THE

LEGAL NEWS.

VOL. XVII. SEPTEMBER 1, 1894. No. 17.

SUPREME COURT OF CANADA.

OTTAWA, May 1, 1894.

BAXTER v. PHILLIPS.

Quebec.]

Rights of succession—Sale by co-heir—Sale by curator before partition—"Retrait successoral"—Art. 710 C. C.—Prescription.

When a co-heir has assigned his share in a succession before partition, any other co-heir may claim such share upon reimbursing the purchaser thereof the price of such assignment, and such claim is imprescriptible so long as the partition has not taken place.—Art. 710 C. C.

A sale by a curator of the assets of an insolvent, even though authorized by a judge, which includes an undivided share of a succession of which there has been no partition, does not deprive the other co-heirs of their right to exercise by direct action against the purchaser thereof the *retrait successoral* of such undivided hereditary rights.

The heir exercising the *retrait successoral* is only bound to reimburse the price paid by the original purchaser, and is not bound in his action to tender the moneys paid by the purchaser.

Appeal dismissed with costs.

Béique, Q.C., for the appellant.

Driscoll and *D. C. Bowie*, for the respondent.

31st May 1894.

Quebec.]

CHAMBERLAND v. FORTIER.

Action "negatoria servitutis"—Right of passage—Private road—Government moneys in aid of—R. S. P. Q. Arts. 1716, 1717 *and* 1718—*Arts.* 407 *and* 1589 *C. C.*

The plaintiff, proprietor of a piece of land in the parish of Charlesbourg, claimed to have himself declared proprietor of a heritage purged from a servitude, being a right of passage alleged to be claimed by his neighbor the defendant. The road was partly built with the aid of Government municipal moneys, but no indemnity was ever paid to the plaintiff, and the privilege of passing on said private road was granted by notarial agreement by the plaintiff to certain parties other than the defendant.

Held, reversing the judgment of the Court of Queen's Bench for Lower Canada (Appeal side), that the mere granting and spending of a sum of money by the Government and the municipality did not make such private road a colonization road within the meaning of Art. 1718 R. S. P. Q.

Appeal allowed with costs.

Amyot, Q.C., for appellant.
Languedoc, Q.C., for respondent.

1st May, 1894.

Quebec.]

BELL'S ASBESTOS CO. v. JOHNSON'S CO.

Action en bornage—R. S. Q. Arts. 4153, 4154—*Straight line.*

Where there is a dispute as to the boundary line between two lots granted by patents from the Crown, and it has been found impossible to identify the original line, but two certain points have been recorded in the Crown Lands Department, the proper course is to run a straight line between the two certain points.—R. S. Q. Art. 4155.

Appeal dismissed with costs.

Stuart, Q.C., and *A. Hurd*, for appellants.
Irvine, Q.C., and *J. Lavergne*, for respondents.

31st May, 1894.

Quebec.]

GUYON DIT LEMOINE v. CITY OF MONTREAL.

ALLAN v. CITY OF MONTREAL.

Expropriation—35 Vic. ch. 32, sec. 7, P. Q.—Interference with award of arbitrators.

In matters of expropriation where the decision originally of a majority of arbitrators who were men of more than ordinary business has been given, such decision should not be interfered with on appeal upon a question which is merely one of value. (Judgment of Court of Queen's Bench, Montreal, R. J. Q., 3 B. R. 181, affirmed).

Appeal dismissed with costs.

Robertson, Q.C., and *Geoffrion, Q.C.*, for appellants.
Ethier, Q.C., and *Greenshields, Q.C.*, for respondents.

31st May, 1894.

Ontario.]

TOWN OF WALKERTON v. ERDMAN.

Evidence—Action for personal injuries caused by negligence—Examination of plaintiff de bene esse—Death of plaintiff—Action by widow under Lord Campbell's Act—Admissibility of evidence taken in first action—Rights of third party.

Though the cause of action given by Lord Campbell's Act, for the benefit of the widow and children of a person whose death results from injuries received through negligence, is different from that which the deceased had in his lifetime, yet the material issues are substantially the same in both actions and the widow and children claim, in effect, under the deceased; therefore where an action is commenced by a person so injured in which his evidence is taken *de bene esse*, and the defendant has a right to cross examine, such evidence is admissible in a subsequent action taken after his death under the Act. Taschereau and Gwynne, JJ., dissenting.

The admissibility of such evidence as against the original defendants is not affected by the fact that said defendants, a municipal corporation, sued for injuries caused by falling into an excavation in a public street, have caused a third party to be added

as defendant as the person who was really responsible for such excavation, and that such third party was not notified of the examination of the plaintiff in the first action and had no opportunity to cross-examine him. Taschereau and Gwynne, JJ., dissenting.

Aylesworth, Q.C., for the appellants.

Shaw, Q.C., for the respondent.

O'Connor, Q.C., for third party.

31st May, 1894.

Ontario.]

GRAND TRUNK RY. CO. v. WEEGAR.

Railway Company—Injury to employee—Negligence—Finding of jury—Interference with, on appeal.

W. was an employee of the G. T. R. Co., whose duty it was to couple cars in the Toronto yard of the Company. In performing this duty on one occasion under specific directions from the conductor of an engine attached to one of the cars being coupled, his hand was crushed owing to the engine backing down and bringing the cars together before the coupling was made. On the trial of an action for damages, resulting from such injury, the conductor denied having given directions for the coupling, and it was contended that W. improperly put his hand between the draw bars to lift out the coupling pin. It was also contended that the conductor had no authority to give directions as to the mode of doing the work. The jury found against both contentions, and W. obtained a verdict which was affirmed by the Divisional Court and Court of Appeal.

Held, per Fournier, Taschereau and Sedgewick, JJ., that though the findings of the jury were not satisfactory upon the evidence, a second court of appeal could not interfere with them.

Held, per King, J., that the finding that specific directions were given must be accepted as conclusive; that the mode in which the coupling was done was not an improper one as W. had a right to rely on the engine not being moved until the coupling was made, and could properly perform the work in the most expeditious way which it was shown he did; that the conductor was empowered to give directions as to the mode of doing the

work if, as was stated at the trial, he believed that using such a mode would save time; and that W. was injured by conforming to an order to go to a dangerous place, the person giving the order being guilty of negligence.

McCarthy, Q.C., for appellants.

Smyth, for respondent.

CHANCERY DIVISION.

LONDON, June 28, 1894.

In re THE BREWERY ASSETS CORPORATION. *Ex parte* TRUMAN (29 L.J.).

Company—Winding up — Contributory — Application for shares — Withdrawal of— Verbal statement to clerk of company—Stoppage of cheque for instalment.

T., on November 4, 1890, filled in a form of application for ten shares in the company, and handed it to a clerk of the company at the company's office, together with a cheque for the amount of the instalments payable on the shares upon application and allotment. Later in the day he called again at the company's office and informed a clerk of the company that he withdrew his application for shares, and demanded back his cheque. The clerk told him that he could not give him back his cheque as the secretary was out. T. called again later, but found the office closed. The next morning he instructed his bankers to stop payment of his cheque, and that they did. On November 7 the directors allotted the shares to T. He received the letter of allotment on November 8, but he returned it at once. The fact that the cheque had not been paid appeared from an entry in the company's bank pass-book under date Nov. 5, and also from entries in the books of the company, but it did not appear that the directors were aware of it at the date of the allotment. The company never took any proceedings to enforce payment by T. of the money due on the application for or allotment of the shares, or the first call made in January, 1891. Resolutions for a voluntary liquidation were passed by the company in November, 1892, and the liquidator put T. on the list of contributories. He took out a summons for the removal of his name.

Wright, J., said that he ought to draw the inference, in the absence of evidence to the contrary, that the clerk to whom T.

made his statement was so far in charge of the premises that it must be imputed to the company that the statement was made to him as a person who, in the absence of others, had authority to receive it, and T.'s withdrawal of his application must be taken to have been communicated to the company. Further, that directors who are making allotments of shares based upon payments to their bankers, ought to make inquiry as to the payments. The stoppage of T.'s cheque was on record, and if the directors in the present case had ascertained that they would have been put upon their guard. The allotment to T. had been made without authority, and he was entitled to the relief he asked for.

LORD RUSSELL ON THE LATE CHIEF JUSTICE COLERIDGE.

As the late Chief Justice Coleridge has fared somewhat hardly at the hands of his biographers, it is but fair that so competent a critic as his successor, Lord Russell of Killowen, should say what he knows. This he has done in an article contributed to the *North American Review*.

Speaking of the celebrated "silver" tongue, Lord Russell says: "If I except the voices of, perhaps, Sir Alexander Cockburn, Mr. Gladstone, the present Sir Robert Peel, and the late Father Burke, of the Dominican Order, I shall have exhausted the list of those who may be said to have been his superiors in this respect."

His power of advocacy are thus referred to: "Mr. Coleridge possessed the gift of lucid exposition, and had higher qualities as an advocate than Mr. Karslake. He commanded a more beautiful diction, a finer voice, and he was endowed with a power of imagination and of pathos in which his rival was deficient. It used to be said of Mr. Coleridge that he was worst in a losing and best in a winning case, when a blaze of fireworks was wanted. I think this does not do him justice. I have known him fight difficult cases strenuously, and winning cases modestly. He was taken all in all, a remarkable advocate. No doubt the case with which his name will be principally linked is the *Tichborne Case*. His cross-examination of the Claimant was at the time the subject of widely divergent opinions at the Bar. For my own part, I thought it, and still think it, the best thing he ever did. It was not a cross-examination calculated, nor should I think even

intended, for immediate effect. It was not like the brilliant cross-examination of the witness Baignet by Mr. Hawkins (now Mr. Justice Hawkins), in which the observer could follow the point and object question by question; but it was one the full force and effect of which could only be appreciated when the facts, as they ultimately appeared in the defendant's case, were finally disclosed. When, indeed, the subsequent prosecution for perjury took place, it was then seen how thorough and searching that cross-examination had been; how in effect, if I may use a fox-hunting metaphor, all the earths had been effectually stopped. I am glad to find that my opinion of that cross-examination has recently been corroborated by so eminent an authority as the Master of the Rolls, Lord Esher. I must not be understood in what I have said to depreciate his great speech in the *Tichborne Case*. A more masterly exposition of complicated facts combined with a searching criticism of the Claimant's evidence has rarely, if ever, been delivered."

The judicial powers of Lord Coleridge are thus described by Lord Russell: "He is undoubtedly entitled to be described as a strong judge; and when the case was sufficiently important to prompt him to take pains, his judgments showed a broad, masterful grasp of the principles of the law he elucidated. I do not think he possessed the great synthetical and analytical powers of Sir Alexander Cockburn at his best, nor the vigorous commonsense of Sir William Erle, nor the wide, legal erudition of the late Mr. Justice Willes, nor the intimate knowledge of the various branches of commercial law of the late Lord Bramwell, nor the hard-headed logic of Lord Blackburn (I do not refer to eminent judges still on the bench); nevertheless he cannot be said to have lacked any quality essential in a great judge. Some of his judgments may well take rank with the best of his time, and many of them are marked by an elegance of diction and possess a literary merit not often met with in judicial records. His judgments in the litigation of the Duke of Norfolk in relation to the Fitzalan Chapel, in the case (commonly known as the *Mignonette Case*) of the seamen Dudley and Stephen (charged with murder in having, under stress of hunger, killed and eaten a boy, one of their crew), and in the remarkable commercial case known as the *Mogul Boycotting Case*, may be referred to as good examples. His direction to the jury on the trial for blasphemy of Ramsey

and Foote, in 1883, is regarded as a departure from the law upon that subject as previously laid down by eminent men—a departure, be it added, which has, I think, received the sanction of the profession generally, and a departure in consonance with the freer and more tolerant spirit of the time."

FIRING ON A NEUTRAL BEFORE DECLARATION OF WAR.

The recent report, now confirmed, that the transport conveying Chinese troops to Corea, which was sunk by a Japanese war-ship, was at the time it was fired upon flying the British flag, must raise a serious question of international law. No declaration of war had been sent by the Japanese to the Chinese Government; no manifesto to neutrals had been issued by the Mikado.

Assuming for the moment that the maximum right of British and other European citizens in this war in the Far East is to be measured by the ordinary laws of war obtaining among European States, it is quite plain that a valid claim for compensation can be put forward by the British owners of the transport *Kow Shing*. Since 1750, formal declarations of war addressed to the hostile powers have been discontinued as a regular practice; although the Franco-Prussian War of 1870 was preceded by a notice by the French to the Prussian Government, and the Russo-Turkish war of 1877 was preceded by a like notice from Russia. But it is positively established as a right of neutral powers to be apprised by means of a manifesto from the State commencing war. The reason for the practice is obvious. The existence of an acknowledged state of war confers upon belligerents rights of seizure of contraband and of declaring blockade —rights which directly affect neutral commerce, and which impose obligations of neutrality on States taking no part in the war. As between the belligerents themselves, war begins either on direct notice from one to the other, or on the first act of hostility; but as between belligerents and neutrals, war, with its attendant rights of capture and attendant duties of neutrality, does not begin until notice through a manifesto is issued by one or other of the belligerents to the representatives of neutral States. (See Vattel, iii. 4, 64; Hall, iii. i.; Woolsey, 122.) This is the present state of that Custom of European States which is

called international law, and represents the minimum required from those States which propose to assume over neutral commerce the rights of belligerents. As has been stated, the earlier law required actual notice from one belligerent to another—an honorable custom not yet extinct. (See Grotius, iii. 3, s. 3.)

The British Foreign Office is therefore entitled to demand ample reparation for the insult to the British flag offered by the Japanese war-ships, as well as the fullest pecuniary compensation to the families of the Englishmen killed and to the owners of the transport for the loss of their property. Even as between States of the European race, such would be the minimum right of the British Government, and it is to be trusted that British interposition will not be wanting in promptness and vigor in its dealings with Japan.

As regards a matter not so immediately concerning European Powers—the alleged slaughter of a thousand Chinese troops while struggling for their lives in the sea—the chief importance of the incident in its bearing on international law is the light it throws on the possibility of any real infiltration of Western ideas among non-European nations. The much-boasted adoption by the Japanese of European civilization—as if the mental habits which are the slow growth of thousands of years of the life of the European race could be put on as a garment in a few decades—the adoption of European "codes," European "Houses of Parliament," the language of European diplomacy, the adhesion to the Geneva Convention—all these reforms can be measured at their true value by consideration of the flagrant violation, not merely of the Geneva Convention, but of the most elementary ideas of common humanity involved in the indiscriminate slaughter of drowning men.

As the German and French Press—notably *Le Temps* and the *Vossische*—has urged for some time, the Great Powers of Europe should intervene, and by united action in Corea put an end to the disorder there, and at the same time put an end to this absurd ascription to the potentates of Japan and China of rights of belligerents in regard to European commerce.—*Law Journal.*

EXPERTS IN HANDWRITING.

Regina v. *Silverlock*, already referred to with respect to the form of an indictment for false pretences, raised another point of more interest. To prove the handwriting of the accused were called a police officer, who produced a letter and envelope written by the accused in his presence, and the solicitor for the prosecution, who had given considerable attention and study to handwriting, and had on several occasions professionally compared handwriting for purposes of evidence. The solicitor's right to speak as an expert was challenged, but his testimony was admitted, subject to reservation of a case on the point. For the defence it was argued that the solicitor was not an expert but a mere amateur, and an attempt was made to suggest that a man cannot be called as a witness to handwriting,who has not made a profession of studying handwriting, which led the Lord Chief Justice to observe that there were two classes of experts, those who made a thorough study of handwriting and those who made a business of testifying in the witness box as to their expertness; and in the end the Court had no difficulty in coming to the conclusion that a witness on a matter of opinion must be skilled in the subject on which he is called to give an opinion, but need not be in a particular business or profession, nor have passed any examination in the subject; or, to adopt the words of Mr. Justice Williams, 'it is necessary to show that the witness, either by his profession or by his habits and studies, is more competent than others to give his opinion." The weight of testimony given as to opinion is a very different thing from the question of its admissibility. A man may know enough about the subject to assist the jury somewhat, but not enough to be of much assistance to them.—*Law Journal.*

DUELLING AT THE IRISH BAR.

The late Mr. John Edward Walsh, who was Attorney-General for Ireland in 1866, and subsequently Master of the Rolls in Ireland till his death in 1869, wrote and published in 1840 a little book entitled "Ireland Sixty Years Ago," in which he directs attention to the practice of duelling at the Irish Bar towards the close of the last century.

Many men at the Bar, Mr. Walsh says, practising fifty (one

hundred) years ago, owed their eminence not to legal ability, but to their powers as duellists. Mr. Walsh relates that a contemporary of his own consulted Dr. Hodgkinson, Vice-Provost of Trinity College, Dublin, then a very old man, as to the best course of study to pursue, and whether he should begin with Fearne or Chitty. The Vice-Provost, who had long been secluded from the world, and whose observation was beginning to fail, immediately reverted to the time when he had himself been a young barrister, and his advice was: "My young friend, practise four hours a day in a pistol gallery, and it will advance you to the woolsack faster than all the Fearnes and Chittys in the library."

Some noted instances of legal and judicial duelling in Ireland will be of interest. Mr. Curran, who became in 1806 Master of the Rolls in Ireland, while at the bar and a member of the Irish Parliament, fought a duel with Lord Buckingham, Chief Secretary for Ireland, because he declined to dismiss at his request a public officer. Mr. Curran also fought with the Attorney-General, Mr. Fitzgibbon—the weapons being enormous pistols twelve inches long. Mr. FitzGibbon afterwards became Lord Chancellor of Ireland and the Earl of Clare. His enmity drove Curran out of practice in the Court of Chancery at a loss, according to his own estimate, of £30,000.

John Scott, who as Earl of Clonmel died in 1798, while Chief Justice of Ireland, fought Lord Tyrawley and Lord Llandaff, and was a party in several other duels with swords and pistols. Marcus Patterson, who was a contemporary of the Earl of Clonmel, and was Chief Justice of the Irish Court of Common Pleas from 1800 till 1827, was Attorney-General from 1789 till 1800. He was distinguished, during the turbulent period which preceded the Union, for his duelling propensities, that he was always the man depended on by the Government to frighten a member of the Opposition, and so rapid was his promotion, that it was said he "shot up" into preferment. When in 1826 the question of retirement from the judicial bench was mooted to Lord Norbury, whose mental and physical powers were clearly failing, he immediately produced from a case in his study a brace of duelling pistols, and threatened to challenge anyone who would venture to mention the matter in his presence.

Mr. Hely-Hutchinson was a barrister of great eminence, and

Prime Sergeant. The holder of this office took precedence in Ireland of the Attorney-General. When practising at the Bar he fought many duels. He was subsequently, in 1774, appointed Provost of Trinity College, Dublin. He was anxious, when Provost, to establish and endow a professorship of the science of defence in the University of Dublin, and challenged and fought a Mr. Doyle, an Irish Master in Chancery.

Those instances, recorded by Mr. Walsh in "Ireland Sixty Years Ago," and by Sir Jonah Barrington in his "Personal Recollections," are startling. Mr. Walsh only writes of what he heard of the doings of a previous generation, but Sir Jonah Barrington, who lived in the Union period, testifies to what he had seen. Sir Jonah was himself Judge of the Irish Court of Admiralty, and a far-famed duellist.

It is perhaps worthy of note that Mr. Ambrose Hardinge Giffard, a member of the Irish Bar, fought a duel with another barrister, Mr. Bagnal Harvey, by whom he was wounded. Mr. Harvey was subsequently, in 1798, the leader of the Rebellion in the county of Wexford, and was executed for high treason. Mr. Giffard afterwards became, as Sir A. Hardinge Giffard, Chief Justice of Ceylon. He was paternal uncle of Lord Halsbury, the ex-Lord Chancellor of England.

The laws by which duelling is punishable were then, Mr. Walsh observes, as severe as now, but such was the spirit of the times that they remained a dead letter. No prosecution ensued, and even if it did no conviction would follow. Every man on the jury was himself probably a duellist, and would not find his brother guilty. After a fatal duel the judge would leave it to the jury whether there had been "any foul play," with a direction not to convict for murder if there had not.

"Duelling in Ireland," wrote Mr. Walsh in 1840, "is now happily a thing of the past." A few years afterwards, however, the old duelling spirit asserted itself at the Irish Bar on a memorable occasion. Mr. T. B. C. Smith, 1844, as Attorney-General for Ireland, conducted the State prosecution of Mr. O'Connell. Mr. FitzGibbon was one of the leading counsel for the defence. The report of the trial for the 30th Jan., 1844, in the State Trials, contains this remarkable passage: "The court having adjourned for luncheon, during the interval the Attorney-General sent a challenge to FitzGibbon."

On the judges resuming their seats, Mr. FitzGibbon complained of the conduct of the Attorney-General thus: "With a pistol in his hands he says to me, I'll pistol you unless you make an apology, and I cannot help telling him now such a course won't draw an apology from me." The Attorney-General admitted that the letter was written hastily, but under circumstances of great provocation. The good offices of common friends were invoked, and the Chief Justice, insisting on an assurance from both gentlemen that the quarrel would proceed no further, thought that "this unpleasant matter might at once be set at rest" (see Reports of State Trials, New Series 5, pp. 366-368).

This was the last instance of a serious challenge at the Irish Bar. Mr. Smith subsequently became Master of the Rolls, and was the immediate predecessor of Mr. Walsh in that office. Mr. FitzGibbon became a Master in Chancery. His son is one of the Lord Justices of Appeal in Ireland.—*Law Times.*

CHANCE VERDICTS.

In *Wright* v. *Abbott*, Mass. Supreme Judicial Court, 36 N. E. Rep. 62, a quotient verdict was set aside, on the testimony of the officer in charge of the jury, who overheard their 'deliberations.' The Court said: "It is certainly not the duty of an officer in charge of a jury to listen to the deliberations of a jury, but, if he does, his testimony cannot be excluded on the ground that his knowledge was obtained in this manner, if it is otherwise competent. The rule excluding testimony of the conduct of jurors in the jury-room when deliberating upon a verdict ought to have some limits. It seems that in England it has been finally settled that the affidavit of a juror will not be received to show that the verdict was determined by lot (*Vaise* v. *Delaval*, 1 T.R. 11; *Owen* v. *Warburton*, 1 Bos. & P. 326; *Straker* v. *Graham*, 7 Dowl. 223, 225). The weight of authority in this country also is that the affidavits or the testimony of jurors to show such a fact will not be received (*Dana* v. *Tucker*, 4 Johns. 487; *Cluggage* v. *Swan*, 4 Bin. 150; *Brewster* v. *Thompson*, 1 N.J. Law, 32. *Grinnell* v. *Phillips*, 1 Mass. 540, is regarded as overruled in *Woodward* v. *Leavitt*, 107 Mass. 453, 462). It has always been held that if a verdict is obtained by resorting to chance, or by drawing lots, it will be set aside (*Mitchell* v. *Ehle*, 10 Wend. 595; *Donner* v. *Palmer*, 23 Cal 40; *Ruble* v. *M'Donald*, 7 Iowa, 90; *Birchard* v.

Booth, 4 Wis. 67; *Dorr* v. *Fenno*, 12 Pick. 520; *Forbes* v. *Howard*, 4 R. I. 364). In *Vaise* v. *Delaval* (*ubi supra*), where a verdict was obtained by tossing up, Lord Mansfield said: "The Court cannot receive such an affidavit from any of the jurymen themselves, in all of whom such conduct is a very high misdemeanour; but in every such case the Court must derive their knowledge from some other source, such as from some person having seen the transaction through a window, or by some other means." In *Wilson* v. *Berryman*, 5 Cal. 44, the verdict was what is called a "quotient verdict"; and the Court, while conceding that the affidavit of a juror could not be received, admitted the affidavit of the undersheriff that the affidavit of the juror was true."—*Green Bag.*

GENERAL NOTES.

ELECTRIC RAILROADS.—Street cars propelled by electricity running along a public highway, it is held in *Newark Passenger R. Co.* v. *Bloch*, (N. J.) 22 L. R. A. 374, cannot be run at a rate of speed which is incompatible with the lawful and customary use of the highway by others. The court holds that there is no just analogy between the right of such a railway company and that of an ordinary railroad company running trains across a highway at grade, and that no public demand undefined and unrecognized by law can justify a speed greater than is consistent with the safety of persons on highways.

LEGAL ANECDOTES.—Sir Fletcher Norton, noted for his scant courtesy and arrogance, while arguing a point of law before Lord Mansfield, relating to manorial rights, proceeded to cite his personal experience in the subject in issue. 'I can illustrate the point, my lord, in my own case, for I have two little manors.' 'We all know that, Sir Fletcher,' interposed the Chief Justice, with his blandest smile.—*Pall Mall Gazette.*

NECESSARIES OF LIFE IN ILLINOIS.—From a standard and entirely sober digest of Illinois reports, under the title "Carriers" and a subdivision as to baggage, we quote the following digest paragraph: '56. Two revolvers in the trunk of a grocer who went into the country to purchase butter: Held, that but one revolver was reasonably necessary." So says the *Green Bag.*

LORD ESHER AND MRS. CATHCART.—In one of the innumerable appeals brought by Mrs. Cathcart recently, the Master of the Rolls indulged in some plain speaking. He reminded her he listened to her because she was born a lady, and was still a woman, and, in giving judgment, said the truth was this lady was not mistress of her mind. She brought frivolous appeals, and tormented a number of suitors with litigation which was perfectly despicable. What ought to be done by people against whom she brought actions was to apply to the courts for security for costs. If one-tenth part of what she said was true, she could, if she had any sense at all, have gone on with the counter-claim, but she had persistently disobeyed every rule of the court applicable to the cause. She would not have counsel and solicitor, and naturally in consequence everything she did was wrong. He believed she would ruin herself, for she was a terribly obstinate woman.—*Law Journal.*

LARCENY ACT AMENDMENT BILL.—The Lord Chancellor, in moving the second reading of this bill (which has since passed through all its stages), explained that its object was to make a small but important change in the criminal law of England. As the law now stood, property might be stolen outside England and received in England with the full knowledge that it had been stolen, without the person so receiving it being amenable for any offence in this country. He might, in fact, hold the stolen property without being subject to any proceedings under the criminal law of England. The view taken by the judges had been that, inasmuch as a person could only be punished here for receiving with a guilty knowledge goods which had been feloniously stolen, and inasmuch as, outside this country, there was no such thing as "felony," a person in England could not be held to have feloniously received goods which had been stolen abroad. That was a technicality of an extreme kind, and one which he thought their lordships would agree ought not to stand in the way of justice. The object of the bill merely was to provide that if goods were stolen abroad and were brought to this country under circumstances which, if the offence were committed here, would render the receiver liable to conviction under our criminal law, such person should no longer be able to escape, on the mere technicality at present existing.

ENJOINING A PRIZE FIGHT.—The spectacle of a judge at Jack-

sonville, Florida, issuing an injunction against the sheriff to prevent him from interfering with a prize fight, is one calculated to fill the breasts of the right-thinking members of the legal profession with indignation and shame, and to send the mind upon a search for the motive which could have prompted such extraordinary action. A judge having the slightest acquaintance with the principles of equity should have known that the writ of injunction is never issued in matters of crime, with one or two limited and marked exceptions, in which prize fighting is not included. One of those exceptions is that an injunction will sometimes issue to enjoin a nuisance; but it is not among those exceptions that an injunction will be issued to protect a nuisance —that is, to restrain the sheriff from preventing the perpetration of a public nuisance. If it is answered that there is no statute law in Florida making prize fighting illegal, the reply may confidently be urged that an ordinary public prize fight is a nuisance at common law. But if it is not a nuisance by the common law of Florida—and if it is not, so much the worse for that law—then the elementary principle remains that an injunction is only used by Courts of equity for the protection of the rights of property and business. Now, what right of property or of business is involved in a prize fight? The possible right to property in a stake of 20,000 dollars, which is put up and which is to be had by the winner, and the business of engaging in a beastly encounter for the purpose of winning a bet.—*American Law Review.*

GROUNDS OF DIVORCE.—The *Omaha Bee* reports that in San Francisco a sensitive husband is suing his wife for divorce because she bleached her hair. In his petition he says: "Bleached or artificially colored hair is easily distinguished as such and does not appear natural, nor does it deceive any person, but it is perfectly patent and noticeably conspicuous. It is regarded by the majority of right thinking persons as an indication of a loose, dissolute and wanton disposition, and is regarded as and commonly held to be a practice never affected by modest, pure and respectable women." The husband claims that he is mortified and humiliated on account of the change in the color of his wife's hair. He adds: "She is a brunette naturally. Her hair is of a chestnut brown color, which in its normal state is modest and becoming, and harmonizes with the natural color of her skin and eyes. Since we married she has, against my wishes and protest, and with intent to vex, annoy, exasperate and shame me, dyed her hair and changed its shade to a conspicuous and showy straw or canary color. As a consequence of this artificial coloring, she has been obliged to paint her face to secure an artificial complexion in keeping with the artificial color of her hair. The combination has given her a giddy, fast and sporty appearance."