent pretended that because he had received it before the appointment of the assignee, he was not bound to pay it over. This pretension was, of course, summarily set aside by the learned judge, and the bankrupt ordered to pay over the money on pain of imprisonment.

MEETINGS OF CREDITORS UNDER THE INSOLVENT ACT.

A point of some interest under the Insolvent Act has been decided by Mr. Justice TORRANCE, *In Re Andrew Macfarlane.* The question was whether the proceedings of an adjourned meeting of creditors under the Insolvent Act were legal. The original meeting had been convened in due form by the notices required by the Act, but these notices had not been repeated previous to the adjourned meeting. Mr. Justice TORRANCE, on the 30th September, sustained the validity of the proceedings.

ASSIGNMENT BY PARTNERSHIP.

The question whether an assignment by a firm gives the assignee possession of the

individual estates of the copartners, has been decided in the affirmative by Mr. Justice TORRANCE, *In Re Macfarlane et al.* The firm of insolvents made an assignment to A. B. Stewart, of all their estate and effects of every nature and kind whatsoever. Subsequently each of the partners assigned to the same assignee his separate estate. The assignee being afterwards removed from office at a meeting of creditors called for the ordering of the affairs of the estate generally, refused to give over to the new assignee the separate estate of one of the insolvents. His contention was that the first assignment to him by the firm did not vest in him the separate and individual estates of the copartners; that it was only under the subsequent assignments that he was vested with possession of the separate estates, and therefore his removal by a general meeting of the creditors of the copartnership took effect only with respect to the partnership estate. The learned judge, in a judgment pronounced the 8th of October, held that the assignment by the firm vested in the assignee the separate and individual estates of the partners as well as the copartnership estate; that the subsequent assignments had no legal effect, and therefore that the removal of the assignee by the creditors of the copartnership took effect with respect to the separate estates of the partners as well as the copartnership estate.

THE LATE CHIEF JUSTICE STUART'S LIBRARY.

The sale of the valuable library of the late Sir James Stuart, commenced at Montreal on the 20th of October, and was continued during eight days. Fifteen years have elapsed since the death of this eminent judge, and to some extent the books were out of date, especially the editions of American and English text books. The collection, however, embraced a great number of very valuable works, and the prices realized were on the whole satisfactory, several institutions becoming purchasers to a large amount.

APPOINTMENTS.

(*Gazetted, 27th August*, 1868.)

The Hon. SAMUEL CORNWALLIS MONK, one of the Puisné Judges of the Superior Court for Lower Canada, now the Province of Quebec, to be a Puisné Judge of the Court of Queen's Bench for Lower Canada, now the Province of Quebec, in the place of the Hon. THOMAS CUSHING AYLWIN, resigned.

ROBERT MACKAY, Esquire, one of Her Majesty's Counsel learned in the Law, to be a Puisné Judge of the Superior Court for Lower Canada, now the Province of Quebec, in the place of the Hon. JAMES SMITH, resigned.

FREDERICK WILLIAM TORRANCE, Esquire, one of Her Majesty's Counsel learned in the Law, to be a Puisné Judge of the Superior Court for Lower Canada, now the Province of Quebec, in the place of the Hon. SAMUEL CORNWALLIS MONK, appointed a Judge of the Court of Queen's Bench.

JOHN MAGUIRE, Esquire, Advocate, and Judge of the Sessions of the Peace, at Quebec, to be a Puisné Judge of the Superior Court for Lower Canada, now the Province of Quebec, in the place of the Hon. JOHN GAWLER THOMPSON, resigned.

(*Gazetted, 3rd October*, 1868.)

The Hon. CHARLES FISHER, of Fredericton, in the Province of New Brunswick, to be a Judge of the Supreme Court of New Brunswick, in the room and stead of the Hon. LEMUEL ALLEN WILMOT, resigned.

QUEBEC.

(*Gazetted, 28th September*, 1868.)

PIERRE ANTOINE DOUCET, Esq., to be Judge of the Sessions of the Peace for the City of Quebec, in the room of the Hon. JOHN MAGUIRE, appointed Judge of the Superior Court.

HENRI ELZEAR TASCHEREAU, Esq., Advocate and Queen's Counsel, to be Clerk of the Peace for the District of Quebec.

WILLIAM EDMUND DUGGAN, Esq., to be Clerk of the Crown for the District of Quebec.

(*Gazetted, 30th September*, 1868.)

LOUIS CHARLES BOUCHER DENIVERVILLE,

Esq., Queen's Counsel, to be Sheriff of the District of Three Rivers, in the place of Isaac G. Ogden, Esq., deceased.

THE MONTREAL COURTS.

The new judges have entered upon their duties with great vigor, and a marked improvement in the administration of justice is already apparent. The heavy arrears before the Court of Review are being cleared off by extra sittings, and last term Mr. Justice TORRANCE sat in a separate room to facilitate the *enquête* in appealable circuit cases.

EDITORIAL CHANGE.

The elevation of Mr. TORRANCE, Q. C., to the Bench of the Superior Court having occasioned a vacancy in the Editorial Committee of the *Lower Canada Jurist*, the Editor of this journal has received the honor of an invitation to fill the office of junior editor of that publication, which has been accepted. This circumstance will occasion no change in the management of the *Law Journal* at present. The editor's reports will appear principally in the *Jurist*, but, as we have before intimated, we believe there is sufficient matter, independent of local reports, to give interest to a quarterly review like the *Law Journal*.

NOTICES OF PUBLICATIONS.

THE AMERICAN LAW REVIEW, (Boston) for October, contains a very interesting and well written review of the life and career of the late Lord Brougham. The only other article in the current number contains an account of what is styled "the Erie Railroad Row." This article, to the lovers of sensational reading, is, alone, worth the whole year's subscription. The revelations respecting the deplorable condition of the New York elective judiciary, are marvellous beyond conception. — *The American Law Review* continues to be conducted with marked ability, and should find many readers in Canada.

RECENT ENGLISH DECISIONS.

Account.—Plaintiff agreed to act as defendant's manager, receiving 7½ per cent. per annum of the profits of the business, to be made up to £500 in any year in which the said share of profits should be less than that sum. The works were valued at the same time. Six years later the defendant sold them at a gain of £47,916. In taking the account, under the above agreement, *held*, that the defendant was not entitled to charge interest on his capital, nor interest on old debts, nor the £500 guaranteed to the plaintiff in the profit and loss account; that he might charge him the depreciation, from the waste of machinery and running out of his lease, calculated on the valuation of the works; that the plaintiff could not charge 7½ per cent. on the gain at which the works were sold, as profits of that year.—*Rishton* v. *Grissell*, Law Rep. 5 Eq. 326.

Assault.—The prisoner assaulted a constable in the execution of his duty. The constable went for aid, and after an hour returned with three others, but found the prisoner had locked himself up in his house. Fifteen minutes later the constables forced the door, entered, and arrested the prisoner, who wounded one of them in resisting the arrest. *Held*, that the arrest was illegal.—*Regina* v. *Marsden*, Law Rep. 1 C. C. 131.

Banker.—Appellants, bankers, had policies on the life of one deceased as security for money due from him to them. To obtain payment of these, they received the probate of his will from his widow and executrix, promising to make over the balance to her. Said probate showed remainders to children after the widow's life estate. The latter drew a check for said balance, payable to a firm composed of herself and her husband's former partner, which banked with appellants, and the amount was placed to the credit of the firm accordingly. In a suit by the children, *held*, by the House of Lords, reversing the decree of the Lord Chancellor of Ireland, that the bankers were not liable to replace said balance. To justify a banker in refusing to pay a cheque

drawn by a customer as executor, there must be a breach of trust intended by the latter, and the banker must be privy to that intent. Proof that any personal benefit to the bankers themselves is designed or stipulated for, is the strongest evidence of such privity.—*Gray* v. *Johnston*, Law Rep. 3 H. L. 1.

Canada, Law of.— A *défense d'aliéner pure et simple*, viz., a provision against alienation for twenty years from death of testator, in the interest of no one but the devisee, is void by the old French law in force in Lower Canada, founded on the Roman law, and by the general principles of jurisprudence.—*Renaud* v. *Tourangeau*, Law Rep. 2 P. C. 4.

Conflict of Laws.—1. After an English marriage between two English persons, obtained by the fraud of the husband and never consummated, the husband committed adultery. Some years later he went to Scotland, to found a jurisdiction against himself, for which he was to receive a sum; to be forfeited, however, in case he gave any information which should be prejudicial to a divorce. After a residence of forty days, a divorce *a vinculo* was obtained against him, and a marriage was thereupon duly celebrated between the wife and an Englishman who was thenceforth domiciled in Scotland. After the death of all the above parties, *held*, that the children of the last marriage were not "lawfully begotten," so as to take English property under an English will.—*Shaw* v. *Gould*, Law Rep. 3 H. L. 55.

2. B. had left Jamaica, his domicile of birth, for good, and gone to Scotland, where afterwards he acquired a domicile; but it being *held*, that, at the time in question, his mind was not made up to stay there permanently, it was further *held*, that the personal *status* of the domicile of birth remained until a new domicile was acquired.—*Bell* v. *Kennedy*, Law Rep. 1 H. L. Sc. 307.

Custody of Children.—The Court gave the custody of two infant children—the one being three or four years, the other eighteen months old—to the mother, pending a suit for dissolution of marriage by the father, on the ground that her health was suffering from being deprived of their society, and that they were living with a stranger, not the father.—*Barnes* v. *Barnes & Beaumont*, Law Rep. 1 P. & D. 463.

Damages.—The defendant contracted in writing to sell to the plaintiff 500 tons of iron, to be delivered by the 25th of July. Owing to an accident in his furnaces, in that month, the defendant delivered none of the iron by the 25th; but proposed that plaintiff should take iron of a different quality, at the same time denying his liability, on the ground of the accident. This proposal was declined, after consideration. Dec. 29, the brokers who had acted for both parties, and were still acting for the plaintiff, wrote that the parties who had contracts for the iron were pressing them, and threatened to purchase against the defendant; adding, "when our Mr. T. waited upon you, he was informed that it might take three months to put the furnaces into repair, and we informed all our friends to this effect, who have waited considerably over that time. When do you think we may promise deliveries?" The defendant answered, not denying these statements, and only stating that he could not say what would be done with the furnaces. The plaintiff bought in the market, in February, and the price of the iron having risen, sought to recover from the defendant the difference between the contract price and the market price in February. The jury returned a verdict for that amount. *Held*, that there was evidence from which the jury might infer that the plaintiff's delay was at the defendant's request; that as the evidence went to show, not a new contract, but simply a forbearance by the plaintiff, at the request of the defendant, the Statute of Frauds did not apply; and that the verdict ought to stand. (Exch. Ch.)—*Ogle* v. *Earl Vane*, Law Rep. 3 Q. B. 272.

False Imprisonment. — Defendant, upon whose premises a felony had been committed, acting on information given him by his own coachman, the most material part of

which was derived from R., a neighbor's coachman, gave the plaintiff into custody on the charge, without making any personal inquiry of R. The plaintiff was living openly in the neighborhood, and it was not suggested that he was likely to run away. In an action of false imprisonment, the judge instructed the jury that, under the circumstances, there was no probable cause; and the verdict being for the plaintiff, the Court of Exchequer Chamber refused to disturb it.—*Perryman* v. *Lister*, (Exch. Ch.), Law Rep. 3 Ex. 197.

Illegitimate Children.—A testator, who had none but illegitimate children, left his property in trust, to divide the residue into four parts, and to hold one share each, on certain trusts, for each of his four children; and if the trusts should fail as to the share of either child, then the same was to be held for such persons as would be the next of kin of said child at his decease, under the Statute of Distributions. There were further trusts as to moneys to which a child should become entitled, "by virtue of the provisions hereinbefore contained, as next of kin of the others, or other, of them."—The trusts failed as to one child. *Held*, that there was an intestacy as to that share. The words "next of kin," could not be read as designating the surviving illegitimate children of the testator.—*In re Standley's Estate*, Law Rep. 5 Eq. 303.

Insurance.—A ship, then at Calcutta, was insured for three months from and after thirty days after her arrival there, and valued at £8,000. At the time the policy was made, but unknown to the parties, the ship had been injured in a storm, so that the expense of the repairs would have exceeded its value when repaired. During the continuance of the risk, the ship was totally lost. *Held*, that the policy attached, notwithstanding the previous injury to the ship, and that, there being no fraud, the valuation of the ship in the policy was conclusive between the parties. —*Barker* v. *Janson*, Law Rep. 3 C. P. 303.

Judge.—Plea to a declaration for slander, that the defendant was a county court udge, and the words complained of were spoken by him in his capacity as such judge, while sitting in his court, and trying a cause in which the present plaintiff was defendant. Replication, that the said words were spoken falsely and maliciously, and without any reasonable, probable, or justifiable cause, and without any foundation whatever, and not *bona fide* in the discharge of the defendant's duty as judge, and were wholly irrelevant in reference to the matter before him. *Held*, that the action could not be maintained.—*Scott* v. *Stansfield*, Law Rep. 3 Ex. 220.

Larceny.—1. The prisoner, having paid a florin to the prosecutrix for purchases, asked her afterwards to give him a shilling for change which he put upon the counter. She put a shilling down, when the prisoner said to her, "You may as well give me the two-shilling piece, and take it all." She then put down the florin and the prisoner took it up. She took up her shilling, and the change for it put down by the prisoner, and was putting them into the drawer, when she saw she had but one shilling of the prisoner's money. But as she was about to speak, the prisoner's confederate drew her attention, and both left the shop. *Held*, that the prisoner was guilty of larceny.—*Regina* v. *McKale*, Law Rep. 1 C. C. 125.

2. The prisoner found a sovereign on a highway; believing it to have been accidentally lost, and with a knowledge that he was doing wrong, he at once determined to keep it, notwithstanding the owner should afterwards become known to him, but not expecting that the owner would. *Held*, on the authority of *Reg.* v. *Thurborn*, (1 Den. C. C. 387; 18 L. J. M. C. 140), that the prisoner was not guilty of larceny.—*Regina* v. *Glyde*, Law Rep. 1 C. C. 139.

Limitations, Statute of.—1. Trustees, under an Act of Parliament, made a road fifty years before this suit, separated from a field by a hedge, a bank, and a ditch three feet wide, adjoining the field. This ditch became filled up, and was never re-opened; but a ditch a foot wide had been made since by the tenant of the field, and it had also become obliterated. The hedge had always been included in the lease of the field, and

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the tenants had always trimmed the same at their own expense, and testified that they had "held and used" the land within the same for more than twenty years, (though apparently only by allowing their cattle to drink out of the ditch when open, and to graze over its site when filled up), without the interference of the trustees. *Held*, there was no such adverse user as to give the owners of the land a title to the site of the ditch by the Statute of Limitations.—*Searby* v. *Tottenham Railway Co.*, Law Rep. 5. Eq. 409.

2. The analogy of the Statute of Limitations cannot be set up by an executor, in answer to a claim founded on breach of trust by his testator.—*Brittlebank* v. *Goodwin*, Law Rep. 5 Eq. 545.

3. A cheque is not an advance until it has been paid, and the Statute of Limitations only runs from that time.—*Garden* v. *Bruce*, Law Rep. 3 C. P. 300.

Master and Servant.—1. It is no answer to a suit against directors of a company, for infringement of a patent, that the acts were done by workmen employed by defendants, but contrary to their orders; the infringement having taken place in defendants' works, and in the course of the proper duties of the workmen.—*Betts* v. *De Vitre*, Law Rep. 3 Ch. 429, 441.

2. W., the defendants' servant, was killed in consequence of the negligent construction of a platform by N., also in their employ. N.'s fitness for his place was not denied. The jury were instructed, that, if the platform was completed before W. was engaged, and if the defendants had delegated to N. their whole power and duty, without control on their part, W. and N. were not fellow-workmen, and the defendants would not be discharged on that ground. *Held*, erroneous. N.'s duty was a continuing one. A master is not made liable to a servant for an injury caused by the negligence of a fellow-servant, by the simple fact that the latter is of a higher grade, as a superintendent.—*Wilson* v. *Merry*, Law Rep. 1 H. L. Sc. 326.

Negligence.—1. The defendants provided gangways from the shore to ships lying in their dock, the gangways being made of materials belonging to the defendants, and managed by their servants. The plaintiff went on board a ship, in said dock, on business, at the invitation of one of the ship's officers; and, while he was there, defendants' servants moved the gangway, and negligently left it insecure, so that it gave way, and the plaintiff was injured on his return, without negligence on his part. *Held*, (by *Bovill*, C. J., and *Byles*, J.; Keating, J., *dubitante*), that there was a duty on the defendants toward the plaintiff not to let the gangway be insecure without warning him, and that he could recover damages for his injuries.—*Smith* v. *London & Saint Katharine Dock Co.*, Law Rep. 3 C. P. 326.

2. The plaintiff, while travelling by the defendants' railway, was injured by the fall of an iron girder, which workmen, not under the defendants' control, were employed in placing across the walls of the railway. It was proved that the work was very dangerous; that the defendants knew the danger; that it was usual, when such work was going on, for the company to place a man to signal to the workmen the approach of a train; and that this precaution was not adopted.—*Held*, sufficient evidence to warrant a jury in finding that the defendants were guilty of negligence and liable, even though the workmen were so also.—*Daniel* v. *Metropolitan Railway Co.*, Law Rep. 3 C. P. 216.

Nullity of Marriage.—In a suit by a wife for nullity, on the ground of the husband's impotence, the only evidence of the same was that of the petitioner, which was contradicted by the respondent. The medical witnesses testified that she might have had regular intercourse with her husband consistently with the appearances, and there were circumstances discrediting the wife's testimony. A decree was refused.—*U.* v. *J.*, Law Rep. 1 P. & D. 460.

Obscene Publication.—A pamphlet entitled "The Confessional Unmasked," besides innocent casuistical discussions, contained obscene extracts from Catholic writers, with condemnatory notes. It was published and sold at cost solely for controversial purposes.

It was ordered to be destroyed under St. 20 & 21 Vict. c. 83, § 1. (Mellor, J., *dubitante*). It being found to be obscene, as a fact, within that statute, the intention to break the law must be inferred, and was not justified by an ulterior good object.—*Regina* v. *Hicklin*, Law Rep. 3 Q. B. 360.

Partnership.—The plaintiff and defendant entered into partnership as solicitors, for a term of seven years, the plaintiff paying a premium of £800. The defendant, before entering into the partnership, knew that the plaintiff was inexperienced and incompetent in his profession, and gave that as a reason for the amount of the premium asked. After two years the defendant wrote to the plaintiff, accusing him of negligence, and saying that the partnership must be dissolved, and that he had instructed counsel to file a bill for that purpose. Plaintiff, thereupon, filed a bill for a dissolution, and for a return of a part of the premium proportionate to the unexpired portion of the term. *Held*, (reversing the decision of Stuart, V. C.,) that the plaintiff could recover.—*Atwood* v. *Maude*, Law Rep. 3 Ch. 369.

Patent.—1. The specification of a patent may describe the process so insufficiently as to be bad, and yet disclose enough to show that what is claimed by a subsequent patent is not new. It is like a publication in a book, and it is not necessary that it should have been acted on, but only that it should be capable of being acted on, which which may be tested by experiments, using any new facilities prior to the second patent. But it must furnish the knowledge necessary to carry it into practice with reasonable certainty, in order to invalidate the second patent. The public use of an invention means a use and invention *in* public, not *by* the public.--*Betts* v. *Neilson*, Law Rep. 3 Ch. 429.

2. The plaintiff being possessed of a patent, granted the defendants the exclusive license to work it in a certain district, by an indenture in which the latter covenanted to pay certain royalties, and to give every information, the better to enable the plaintiff to support the letters-patent, and the plaintiff covenanted for quiet enjoyment of the patent by the defendants; and that, in case any persons should work the patented processes, the plaintiff would, at his own costs, commence and carry on all such actions, &c., as should be necessary to put a stop to such working of said processes; and that in case the plaintiff should fail or neglect so to do; the defendants should not be liable "thenceforth" to pay the said royalties, "*after the time of such person commencing to work the said processes*," until the plaintiff had by law, or otherwise, put a stop to such working. But the defendants were to keep an account of all royalties, that they might be paid to the plaintiff, on the enforcement of the patent right against the person infringing the same. *Held*, that the payment of royalties was not to be suspended, under the above condition, until the plaintiff had notice of an infringement, and until he had been allowed a reasonable time to institute proceedings to restrain the same.—*Henderson* v. *Mostyn Copper Co.*, Law Rep. 3 C. P. 202.

Railway.—1. A train of the defendants, while stationary on their railway, was run into by, and by the fault of, another train. Several companies had running powers over that part of the defendants' line, and no evidence was given whether the moving train belonged to or was under the control of the defendants. *Held*, that *prima facie* defendants were liable.—*Ayles* v. *South Eastern Railway Co.* Law Rep. 3 Ex. 146.

2. A railway carriage, on which the plaintiffs (husband and wife) were passengers to R., on reaching R. overshot the platform on account of the length of the train. The passengers were not warned to keep their seats, nor was any offer made to back the train to the platform, nor was it so backed. After several persons had got out of the carriage the husband did so, and the wife then took his hands and jumped from the step, and in so doing strained her knee. There was no request made to the Company's servants to back the train, or any communication with them. It was daylight. *Held* (*per* Martin, Bramwell, and Pigott, BB.; Kelly, C.B., *dissentiente*), that there was no evidence for the jury of negligence in the defendants.—*Siner* v. *Great Western Railway Co.*, Law Rep. 3 Ex. 150.

3. The plaintiff, on getting into a railway carriage, having a parcel in his right hand, placed his left hand on the back of the open door to aid him in mounting the step. It was after dark, and he could see no handle, if there was one. The guard, without warning, slammed the door, throwing the plaintiff forward, and crushing his hand between the door and door-post. *Held*, (by Byles and Keating, JJ.; Montague Smith, J., *dissentiente*,) that the jury were justified in finding that the guard was negligent, and that the plaintiff was not, and that the injury was not too remote to be recovered for.—*Fordham* v. *Brighton Railway Co.*, Law Rep. 3 C. P. 368.

4. But when the plaintiff had entered the carriage, and a porter gave warning, and then shut the door, in the ordinary course of his duty, the other facts being as above, *Held*, that the plaintiff could not recover.—*Richardson* v. *Metropolitan Railway Co.* Ibid. 374, in notes.

Slander.— Slander: "You have heard what has caused the fall" (*i. e.*,' in certain shares); "I mean, the rumor about the South Eastern Chairman having failed:" meaning thereby that the plaintiff had become insolvent. Plea, that defendant meant, and was understood to mean, that there was a rumor to the above effect, and not that the plaintiff had become insolvent, as in the inuendo alleged, and that it was true that there was such a rumor. *Held*, that the plea was bad. The existence of the rumor did not justify its repetition, the latter not being shown to be privileged, and the truth of the rumor not being pleaded.—*Watkin* v. *Hall*, Law Rep. 3 Q. B. 396.

Stoppage in Transitu.-Goods were shipped by A. in Calcutta to B. in England. B. pledged the bill of lading to C., and afterwards became bankrupt. On the arrival of the ship in which the goods were, C. obtained from the ship's brokers, on payment of the freight, an overside order for the delivery of the goods. This order was presented to the officer of the ship, who promised C. should have the goods as soon as they could be got at. Before the ship broke bulk, A. forbade the delivery of the goods. *Held*, that A. had not lost his right of stoppage *in transitu*. The goods were not brought into the possession, actual or constructive, of B. by the promise to C. After satisfying C., A. had a right to the surplus proceeds, as against the assignees in bankruptcy of B.—*Coventry* v. *Gladstone*, Law Rep. 6 Eq. 44.

Undue Influence.—Persuasion is not unlawful; but pressure, of whatever character, if so exerted as to overpower the volition, without convincing the judgment, of a testator, will constitute undue influence, though no force is either used or threatened.—*Hall* v. *Hall*, Law Rep. 1 P. & D. 481.

RECENT AMERICAN DECISIONS.

Assumpsit.—In *assumpsit* by the owners of a vessel against the master for earnings, a release by one of the plaintiffs is a bar to the action; and evidence of collusion between the parties to the same is inadmissible to change its effect.—*Hall* v. *Gray*, 54 Me. 230.

Bills and Notes.—An instrument promising to pay "five hundred" to A. or order, but having "$500" on its face, *held*, a promissory note.—*Corgan* v. *Frew*, 39 Ill. 31.

Broker.—1. The plaintiff employed the defendant, a broker, to carry stock for him; and, the former having failed to make good a margin on demand, the latter sold the stock within two hours. This was in May. In September, the plaintiff demanded an account of the sales, and received and drew a cheque for the balance due him. This suit was not begun till December. *Held*, that, even if time enough had not been allowed the plaintiff before selling, the sale had been ratified by him.—*Hanks* v. *Drake*, 44 Barb. 186.

2. Such a contract is rather a conditional sale than a pledge; and on the failure of the principal to make the margin good on demand, the broker may sell without giving him notice of the time or place of the sale.—*Markham* v. *Jaudon*, 49 Barb. 462.

Carrier.—1. A., the day after delivering

hay to a railroad company for transportation, requested them not to forward it until he had seen the party to whom he had sold it. The hay had been put on platform cars, where it was left, and the next day it was burnt by sparks from an engine. *Held*, that, by the request of A. the liability of the bailees, as carriers, ceased; and they were only liable for negligence as warehousemen.—*St. Louis, A. & T. H. R. R. Co.* v. *Montgomery*, 39 Ill. 335.

2. Checks for luggage worth $456.35 were delivered to a carrier, and a receipt taken, on which was printed, "Liability limited to $100, except by special agreement, to be noted on this card." There was no proof of assent to these terms, except the taking of the receipt. The luggage was lost by the carrier's negligence. *Held*, that the carrier was liable for its whole value. It did not appear the contract was assented to; and, if it was, it did not limit his liability for negligence, but only as an *insurer*. —*Prentice* v. *Decker*, 49 Barb. 21.

Criminal Law.—It is error in a judge to give any charge to the jury in the absence of the prisoner.—*State* v. *Blackwelder*, 1 Phillips, N. C. 38.

Damages.—In an action against a common carrier for damages caused by unjustifiable delay in transporting flour, the decline in its market value between the time when it actually arrived at the place of destination, and when it would have arrived but for the delay, may be considered by the jury in ascertaining the actual damages of the plaintiff.—*Weston* v. *Grand Trunk R. Co.*, 54 Me. 376.

Divorce.—Complainant having a domicile elsewhere, brought her trunk into a State, and immediately began a suit for divorce for her husband's adultery. *Held*, that she was not an inhabitant or resident of the State, within the Statute giving the Court jurisdiction.—*Winship* v. *Winship*, 1 C. E. Green, 107.

Evidence.—Statute of Limitations pleaded, and presiding judge could not determine whether the date of the note declared on was January or June. *Held*, that extrinsic evidence was admissible to show the true date, and that the question was properly left to the jury.—*Fenderson* v. *Owen*, 54 Me. 372.

Factor.—A factor who makes advances on account of goods consigned to him, has a right to sell enough of the same, according to the usual course of his duty, to reimburse such advances, notwithstanding orders to the contrary from the consignor.—*Whitney* v. *Wyman*, 24 Md. 131.

Fixtures.—1. Fruit trees and ornamental shrubbery in a nursery pass with the land as between vendor and vendee; and evidence of a verbal agreement for their reservation, contemporaneous with, but not contained in, the written contract is not admissible.—*Smith* v. *Price*, 39 Ill. 28.

2. Timber trees cut down and lying on the land where they fell, with tops and branches still on, pass by a warranty deed of the land. Otherwise, it seems, if cut into logs or hewed into timber.—*Blackett* v. *Goddard*, 54 Me. 309.

3. A marine railway, consisting of iron and wooden rails and sleepers, endless chain, gear, wheels and ship cradle, the sleepers being laid on the ground in the usual way, with a road bed of earth, so far as one is required, is a fixture, and passes by a levy upon the realty.—*Strickland* v. *Parker*, 54 Me. 263.

Fraud.—The defendant, a creditor to a large amount, being inquired of as to the solvency of his debtor, wrote a letter speaking well of it, and not mentioning the debt due to himself. Credit was given thereupon which would have been refused had said debt been known of. Defendant having exhausted the debtor's goods in paying his own debt, *held*, that he was liable to the extent of the above credit.—*Viele* v. *Goss*, 49 Barb. 96.

Statute of Frauds.—1. Defendants' wood agent agreed verbally to take all the wood the plaintiff would put on the line of their road; and the plaintiff spoke of cutting and hauling the wood from his own land, naming a particular place. He cut wood accordingly, landed it within the limits of the road, and called on the wood agent to measure it. The latter said he would, but did

not; and, after two or three years, the wood was burned by fire from defendants' engines. *Held*, that the contract was for a sale, and within the Statute of Frauds, and not for the manufacture of particular wood into cordwood. Also, that there was no evidence that the defendants accepted the wood.—*Edwards* v. *Grand Trunk Railway*, 54 Me. 105.

2. The plaintiff, being indebted to one of the defendants in a sum equal to or exceeding a debt from the defendants to him, it was agreed by parol that the amount due him should be applied upon his indebtedness, and the latter cancelled. The plaintiff was to give a receipt, which was never done. *Held*, that his claim was not extinguished. This was a sale of a chose in action by the plaintiff, and void by the Statute of Frauds, while resting merely in parol.—*Brand* v. *Brand*, 49 Barb. 346.

Husband and Wife.—The courts of North Carolina will not interfere to punish a husband for the moderate correction of his wife, although unprovoked.—*State* v. *Rhodes*, 1 Phillips, N. C. 453.

Illegal Contract.—A clause in a policy of insurance, stipulating that in case any dispute shall arise in relation to any alleged loss, no policy holder shall maintain any action thereon until he shall have offered to submit his claim to referees to be mutually chosen by the parties, and that, in case of any suit being commenced without such offer of reference, the company shall be exempted from all liability to the plaintiff's claim: *held*, void.—*Stephenson* v. *Piscataqua* F. & M. Ins. Co., 54 Me. 55.

Indictment.—An indictment alleging that the accused "feloniously, wilfully, and of his malice aforethought, did kill and murder," will sustain a verdict of guilty of murder in the first degree, although that is defined by Statute as murder "with malice *express* aforethought."—*State* v. *Verrill*, 54 Me. 408.

Insurance.—Temporary repairs were made upon a vessel in a foreign port by the insured, by the written authority of the insurers, in a case where they might have abandoned for a total loss, in order that the vessel might be brought to the port of destination, and there permanently repaired at less cost. *Held*, that the liability of the insurers was not limited by the sum insured, but that they were liable for the whole expense of the temporary as well as the permanent repairs.—*Alexander* v. *Sun Mutual Ins. Co.*, 49 Barb. 475.

Master and Servant.—A railroad bridge, which was properly built in all respects, fell in consequence of dry rot, and killed a servant of the company. The day before, it had been inspected by the repairer of bridges and division superintendent, and watched under the weight of a freight train, and was thought sound. *Held*, that the company were not liable, either for negligence as to their bridge or for the employment of incompetent persons to examine the bridge.—*Faulkner* v. *Erie R. Co.*, 49 Barb. 324.

Nuisance.—1. A tomb on defendant's land, within forty-four feet of plaintiff's windows, formerly contained bodies, which were removed because their effluvia rendered the plaintiff's house unwholesome. Afterwards, another body was put therein, and the plaintiff's life was made uncomfortable by apprehension of danger from that cause; and the value of his house was lessened by $1000 or $1500, although no bad smell had been perceived at the date of the writ. *Held*, that on these facts a nonsuit was improperly ordered.—*Barnes* v. *Hathorn*, 54 Me. 124.

2. The common law allows the owner of the soil over which a floatable but innavigable stream flows, to build a dam across it and erect a mill thereon, provided he makes a convenient and suitable passage way for the public by or through the dam. —*Lancey* v. *Clifford*, 54 Me. 487.

Principal and Agent.—A cashier received at his bank a sum of money from the plaintiff, with orders to apply it to a note of the latter, then not due. He did apply it to another note signed by the plaintiff as surety, which was overdue, both of said notes being payable to said bank. The plaintiff never acquiesced in said application. *Held*, that the cashier was personally liable for said money with interest from the time when received, whether he applied it to his

own use or that of the bank.—*Norton* v. *Kidder*, 54 Me. 189.

Proximate Cause.—Defendant kindled a fire upon his land for purposes of husbandry. Two days later, a violent wind arose, and carried some of the fire sixteen rods to the plaintiff's woodland, where it became unmanageable. *Held*, that defendant was liable for the damage, if it was owing to a want of ordinary care on his part, either in the time or manner of kindling, or in the means used to prevent the spreading of the fire.—*Hewey* v. *Nourse*, 54 Me. 256.

Robbery.—The robbery of one walking on a railroad is not robbery in a highway, within the meaning of a penal statute copied from 23 H. VIII. c. 1, §3, and 1 Ed. VI. c. 12, §10.—*State* v. *Johnson*, 1 Phillips, N. C. 140.

Sale.—1. Defendant, being then in good standing, gave a verbal order for spirits, which were forwarded by rail and stored. He was in fact insolvent at the time of the order, and knew this before paying the freight and taking the goods into his custody. The jury were instructed that, if he received the goods with intent not to pay for them, the sale was void, although he had no such design when be ordered the same. *Held*, correct.—*Pike* v. *Wieting*, 49 Barb. 314.

2. A vendor, after the refusal of the purchaser to perform his part of the bargain, may sell the goods without notice of the time or place of sale to said purchaser, and wherever he can get the best price and readiest sale within the usual course of trade, he not being restricted to the place of delivery.—*Lewis* v. *Greider*, 49 Barb. 606.

Slave.—A homicide was committed by the prisoner when a slave, and he had since become free. *Held*, that this did not operate a pardon.—*State* v. *Brodnax*, 1 Phillips, N.C. 41.

Surety.—A surety requested the creditor "to wait on" the principal "as long as he could;" and the creditor afterwards gave the latter a written extension for a year. *Held*, that the question, whether the above words authorized a legal contract for delay, so as to prevent the discharge of the surety, was a question for the jury.—*Treat* v. *Smith*, 54 Me. 112.

Trade Mark. — Plaintiffs made cement from lime beds near Akron, Erie County, known and sold as "Akron Cement," and "Akron Water Lime;" the packages being marked "Newman's Akron Cement Co., manufactured at Akron, N. Y. The Hydraulic Cement, known as the Akron Water Lime." Defendants not being inhabitants of Akron, but owning lime beds near Syracuse, in Onondaga County, and knowing that plaintiffs' cement was sold by above names, named their beds "Onondaga Akron Cement and Water Lime," and afterwards sold their cement in the places where the plaintiffs' was sold, in packages marked "Alvord's Onondaga Akron Cement, or Water Lime, manufactured at Syracuse, New York." *Held*, that the word "Akron" was a trade mark, and the use of it was enjoined.—*Newman* v. *Alvord*, 149 Barb. 588.

Will.—Testator asked a witness to read a paper, which he did, silently. The testator then asked him to witness his signature, and said, in answer to questions, that he had heard the paper read, and thought it was all right. Another person was then called into the room, and asked by the testator to witness his signature. Both witnesses then signed. Nothing was said as to what the paper was. *Held*, that this was not a sufficient publication.—*Abbey* v. *Christy*, 49 Barb. 276.

CIRCUIT COURT, QUEBEC.

SEPTEMBER TERM, 1868.

Coram MEREDITH, C. J.

SIMARD *v.* ROY.

Held, that when the writ of summons contains a conclusion for the costs of suit, it is not necessary that there should also be one in the declaration annexed.

DAWSON *v.* BREWIS.

Held, that an exception to the form upon the ground of the falsity of the affidavit of the plaintiff, is a good plea to a seizure be-

fore judgment, grounded on an affidavit that the defendant was secreting his effects.

By the Court.—I hold that the form of pleading adopted by the defendant in this case is a correct one, and have therefore proceeded to examine the case upon its merits. I have come to the conclusion that the plaintiff had good cause to make the affidavit which he made in the case.—(I. T. W.)

LORD CRANWORTH.

Robert Monsey Rolfe was born at Cranworth, in the county of Norfolk, England, December 18th, 1790. He was the eldest son of the clergyman of that Parish, the Rev. Edmund Rolfe, who was first cousin of the renowned Admiral Lord Nelson. He attended the grammar school of Bury St. Edmunds; going from there to Winchester College, and finishing his collegiate education at Trinity College, Cambridge. He came out as Master of Arts in 1812, with the moderate rank of 17th wrangler, and was in the same year elected to a fellowship at Downing College. Having been a law student at Lincoln's Inn, he was called to the bar there in 1816. He began as an Equity barrister, and for many years worked hard at Lincoln's Inn, on a small and slowly increasing Chancery practice. He became Recorder of Bury St. Edmunds, and in 1832 was made a king's counsel by Lord Brougham. He was returned to the Reformed Parliament in the Liberal interest, in December, 1832, as member for the Cornish borough of Penryn, and continued to represent it until 1839. On the 6th of November, 1834, during Lord Melbourne's first administration, he was made Solicitor General; but, retiring with the Whig Ministry the very next month, he remained out of office during the brief rule of Sir Robert Peel. He resumed it again in the spring of 1835, under Lord Melbourne, and held it until his appointment as a puisne Baron of the Court of Exchequer in 1839. When Lord Cottenham left the woolsack in 1850, Baron Rolfe was appointed one of the three Commissioners of the Great Seal, and held the office for a brief period. After the death of Sir Lancelot Shadwell, he was, November 2nd, 1850, made one of the Vice-Chancellors, and a month later was raised to the peerage with the title of Baron Cranworth. This creation was the first and only instance of a Vice-Chancellor receiving a peerage. In less than a year after, he became one of the two Lords Justices of the Court of Appeal in Chancery, and in December, 1852, he was appointed Lord Chancellor of Great Britain; continuing in office during Lord Aberdeen's ministry and during that of Lord Palmerston, which followed it. The Tories came into power again with the Earl of Derby's second administration, February 21st, 1858, and Lord Cranworth had then to yield to an eloquent barrister, Sir Frederick Thesiger, who took his seat on the woolsack with the title of Lord Chelmsford. Lord Cranworth was passed over for Lord Campbell, when Lord Palmerston's second administion began in June, 1859. Lord Westbury succeeded Lord Campbell, who died in office in June, 1861. The unhappy complications in which Lord Westbury became involved by the disgraceful proceedings of his eldest son led to his abandoning the Chancellorship, and Lord Cranworth was again elevated to the woolsack. This unexpected appointment was attributed by some to a desire on the part of the government to save one ex-chancellor's pension, as there were at that time four "Dowager Chancellors" (Lords Brougham, St. Leonards, Cranworth, and Chelmsford) drawing a pension of £5,000 a year each. Lord Cranworth did not long retain the office, for the Earl of Derby came into power a third time, June 27th, 1836, and Lord Chelmsford resumed the woolsack. Since his retirement, Lord Cranworth performed his share of the duties of the House of Lords, but had of late become quite infirm, so that his death, which occurred on July 26th, 1868, created no surprise. Lord Cranworth was not distinguished by any great talents, and was in no sense a marked man. Lord Romilly said

of him in the House of Lords, the day after his death:—"He was pre-eminently distinguished for three qualities, his candor and fairness, his common sense, and his gentlemanly feeling and bearing towards all with whom he was brought into contact." Lord Cairns used on the same occasion rather warmer language, not attributing to Lord Cranworth, however, the possession of any brilliant or uncommon qualities. He said: "My Lords, of the loss of Lord Cranworth to those who have had the privilege of enjoying his friendship, I feel it impossible for me to speak. But, my Lords, this I may say, that your Lordships and the public have in him lost one who has passed through a long career of high judicial office without a tarnish on his name; one who, I venture to say, in the discharge of his great duties, for courtesy, for candor, for careful and conscientious efficiency, and above all, for sound and explicit common sense, has never been surpassed by any persons who ever before filled the same offices." Possessed of much natural capacity, by constant study and assiduous devotion to his profession, with tact, good temper, and genial manners, he rose slowly and gradually to the Lord Chancellorship, filling that as well as the antecedent positions honorably to himself and satisfactorily to the public. Although a Liberal from the first, he was nothing of a Reformer. Although a politician, he was not a statesman. He made no pretensions to being an orator. What he accomplished in life,—and he accomplished much,—what fame he gained,—and he has left a most honorable record,—was due to the exercise of those rare qualities which we have referred to.

The *London Times*, from which we copied (2 L. C. L. J. 124) an article on the retirement of Lord Cranworth from office, thus portrays him after his death. "Although Lord Cranworth lived in agitated times, he never made a personal enemy; and, although during the years in which he held the great seal he presided over debates of the keenest interest, the demeanor of the House of Lords was under him maintained unruffled. His career was of a kind of which Englishmen are not unnaturally proud. He was the son of a country parson, and he made his way in the world by his own good abilities and sterling character. A sedulous schoolboy, a successful, if not a distinguished student at the University, an advocate of trusted reputation, a judge of the first rank, both on the common law and equity sides of Westminster Hall, distinguished as a lawyer by his freedom from the prejudices of his profession, and as a politician by his perfect temper and consistency, Lord Cranworth earned the position he held with the approval of all men. It was as impossible for him to sympathize with the stormy violence of Brougham as with the dogged resistance Eldon offered to change. His life had been too easy to allow him to be revolutionary,—and, owing nothing himself to privilege, he was never tempted to engage in a vain battle in defence of privileges. He had worked hard for many years, but his labor had been well rewarded; and as he kept his mind open to fresh impressions to the last, he never sank into the optimism of those who think the world must be perfectly well ordered because they are themselves tolerably comfortable in it. Few men enjoyed greater personal popularity. He was a thorough Whig, but he never allowed the keenness of his partisanship to cloud his judgment or to warp his actions."

Another critic says:—"Sir Robert Monsey Rolfe, as Solicitor General, and as a judge, it was often said, had a kind heart and an ever smiling face. His looks did not belie the real nature of the man within. As an advocate in the courts, indeed, and as a member of the House, he showed no symptoms of fancy, or even of liveliness; and he seemed as if he could not for the life of him imagine what anything light or playful could have to do with either side of Westminster Hall. His speeches were even dull and somnolent; and often must both the judge and the audience have desiderated a little bit of vivacity or wit. But it never came. There was nothing but an even flow of dull and dry but correct legal matter, unrelieved by the shadow of a joke or jest, even when the subject invited it; and yet

his ever pleasing countenance was radiant with smiles. When, therefore, he sat upon the bench as a judge and became Lord Cranworth, he had no jocose habits to unlearn, no impaired dignity to regret. Somewhat under the average height, rather feebly made, and with a pale complexion, slightly angular and prominent nose, his light gray amiable eyes made his personal appearance prepossessing, and their owner a favorite with all who were brought into contact with him."

GOVERNOR EYRE'S CASE.

The case of the *Queen* v. *Eyre*, in the Queen's Bench, has given rise to an extraordinary scene, which, in the language of the London *Times*, caused greater excitement in Westminster Hall, than anything that has occurred there during living memory. On the 2nd of June last, Mr. Justice Blackburn, the senior puisne Judge of the Queen's Bench, delivered a charge to the Grand Jury of Middlesex on the indictment presented against Mr. Eyre for high crimes and misdemeanors in acts of alleged abuse and oppression in the execution of his office as Governor of Jamaica.

Among other propositions, the learned Judge laid down the following, viz., That martial law anciently existed in England, in practice at least, although not sanctioned in courts of law; that after the Petition of Right, in the time of Charles I., it was abandoned in time of peace, but not expressly abandoned in time of war; that under the colonial Statutes of Jamaica, the Governor had authority to proclaim martial law for a limited period; and that the transportation of Gordon from a peaceful part of the island to a district where martial law existed, was not criminal if Mr. Eyre honestly thought that Gordon was guilty, and that there was such a danger from an organized conspiracy that it was necessary that he should be punished promptly in order to suppress the insurrection, and that a reasonable man in Governor Eyre's position would have thought as he did; and he further stated that the points of law in his charge had the sanction of the Lord Chief Justice and his brethren of the Queen's Bench. The Grand Jury, after deliberating four hours, came into court, and informed the Judge that they returned "no true bill." At the next session of the court *in banco*, the Lord Chief Justice, Sir Alex. Cockburn, took occasion to contradict some of the statements of Mr. Justice Blackburn. In reference to the assertion that the law laid down in the charge had the assent of other members of the court, he read from a written paper as follows:—

"There was, undoubtedly, a proposition of law, which seemed to us sufficient for the guidance of the jury, and which we understood was to form, if I may so express myself, the basis of the charge, on which proposition we were all agreed; namely, that, assuming that the governor of a colony had, by virtue of authority delegated to him by the Crown, or conferred on him by local legislation, the power to put martial law in force, all that could be required of him, so far as affects his responsibility in a court of criminal law, was, that in judging of the necessity, which it is admitted on all hands, affords the sole justification for resorting to martial law,—either for putting this exceptional law in force, or prolonging its duration, he should not only act with an honest intention to discharge a public duty, but should bring to the consideration of the course to be pursued, the careful, conscientious and considerate judgment which may reasonably be expected from one invested with authority, and which, in our opinion, a governor so circumstanced is bound to exercise before he places the Queen's subjects committed to his government beyond the pale and protection of the laws."

This proposition, the Chief Justice said, had received the assent of the Court, in consultation with Mr. Justice Blackburn, and, indeed, this is contained in the charge. But the Chief Justice proceeded to say, that as far as he was individually concerned, there were in the charge of the learned judge, certain propositions of law from which he altogether dissented. He denied

that martial law, as we now understand it, was ever legally exercised in England against civilians not taken in arms, and expressed very grave doubt whether the martial law which the Jamaica statute authorized the governor to put in force, was anything more than a levy of the inhabitants, and their subjection, while in the military service, to military law. And, finally, he emphatically repudiated all concurrence in the opinion that the removal of Gordon to the proclaimed district was legally justifiable. "Assuredly," said he, "had I known that the law would have been laid down as it is understood to have been stated, I should have felt it my duty to attend in my place in court on the occasion of the charge being delivered, and to declare my views of the law to the jury."

Mr. Justice Blackburn then gave some explanation of the way in which the misunderstanding arose. He said that he had read carefully the charge of the Lord Chief Justice, in the case of *Regina v. Nelson and Brand*, and thought that he agreed with the opinions there expressed, so far as was necessary for the purpose of his instructions to the Grand Jury; that the main points of the charge, on which all the judges were agreed, he had reduced to writing, and read to them, and had then too briefly stated to them the other minor points of his charge. His own mind, he said, was so full of what he had been deliberating on, that he did not sufficiently explain his opinions to the other members of the court. With regard to the instructions on the evidence, however, he took the entire responsibility, and he so stated to the jury, while informing them of the agreement of his brethren on the matters of law.

The Chief Justice then reiterated his former statement that he had heard nothing from the learned judge, excepting the proposition as to the responsibility of the governor, and in this Mr. Justice Lush concurred.

BANKRUPTS ON THE BENCH.—The following, from the London *Law Times*, shows that even in England the Bench is not wholly free from bankrupts:—

"For some little time past the Judge of a metropolitan County Court has been unable to sit, having been arrested at the suit of a creditor. We do not state particulars because the scandal is sufficiently widespread already, and we here desire only to call attention to the fact that there appears to be no power of removing a County Court Judge, who, by reason of his liabilities, is an unfit person to fill the office. The grounds upon which he may be removed are "inability and misbehavior," but under neither of these headings, strictly speaking, can a Judge be brought who is simply in debt, unless he be continuously in the hands of the sheriff, when, doubtless, the term "inability" would apply. Of all persons the County Court Judge should be free from the stigma of insolvency, his principal duty being to compel the payment of debts due—a compulsion which he must exercise with a very bad grace when he himself is a more extensive sinner. In the particular instance we fear there is much cause to anticipate some inconvenience and considerable scandal."

MEASURE OF DAMAGES.

Cory *v.* The Thames Ironworks and Shipbuilding Company, Law Rep., 3 Q. B. 181.

Although the jury have always, or nearly always, to decide upon the amount of damages that a plaintiff is entitled to recover in an action, they are bound to adopt the scale or method of ascertaining such amount that is pointed out to them by the judge presiding at the trial. The rule by which the damages must be calculated is called "the measure of damages," and is a question of pure law with which the jury are not concerned. For instance, to take the simplest possible example, the measure of damages for breach of a contract to deliver goods is, in the absence of any special circumstances, the difference between the agreed and the market price at the time of the breach. The law being that

this is the true measure of damages, it is for the jury to say what is the amount of the difference between the market price and the agreed price of the goods. There may, however, be special circumstances which render this rule inapplicable, and Hadley *v.* Baxendale (2 W. R. 302, 9 Ex. 341), is the leading case on this subject. The rule there laid down is "where the parties have made a contract which one of them has broken, the damages which the other party ought to receive in respect of such breach of contract should be either such as may fairly and reasonably be considered as arising naturally, *i.e.*, according to the natural course of things, from such breach of contract itself, or such as may reasonably be supposed to have been in the contemplation of both parties at the time they made the contract as the probable result of the breach of it." This rule has frequently been acted upon, but difficulty is found from time to time in applying it to the facts of a particular case.

In Cory *v.* The Thames Ironworks and Shipbuilding Company, a question arose as to the measure of damages upon the breach of a contract for the sale of a "derrick" or large flat-bottomed vessel or float. The defendants did not deliver the derrick until six months after the stipulated time. The plaintiff purchased the derrick in order to erect on it hydraulic cranes, for the purpose of unloading coals from vessels in the Thames. This was an entirely new contrivance, as no vessel had ever been used in this way before, and the defendants were not aware of the use to which the plaintiff intended to put the derrick, but thought it was to be used as a coal store, which was the most obvious use to which it could be applied. The plaintiff, in anticipation of having the derrick at the stipulated time, procured new steamtugs and certain machinery, and in consequence of the delay of six months before the derrick was delivered, he lost a considerable sum of money from the steamtugs and the machinery being useless, or nearly so, during that time. The value of the derrick as a coalstore during the period of six months would have been about £450, much less than the plaintiff had actually lost. The question was, first, whether the plaintiff was entitled to recover only the £450, or whether he might not recover the larger amount which he had lost. The defendants also argued that as the plaintiff did not intend to use the derrick as a coalstore, he could not recover damages for not having the vessel for that purpose; that as the defendants did not know the actual use to which it was proposed to put the derrick, they were not liable for the actual damage sustained.

Cockburn, C.J., thus laid down the rule applicable to this case: "Where the buyer may have suffered a loss by reason of the non-delivery of a thing intended for some special or extraordinary purpose, the seller is not liable for that loss, unless it was brought within his contemplation at the time of the sale. But he ought to be made to pay to this extent, so far as he had in his contemplation the loss of profits which would result by its not being applied, by reason of non-delivery, to the ordinary purpose for which he supposed it to have been purchased." The plaintiff was therefore entitled to recover the £450, as he had actually suffered that loss, and as he would have suffered that loss if the derrick had been employed in the most obvious way in which it could have been used. This case, it will be seen, quite agrees with Hadley *v.* Baxendale, but in addition it explains and decides a point that apparently had not before been decided.—*Solicitors' Journal.*

THE DIGEST OF LAW COMMISSION.

The Digest of Law Commissioners have chosen for the preparation of specimen digests, Mr. Henry Dunning Macleod, on the law of bills of exchange; Mr. William Richard Fisher, on the law of mortgages, and Mr. John Leyburn Goddard on the law of easements. Mr. Macleod has been at the bar, but, we believe, without practice, nearly twenty years, and is well known as the author of a very exhaustive work on the theory and practice of banking. Mr. Fisher is an

Equity draughtsman and conveyancer. He was called to the bar in 1851, and is the author of one of the standard works on mortgages. Mr. Goddard has been scarcely six years at the bar, and is wholly unknown in the world of authorship upon the subject to which he has been appointed.

There were thirty-six competitors upon the subject of mortgages, and amongst them was a learned sergeant in company with several men well-known in authorship and in practice. Twenty-four gentlemen competed in the treatment of bills of exchange, a partner in a joint production being a Queen's Counsel of some reputation. Upon the branch easements and servitudes, twenty-seven papers were sent in, some of them emanating from gentlemen of long standing, and erudition, well known in authorship and practice.

We must remark upon the selection made by the commissioners as we remarked when competition by the whole bar was invited, namely, that it would have been better to have entrusted the work to known authors without competition. Had this course been pursued, in all probability Mr. Macleod and Mr. Fisher would have been selected. Mr. Goddard alone would have been placed at a disadvantage. He has won the prize in a competition which was severe, and to him is due every credit. We say that it would have been well to adopt this course, because it is impossible to forget what an amount of time and labor has been wasted, and expense incurred by gentlemen ill able to spare either time or money, and how great the disappointment of many.—Granted that all this must have been contemplated by the competitors; nevertheless the competitive system was a bad system to apply to such a purpose. We trust, however, that the result will be satisfactory.—*The Law Times.*

MOUSTACHES AT THE BAR.

The question of the right of barristers to wear moustaches has just been again raised in Paris. A young advocate named Ferrand, on whose upper lip might be seen a growth of hair evidently cultivated with some care, came before the Tribunal of Correctional Police, the day before yesterday, in some affair of no importance. After apologizing to the court for having caused the postponement of the case in consequence of his having been engaged before the Military Tribunal, he was about to proceed, when the judge, looking at the offending ornament on the gentleman's face, said, smiling, "Where you have just been pleading there may not have been any objection to the ornament on your upper lip, but here you must be aware it is not permitted." The barrister had, however, come prepared with his own defence, and, after protesting that he was not infringing any regulations, showed that the whole question of costume was based on a decree of 1810, which contained no prohibition, and maintained the previous ordinances on the subject. "As to the custom of the former Parliament," he continued, "it is sufficient to raise your eyes to those portraits which we admire around us to see that the faces of those judges and advocates are adorned with majestic beards." He added that the question had recently been raised with respect to the National Guard Mobile, when the minister of Justice had replied to an application to allow moustaches at the Bar, by declaring there was no need to permit it as it was not forbidden. M. Ferrand also said that he had already pleaded in the same court as he then appeared. "In that case," said the judge, "you may do so today, but we shall make an enquiry into the matter."—*Paris Correspondent of the Times.*

CONFESSION.

A controversy is raging whether, if the ministers of religion in a gaol receive a confession from a convict, they are bound to communicate it to the public. We cannot understand the affirmative argument. Where lies the moral obligation to divulge any secret, much less a secret revealed in the confidence that it will never pass beyond the ear that receives it? No public interest whatever is to be served by it. A confession has no other advantage than that it relieves certain restless minds from an uncomfortable feeling of doubt. A con-

fession does not strengthen the verdict, nor does nonconfession weaken it. It is desirable that a criminal should confess, not for the benefit of the public, but for his own sake, because it is the first step to repentance; but for this purpose the confession is the same, whether made to one or to many. As being a question wholly between the criminal and his God, we have no hesitation in asserting that all confessions made to ministers of religion in the performance of their duties should be privileged, like those made to an attorney. It is for the temporal advantage of the criminal that he is allowed to make a clean breast of it to his solicitor, and it is for his spiritual and eternal advantage that he should do the like to his minister, and it would be humane, right and politic to encourage him to save his soul by the assurance that he will not thereby destroy his body.—*The Law Times.*

A ROMANTIC LAW CASE.

The courts of law will in all probability be occupied early in the ensuing session with one of those remarkable cases which so often occur in romances, and so seldom in real life. It appears that about a hundred and twenty years ago a large estate, close to one of the most important of English manufacturing towns, was in the possession of the great grandfather of the parties to the present litigation. Since that time the land has been built upon to a great extent, and now forms the most wealthy suburb of the town in question. At the death of the owner, his eldest son, finding that there was no will, naturally claimed the estate. The children of a second marriage, however, who had never lived on good terms with their half-brother, protested against his title on the ground that his parents had never married, and that he was consequently illegitimate. It seemed at first that there was no ground for this statement. The parents had always been received in society, and no one had ever heard of any scandal in connection with them. On making inquiry, it was, however, found impossible to discover any trace of the marriage, and the eldest son was forced to submit, and leave the home he had always considered his own, without a shilling. He went into town and embarked in trade, apparently without much success, for his grandson is at the present time a shoemaker in a back street, and in a very small way of business. The tradition of the lost estate has, however, always been preserved, and some time since this descendant of the elder son recommenced the search for proof of the marriage in question. After much trouble he succeeded in getting at the copies of the registers which are preserved in the Chancery at Chester, and there, in the index, he discovered, somewhat easier than was expected, the names of the original possessor of the estate and his first wife. There, was, however, no such entry in the body of the book. At last, however, in going through it for the last time, it was discovered that two leaves had been fastened together, and on their being separated a copy of the entry of the marriage from the books of a Manchester church was duly found. On referring back to the church itself, the book was produced, but the entry was not there. Further examination showed, however, that this book had been tampered with, but in a different way—a leaf had been cut out with scissors, and the marks were even then distinctly visible. On these facts the action will be brought, and when it is remembered that the present family have been in possession for nearly a century, and that they are highly respected, and their members married among the wealthiest people in the county, it may readily be imagined that the matter is creating a good deal of interest. The value of the property at stake is between one and two hundred thousand pounds.—*Western Morning News (English.)*

LORD PLUNKET.

The son of a Presbyterian clergyman in the North of Ireland, he was left by his father's death penniless at an early age; but having, through the kindness of friends, gained an education at Trinity College,

Dublin, and afterwards an entry into Lincoln's Inn, London, he was called to the Irish bar in 1787. His studies had been pursued with unflagging zeal and industry. He had debated every inch of ground with Fearne (his favourite author) on the battle field of contingent remainders; and his success at the bar was immediate, and his rise rapid. He attended closely to his profession, and kept aloof from the allurements of political life, until 1798, when he entered the Irish Commons. It is here that are found Plunket's first reported political speeches; and though his arguments afterwards delivered in England, both to the Lords and Commons, may perhaps be more comprehensive, statesmanlike and elegant, here he exhibited a greater eloquence, a stronger and more heartfelt passion and sarcasm, than can be found in his more elaborate orations.

Nature had added to the great gifts of mind an imposing personal appearance. His features and voice added weight to his words. What had been in youth "a clever, hard-headed boy, very attentive to his studies, and very negligent of his person," had become a tall, robust and compact man. "His face," says Mr. Shiel, "is one of the most striking I ever saw; and yet the peculiarity lies so much more in the expression than in the outline, that I find it hard to describe it. The features, on the whole, are blunt and harsh. There is extraordinary breadth and capacity of forehead; and when the brows are raised in the act of thought, it becomes intersected with an infinite series of parallel lines and folds. His eloquent contemporary, Charles Philips, has thus sketched him: "Who is that square-built, solitary, ascetic-looking person, pacing to and fro, his hands crossed behind his back, so apparently absorbed in self,—the observer of all, and yet the companion of none? It is easy to designate the man, but difficult adequately to delineate his character. Perhaps never was a person less to be estimated by appearances: he is precisely the reverse of what he seems —externally cold, yet ardent in his nature; in manner repulsive, yet warm, sincere and steadfast in his friendships; severe in aspect, yet in reality sociable and companionable. That is Plunket, a man of the foremost rank, a wit, a jurist, a statesman, an orator, a logician, the Irish Gysippus, as Curran called him, in whom are concentrated all the energies and talents of the country."

It was in Chancery that his reasoning powers had their fullest effect, and it was there that his greatest practice lay, there that he obtained the largest professional income at the Irish bar. Mr. Shiel gives a graphic and amusing picture of his equity arguments: "There is one peculiarity in his powers," he says, "which, to be adequately comprehended, must be actually witnessed. I allude to his capacity of pouring out, I would almost say indefinitely, a continuous, unintermitted volume of thought and language. In this respect, I look upon Mr. Plunket's going through a long and important argument in the Court of Chancery, to be a most extraordinary exhibition of human intellect. For hours he will go on, with unwearied rapidity, arguing, defining, illustrating, separating intricate facts, laying down subtle distinctions, prostrating an objection here, pouncing upon a fallacy there; then retracing his steps, and restating, in some original point of view, his general proposition; then flying off again to the outskirts of the question, and dealing his desultory blows, with merciless reiteration, wherever an inch of ground remains to be cleared, and during the whole of this does not his vigor flag for a single instant,—his mind does not pause for a second for a topic, an idea, or an expression. This velocity of creation, arrangement and delivery, is quite astonishing; and what adds to your wonder is, that it appears to be achieved without an effort.

Unlike Erskine, Plunket increased his general reputation by his parliamentary efforts. Upon the passage of the Union, he retired from political life to the practice of his profession.

It was at this time that he was retained in the prosecution of Robert Emmett. After successively filling the positions of Solicitor

and Attorney General of Ireland, he was, in 1812, elected to the English House of Commons as the representative of Dublin. For fifteen years he continued a member of the House; and in successive parliaments, in which Grattan, Brougham, Canning, Mackintosh, Romilly and Peel, contended for pre-eminence in debate, it is admitted he had no superior as a public speaker. Comparing him with his greatest rivals, he had not the imagination of Grattan, the brilliancy of Canning, the depth of Mackintosh, or the versatility of Brougham.

In 1822, Plunket was again made Attorney General of Ireland; and in 1827, when Canning became minister, he was raised to the peerage, and nominated to the office of Master of the Rolls, in England. The latter appointment was cancelled, on account of the objection of the English bar to the intrusion of an Irishman; and he was given the Chief Justiceship of the Common Pleas in Ireland. This he held but a short time, and in 1830 he was made Chancellor of Ireland. He held the seals, with the exception of a few months, until 1841, when he was removed, through a political intrigue, for the purpose of giving the Chancellor's retiring pension to Lord Campbell. "It was," says Lord Brougham, "the most gross and unjustifiable act ever done by party, combining violence and ingratitude with fraud." At the period of retirement, though at the advanced age of seventy-five years, he was in perfect possession of his powers. After a brief tour on the continent, he retired to his country seat at old Connaught, where he lived, surrounded by his family, until his death, in 1854, in his ninetieth year. It is related that the old man, in his last years, dead to the present, was wont to rehearse with his descendants, fresh from college, those passages of the ancients which had inspired his eloquence and formed his taste in youth; and to drive often to the hill side, whence he could view the dome of the Four Courts, the arena of his professional victories. In that arena is now placed a marble statue of him, with the inscription on its pedestal, "Erected by the Bar of Ireland."—*Am. Law Review.*

THE NEW JUDGES.

The three new judges authorized by the Election Petitions Act have been selected. They are Sir W. B. Brett, the Solicitor General; Mr. Sergeant Hayes, and Mr. Cleasby, Q.C. Sir W. B. Brett was called to the bar at the Inner Temple in January, 1846. He was made a Queen's Counsel in 1861, and Solicitor-General in 1868. He represents in Parliament the borough of Helston.

Mr. Sergeant Hayes was called to the bar at the Middle Temple in January, 1830. He was raised to the degree of the coif in 1856, and received the patent of precedence. He has long been a leader of the Midland Circuit. He had the reputation of being the wittiest man at the bar.

Mr. Cleasby was called to the bar at the Inner Temple in 1831. He was made Queen's Counsel in 1861. He has enjoyed an extensive practice in the Northern Circuit, and last year was an unsuccessful candidate for the University of Cambridge, having been defeated by Mr. Beresford Hope. Although appointed under the provisions of the Corrupt Practices Act of last session, the new judges will not of necessity be "the bribery judges." To this unpleasant and somewhat degrading duty one judge of each court is to be condemned by the vote of his brethren. It is reported that Sir W. B. Brett has been preferred to the Common Pleas, Mr. Sergeant Hayes to the Queen's Bench, and Mr. Cleasby to the Exchequer. All the new judges are said to be Conservatives. Some criticism is expressed by the newspapers on these new appointments, for the reason that the Conservative government, having already had an unparalleled amount of legal patronage at its disposal, has not seen fit to fling a few crumbs to its political opponents. A more serious defect in the English system seems to be, that almost every judicial office is filled, no matter which party may be in power, by lawyers who are also politicians. A seat in Parliament is nearly indispensable to legal preferment.—*Am. Law Review.*

THE LAW OF LIBEL.

The Court of Exchequer has just determined a new and curious question: Is a judge liable to an action for slander for words used on the judgment seat? One of the county court judges had told a defendant on a trial before him that he was "a harpy preying on the vitals of the poor." For this the action was brought, to which the judge pleaded the privilege of his office. It was contended for the plaintiff that a judge is not wholly protected in respect of anything he may say in his capacity as a judge, and that at least the privilege does not extend to anything spoken falsely and maliciously. The judgment of the Lord Chief Baron, in which the other Barons concurred, was as follows:

It certainly raised, and perhaps for the first time, a question in relation to the judge of a county court of considerable importance, and it was for that reason, and that reason only, speaking for himself, that he thought it right to hear the entire argument on behalf of the defendant, and not at once at the outset to call upon the plaintiff's counsel to support the declaration or replication. The question was, whether an action was maintainable against a judge of a county court, which was a court of record, for words spoken by him in his judicial character, and in the exercise of his judicial functions, in a court within and over which he presided, although they might impute to the plaintiff that which, as against an ordinary individual, would constitute a cause of action, and although it would be alleged, as in the declaration, that they were spoken maliciously, without probable cause, and wilfully, that they were irrelevant to the matter in issue, and in fact spoken under all the circumstances of aggravation which it might be the object of some ingenious special pleader to devise or to invent. He said that in the largest terms, because he thought that they were bound to decide this question, so as if possible to preclude any doubt hereafter as to what the law really was upon this all important point. Now, it had been held from the time of Lord Coke to the present day, that no action could be maintained against a judge for any act done or any words spoken in his judicial capacity in a court of justice, and the whole current of decisions from that time to this, a space of 300 years, or nearly so, was uniformly to the same effect. It had been held, not only in the case of the superior courts of Westminster Hall, but in the case of a coroner's court, and in that of a court-martial, which was not a court of record, and was not, therefore, invested with all the privileges of such a court, but which was yet a court in which it was essential, as it was in all courts, that the judge or judges who were appointed to administer the law should be permitted, under the protection of the law, to administer it not only independently and freely, not only without favor, but without fear; and that provision of the law, which was as ancient as the law itself in this country, was not for the protection or in anywise for the benefit of a malicious or corrupt judge, or a judge of any court whatever. It was for the benefit of the whole people of the country, who were entitled to require that the judges should have perfect liberty, and should be protected by the law in the exercise of their functions for the advantage of the community. What judge could independently and freely, and without fear of the consequences, exercise his important functions, if he were in daily and hourly fear of an action being brought against him, and of its being left to a jury to say whether what fell from him in commenting on a question of fact, or delivering his judgment, was relevant to the matter in hand? It was impossible to hold too strongly, or in language too clear and expressive, that no such action as this, under any circumstances, could be maintained against a county court judge. The other judges being of the same opinion, judgment was given for the defendant.—*The Law Times.*

COPYRIGHT LAW.

The decision of the House of Lords in the case of Routledge v. Low will give an enormous advantage to American authors. In effect, it determines that a foreigner may acquire a copyright in England merely by being a resident in any part of the British dominions at the time of the first publication of his book; even though that residence be temporary, and the publication here is followed on the very next day by publication in his own country. If, therefore, as the law is now declared, an American author desires to obtain a copyright in England, he has but to cross the boundary into Canada for a couple of days, with half a dozen copies of his yet unissued book in his carpet bag, and then offer it for sale, and he acquires to himself the benefit of a British copyright, which means a revenue levied upon two generations of English readers.

In this judgment all would heartily rejoice if only the Americans would do to us as we have done to them. But they steadily refuse to be just to us in this particular. They keep what they have and get all they can. They plunder English authors without mercy; they refuse to us the slightest shadow of a copyright, no matter what we concede to them. Every good English book is pirated instantly on its appearance here, and they are deaf alike to remonstrances and reproaches. The transaction is profitable to them—that is their conclusive argument. Some of our American-worshipping journals pretend to a belief that our example will shame the Americans into doing as they have been done by, and that they will consent to forego their dishonest gains for the future. But it is far more probable that our concession will serve to confirm their practice. We had some little rein upon them while we held in our hands the means of retaliation, but we have thrown it away, and now we have none. We are dealing with a people who pride themselves upon their "'cuteness" in driving a bargain. A bargain means an exchange. They might have been brought to consider whether it would not be profitable to "swap" with us a copyright law at home for copyright in England; but now that we have flung to them our copyright without demanding theirs in return, they will assuredly pocket it with a grin, and when we ask for reciprocity will laugh at us—as we shall, indeed, deserve to be laughed at.—*The Law Times.*

HOPKINSON *v.* MARQUIS OF EXETER.

Club — Expulsion of Member by General Meeting—Bonâ fide Exercise of Power to remove.

The plaintiff asked for a declaration that he was entitled to the enjoyment of the property and effects of a club, the rules of which authorized the committee to call a general meeting "in case any circumstance should occur likely to endanger the welfare and good order of the club," and provided that any member might be removed by the votes of two-thirds of the persons present at such meeting. On a bill filed by a member so removed praying to be reinstated in his rights as a member of the club, *Held*, that, as in the judgment of the Court the meeting was fairly called and the decision arrived at *bonâ fide* and not through caprice, such decision was final, and that the Court had no jurisdiction to interfere.

This was a suit against the committee of the *Conservative Club*, of which the plaintiff was one of the original members, and from which he had been expelled by the vote of a general meeting, praying a declaration that so long as he should conform to the rules of the club (which he offered to do) he was entitled to participate in the use and enjoyment of the property and effects of the club, and in its rights, privileges and benefits, and also that the defendants might be restrained from excluding the plaintiff from such rights and benefits, and from removing his name from the list of members.

The rules of the club made no reference to the political opinions of its members, except so far as they were implied by the

name. The 29th rule provided that it was "the duty of the committee, in case any circumstance should occur likely to endanger the welfare and good order of the club, to call a general meeting, and in the event of its being voted at that meeting by two-thirds of the persons present that the name of any member should be removed, he should cease to belong to the club."

At the time of the election in 1865 a correspondence took place between the plaintiff and the secretary of the club respecting a pledge which it was alleged the plaintiff had given to vote for certain "Liberal" candidates at the election of 1865, the result of which was that the committee convened a general meeting under the 29th rule to consider such correspondence, and whether the plaintiff's name should be removed from the club.

The meeting was held, and the chairman referred to certain votes given by the plaintiff for "Liberal" candidates, and the correspondence was read, after which the plaintiff addressed the meeting, and expressed his wish that one of his letters to which exception had been taken were unwritten, and repudiated the right of the committee to remove him.

A resolution that the plaintiff should cease to be a member of the club was put to the vote and carried by 191 to 21.

The plaintiff submitted that he had not been guilty of any conduct endangering the welfare and good order of the club; that the meeting was unauthorized; that the real issue put to the meeting was as to the votes he had given, which it was not competent to the meeting to consider.

The defendants, by their answer, submitted that the meeting was properly convened; that the proceedings in question were not dictated by personal or political pique; and that the plaintiff was not entitled to the relief prayed.

Sir *Roundell Palmer*, Q.C., Mr. *Wickens*, and Mr. *Osborne Morgan*, for the Plaintiff:—

A club being a species of partnership, the rules which regulate ordinary partnerships may, to a certain extent, be applied to it, though with some qualification, as it is an institution *sui generis*, being mainly intended for social purposes. All the members of a club are bound by the contract into which they enter as defined by the rules. In the present instance there is a power by this contract under certain circumstances to remove a person from being a member of the club, but this power must be exercised *bonâ fide* and for the purpose for which it was introduced into the contract. The way in which similar powers are to be exercised in ordinary partnerships was considered in *Dummer* v. *Corporation of Chippenham* (1), and in *Blisset* v. *Daniel* (2), where it was held that a power which was given to two-thirds of the holders of shares in a partnership to expel any partner could not be exercised without any cause being assigned, but must be exercised with good faith and not against the tenor of the contract. In the case of *In re St. James's Club* (3), it was considered that though clubs were not partnerships within the meaning of the Winding-up Acts, yet that a member of a club had an interest in the general assets, and that if the club were broken up while he was a member he might file a bill to have its assets administered, and would be entitled to have a share in its effects. In the present case we contend that the power of removal was improperly exercised; that the real issue put to the meeting related to the Plaintiff's votes at the recent election, which did not contravene any of the rules of the club, and formed no ground for his expulsion; that this Court has, in such a case, full power to interfere, as in the case of an ordinary partnership, to protect the Plaintiff's rights and privileges as a member of the club; and that, there being nothing in his conduct to warrant the step which has been taken, he is entitled to a decree.

The *Solicitor General* (Sir *C. J. Selwyn*), Mr. *Baggallay*, Q.C., and Mr. *Walford*, for the Defendants:—

A club is an association of gentlemen in which the rules of good order and good

(1) 14 Ves. 245.
(2) 10 Hare, 493.
(3) 2 D. M. & G. 383.

feeling ought to be maintained, and for this purpose the power of expelling an obnoxieus member is vested in a certain majority of its members. We admit that this power cannot be exercised corruptly or capriciously, but if that is not proved to have been the case, the Court cannot interfere with the discretion of the members. The only question, therefore, is, whether they have acted *bonâ fide* for the good of the club. In *Inderwick* v. *Snell* (1), where a general meeting of a company was empowered by the deed of settlement to remove any director for negligence, misconduct in office, or any other reasonable cause, and certain directors were removed for alleged misconduct, and new directors appointed,—on a bill filed by the directors who had been removed to set aside the proceedings of the meeting, it was held that the words "reasonable cause" referred only to such a cause as should be deemed reasonable by the shareholders, and that, in the absence of fraud, the Court had no jurisdiction to interfere. That decision has been followed in the case of *Manby* v. *Gresham Life Assurance Society* (2). Here the Court has no right to interfere with the honest exercise of the discretion of the members. The circumstances of the case, and the Plaintiff's conduct, were sufficient to justify the calling of the meeting, and, with regard to the Plaintiff's votes at the election, if the majority held that those votes were contrary to the well being of the club, even if that were the reason of the decision, it would afford no ground for the interference of the Court.

Mr. *Wickens*, in reply.

Lord Romilly, M.R.:—

I should have reserved my judgment in this case if I thought that by so doing I could have arrived at any different conclusion from that to which I was led very early in the argument.

This is an application by the Plaintiff asking a declaration that he is entitled to the enjoyment of the property and effects of the *Conservative Club*, and to participate in its rights, privileges, and benefits, and also that the Defendants, the committee of the club, may be restrained by injunction from excluding him therefrom, or removing his name from the list of members of the club.

These clubs are very peculiar institutions. They are societies of gentlemen who meet principally for social purposes, superadded to which there are often other purposes, sometimes of a literary nature, sometimes to promote political objects, as in the *Conservative* or the *Reform Club*. But the principal objects for which they are designed are social, the others are only secondary. It is, therefore, necessary that there should be a good understanding between all the members, and that nothing should occur that is likely to disturb the good feeling that ought to subsist between them.

It follows that a club is a partnership of a perfectly different kind from any other. In order to secure the principal object of the club, the members generally enter into a written contract in the form of rules, and in the rules of this club it is provided (Rule 29), that, "it shall be the duty of the committee, in case any circumstances should occur likely to endanger the welfare and good order of the club" (that is, likely in their opinion to do so), "to call a general meeting, and in the event of its being voted at that meeting by two-thirds of the persons present, to be decided by ballot, that the name of any member shall be removed from the club, then he shall cease to belong to the club." That rule amounts to this, that if such circumstances as are there referred to should arise, it would be the duty of the committee to call a meeting, and to submit the matter for a judicial decision of the members of the club at that meeting, and then it would be for them to determine whether any "circumstances likely to endanger the welfare and good order of the club" had taken place.

The evidence shows that this has occurred in the present case. The committee were of opinion that circumstances had occurred likely to endanger the welfare and good order of the club; they called a general meeting of the club. The matter was sub-

(1) 2 Mac. & G. 216. (2) 29 Beav. 429.

mitted for the judicial decision of the members of the club, and they decided by the votes of two-thirds of the members present, such votes being taken by ballot, that the Plaintiff should thenceforward cease to be a member of the club.

The first question is, whether there is any appeal from that decision. It is clear that every member has contracted to abide by that rule which gives an absolute discretion to two-thirds of the members present to expel any member. Such discretion, like that referred to by Lord *Eldon* in *White* v. *Damon* (1), must not be a capricious or arbitrary discretion. But if the decision has been arrived at *bonâ fide*, without any caprice or improper motive, then it is a judicial opinion from which there is no appeal. None but the members of the club can know the little details which are essential to the social well-being of such a society of gentlemen, and it must be a very strong case that would induce this Court to interfere.

In the present case I have felt reluctant to go into any questions that have arisen further than to ascertain that the decision of the meeting was a *bonâ fide* exercise of their discretion, and not the result of mere caprice. I forbear, therefore, to comment on the conduct or the letters of the Plaintiff, but I am of opinion that this was a *bonâ fide* meeting, and one that was fairly called; that the question was fairly submitted to the meeting, and the decision adopted *bonâ fide*, and not through any caprice; and, therefore, that the decision was final, and the bill must be dismissed with costs.—*Law Rep.* 5 *Eq.* 63.

Judicial Bombast.—A number of decisions of the Supreme Court of Nevada have reached us. One short extract will suffice to show that in the study of their profession the bar and the bench of Nevada have not neglected the graces of classical culture:—"As every means which legal learning and subtle ingenuity could suggest have been long since exhausted in this cause, counsel have now, it seems, been driven to the necessity of calling the muses from the sylvan shades of Pindus and Helicon to assist them; and, if we may judge from the tragic fervor of the respective arguments, Melpomene at least responded to their invocation; for we find the evidences of her assistance on both sides of this irrepressible case. But, unfortunately for counsel, the law does not affiliate with the tuneful nine, nor accept them as authority in her prosy dominion, but, like the companions of Ulysses, stops her ears against their seductive appeals, and listens only to logic and unvarnished facts. As faithful servants of this wrinkled-browed and heartless prude, the law, we will leave the poetry of the case, and direct attention to what little prose there may be left in it."—*Am. Law Review.*

(1) 7 Ves. 85.

Capital Punishment.—In the debate in the English House of Commons, on the 21st of April, on the measure for making executions private, Mr. Gilpin having questioned the expediency of capital punishment, Mr. Mill said, to deprive a criminal of the life of which he had proved himself unworthy—solemnly to blot him out from the fellowship of mankind, and from the category of the living—was the most appropriate and the most impressive mode in which society could deal with so great a crime as murder. Imprisonment would be far more cruel and less efficacious. None could say that this punishment had failed, for none could say who had been deterred, and how many would not have been murderers but for the awful idea of the gallows. Do not bring about an enervation, an effeminacy in the mind of the nation; for it is that to be more shocked by taking a man's life than by taking all that makes life valuable. Is death the greatest of all earthly evils? A manly education teaches us the contrary; if an evil at all, it is one not high in the list of evils. Respect the capacity of suffering, not of merely existing. It is not human life only, not human life as such, but

human feelings, that should be held sacred. Moreover, taking life for murder no more implies want of respect for life than fining a criminal shows want of respect for property. In countries where execution is morbidly disliked, there is no abhorrence of the assassin. Mr. Mill added that we had been in danger of reducing all our punishments to nothing; and though that disposition had stopped, our penalties for brutal crimes (for which he earnestly recommended the scourge) were ridiculously light, and ought to be strengthened. The House, on division, by 127 to 22, affirmed the principle of Capital Punishment.

ERMINE WITHOUT SILK.—A contemporary, in a leader relative to the new Judge, Mr. Justice Hannen, observes, "He never took silk." We should think not. There is no occasion for anybody to say, "Set a Judge to try shoplifters."—*Punch.*

For his mastery of oratorical artifice Alexander Wedderburn was greatly indebted to Sheridan, the lecturer on elocution, and Macklin, the actor, from both of whom he took lessons; and when he had dismissed his teachers and become a leader of the English bar he adhered to their rules, and daily practised before a looking-glass the facial tricks by which Macklin taught him to simulate surprise or anger, indignation or triumph. Erskine was a perfect master of dramatic effect, and much of his richly deserved success was due to the theatrical artifices with which he played on the passions of juries. At the conclusion of a long oration he was accustomed to feign utter physical prostration, so that the twelve gentlemen in the box, in their sympathy for his sufferings and their admiration for his devotion to the interests of his client, might be impelled by generous emotion to return a favorable verdict. Thus when he defended Hardy, hoarseness and fatigue so overpowered him towards the close of his speech, that during the last ten minutes he could not speak above a whisper, and in order that his whispers might be audible to the jury, the exhausted advocate advanced two steps nearer to their box, and then extended his pale face to their eager eyes. The effect of the artifice on the excited jury is said to have been great and enduring, although they were speedily enlightened as to the real nature of his apparent distress. No sooner had the advocate received the first plaudits of his theatre on the determination of his harangue, than the multitude outside the court, taking up the acclamations which were heard within the building, expressed their feelings with such deafening clamor, and with so many signs of riotous intention, that Erskine was entreated to leave the court and soothe the passions of the mob with a few words of exhortation. In compliance with this suggestion he left the court, and forthwith addressed the dense out-door assembly in clear, ringing tones that were audible in Ludgate Hill, at one end of the Old Bailey, and to the billowy sea of human heads that surged around St. Sepulchre's Church at the other extremity of the dismal thoroughfare.—*Jeaffreson.*

Of Egerton's student days a story is extant, which has merits, independent of its truth or want of truth. The hostess of a Smithfield tavern had received a sum of money from three graziers, in trust for them, and on engagement to restore it to them on their joint demand. Soon after this transfer, one of the co-depositors, fraudulently representing himself to be acting as the agent of the other two, induced the old lady to give him possession of the whole of the money—and thereupon absconded. Forthwith the other two depositors brought an action against the landlady, and were on the point of gaining a decision in their favor, when young Egerton, who had been taking notes of the trial, rose as *amicus curiæ*, and argued, "This money, by the contract, was to be returned to *three*, but *two* only sue—where is the *third*? let him appear with the others; till then the money cannot be demanded from her." Nonsuit for the plaintiffs—for the young student a hum of commendation.—*Jeaffreson.*

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POSTCRIPT.

Since the October number appeared, it has been deemed advisable to discontinue the issue of the *Law Journal*. The series is therefore brought to a close by the present volume.