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THE VETO QUESTION.

The discussion of a question that savours of politics usually occupies more attention nowadays, or at any rate occupies more of the space of the daily journals, than a great war carried on after sterner methods. Amidst much upon the veto question that is partisan, we find a little note upon the subject in the *Bystander*, from the pen of Mr. Goldwin Smith, who may be assumed to express an independent view:—

"As to the Streams bill, there is no denying that the Dominion Government has the veto power, nor is there ground for saying that the power was not intended to be used. We are dealing not with antiquated practices or vague traditions, but with a constitution recently framed, which must be supposed to be operative in all its parts. Of course the veto is not to be exercised without good reason, but two good reasons at least for its exercise may be assigned. One is, an excess of powers on the part of the Provincial Legislature: the other is a breach of the fundamental principles of public morality and justice by which all legislation ought to be restrained. Nothing can be more likely than that such bodies as our Local Legislatures should occasionally betray an ignorance of the great rules of jurisprudence and require to be called to order by superior authority; such a check is made more essential by the increasing tendency of the machines to ostracise the best intellect of the province. The bill breaking Mr. Goodhue's will was a case in point, and formed a proper subject for the veto. Whether the Streams bill is actually a breach of the principle which forbids legislative aggression upon vested interests is a question which turns partly upon disputed matters of fact, and on which there is sincere difference of opinion among persons free from the party bias. On its face the Act certainly seems to be one confiscating improvements and assigning only an arbitrary compensation; it also looks very like a law directed against an individual under colour of a general enactment. In any case, however, the contention of Ontario ought to be that the bill is unobjectionable in principle, not that the veto is a nullity."

The Act referred to is an Act "for protecting the public interest in Rivers, Streams and Creeks," which has been thrice passed by the Legislature of Ontario, and thrice disallowed by the Governor General on the advice of the Privy Council.

THE SEDUCTION BILL.

"Violent legislation is the nostrum to which "minds of a certain type are ready to fly when-"ever they see anything amiss, without con-"sidering what the general effect will be." So writes Mr. Goldwin Smith, in the same journal, and we think some of our local as well as federal legislators should give heed to the words. They occur in some observations upon the Charlton seduction bill, and the entire paragraph is worth reading:—

"Mr. Charlton moves, practically, to make the illicit intercourse of the sexes a crime, and punish the male offender alone. To protest against the injustice would be idle; philanthropy likes injustice. But does not Mr. Charlton see that he is taking away the principal safeguard of female purity by declaring, as in effect he proposes to do, that breach of chastity is no offence in the woman, and that even when she allures a lover, as it is preposterous to doubt that licentious women often do, she is to be regarded as a passive and guiltless victim? Law will, as usual, mould opinion, and less shame will attend what the law proclaims to be merely a wrong involuntarily undergone. In civilized countries a woman is protected from violence by the Government; against the enemy in her own breast she must protect herself; she is the keeper of her honour, and she knows that a promise is not marriage. It is singular that those who wish to call her to the exercise of political power should at the same time treat her as a creature devoid of sense and will. Violent legislation is the nostrum to which minds of a certain type are ready to fly whenever they see anything amiss, without considering what the general effect will be. A new weapon will be put into the hand of a female black-mailer, to whose machinations the characters of clergymen and medical men especially are exposed, as has just been proved by a signal example in this country, and by a

tragical example in England. There are varieties of character, female as well as male, and female as well as male fiends. Of this enthusiasts take no heed: male reputations, even when they are of the highest importance to the community, being beneath the notice of benevolence. By the provision that the offender shall be let off if he can plead that he has married the girl, a vista of conspiracy, forced marriage, and domestic misery is opened to view. Any woman who can entrap a foolish youth will be able to compel him to marry her on pain of being put in the dock. Experienced lawyers say that real cases of seduction are rare; but if Mr. Charlton's bill becomes law, fictitious cases of seduction are likely to abound. Such Acts have been passed, no doubt, by Legislatures in the United States. Legislatures in the United States will for show pass anything that is sentimental with more ease than they would pass an effective law against corruption; but to what extent have these enactments been put into execution? The illicit intercourse of the sexes is a sin which, besides destroying purity and beauty of character, poisons the very well-spring of human happiness. A crime in the legal sense it is not; much less is it a crime in one party alone. In the real interest of morality, it is to be hoped that Mr. Charlton's proposal will never become law."

THE NESBITT MURDER.

The Nesbitt case is in some respects of considerable interest, and the task of charging the jury was of more than ordinary delicacy. The learned judge who presided at the trial has put the substance of the charge in writing, and we believe its importance will be considered sufficient, more especially by those of our readers practising in criminal courts, to justify its reproduction here.

NOTES OF CASES.

SUPERIOR COURT.

MONTREAL, March 20, 1883.

Before LORANGER, J.

ANDERS v. HAGAR.

Exception to the form—Demurrer.

A defendant who is sued for the recovery of a penalty under 31 *Vict., cap.* 25, *sec.* 37 (*Q.*) *by a plaintiff who brings the action in his own name instead of suing as well for the Crown as for himself, should set up this defect by demurrer and not by exception to the form.*

The plaintiff instituted an action in his own name against the defendant who was President of the Pioneer Beet Root Sugar Co., for a penalty of $100 for alleged refusal to exhibit the Company's books, and $50 damages suffered in consequence of such refusal. The defendant met the action by exception to the form, saying that the plaintiff should in virtue of the Act 31 Vict., cap. 7, sec. 7, have brought the action as well for the Crown as for himself, and claimed only one-half of the penalty for himself. The plaintiff thereupon obtained leave to amend the conclusions of his declaration so as to claim only a moiety of the penalty for himself and the balance for the Crown. The defendant then inscribed on the exception, pretending that as the writ had not been changed, and as the plaintiff was still suing in his own name, the action as amended was still bad and should be dismissed.

LORANGER, J., held that, although the action was undoubtedly badly brought, the question should have been raised by a plea to the merits, as this was not a ground for exception to the form under Art. 116 C.C.P.

Exception dismissed.

F. X. Choquet, for plaintiff.

Wotherspoon, Lafleur & Heneker, for defendant.

[The Court of Q.B., March 29, without expressing any opinion on the merits of the question, granted leave to appeal from the above judgment.]

SUPERIOR COURT.

SHERBROOKE, January 31, 1883.

Before BROOKS, J.

LUCKE et al. v. WOOD.

Compensation—Unliquidated damages.

A claim of unliquidated damages, ex delicto, e. g., damages caused by wrongful issue of capias, cannot be pleaded in compensation to an action for goods sold.

This was an action for $41.02, instituted in the Superior Court, commenced by issuing a *capias* August 10, 1880, followed by a seizure on the 27th of the same month. A *capias* had first issued in July, returnable in August, but the plaintiffs, fearing that their proceedings were irregular, discharged the defendant from arrest, and took out a second writ.

The defendant did not petition to set aside the capias or seizure, but filed three pleas:—

1st. General issue.

2nd. A denial of certain items of the account, and allegation of payment of others, and alleg-

ing that in any event he was entitled to set off damages caused by the first arrest, which had been abandoned; and

3rd. That the second arrest was illegal, as the defendant could not be twice arrested for the same debt.

Mr. *Merry*, for plaintiffs, urged:

That the account sued upon had been fully proved by the evidence of witnesses, and the admissions of defendant, and that the alleged damages, not being *clairs et liquides*, could not be pleaded as a set-off to plaintiffs' claim for goods, wares and merchandise sold; that secretion of property by defendant had been fully established by plaintiffs.

Mr. *Brown* for defendant, urged:

That the account had not been established to the extent of $40, consequently the action had been improperly brought in the Superior Court; and further, that in any event defendant had proved disbursements, to the extent of $18.25, made by him in getting released on bail under the first capias, and that he was entitled to set off damages easily proved against plaintiffs' account, and that the action must be dismissed. Also, that defendant could not be arrested a second time.

Brooks, J. Owing to the account sued upon being so small, I have examined very carefully the proof, as the reduction of a small sum would cause the capias to be set aside, but I find the account proved. The defendant himself was, on more than one occasion, furnished with a detailed statement, and made no objection until arrested. He, on several occasions, stated that he only owed plaintiffs a little over $40, and that they should not have arrested him for so small a sum. He has, moreover, pleaded in bad faith, denying articles which are proved, and alleging payment of others by one Moulton, which he does not attempt to establish, though Moulton was examined

As to the second ground, the right to off-set unliquidated damages caused by former arrest, I do not think this can be legally done. C. C. 1188 says that compensation takes place between debts which are equally liquidated and demandable. Does this apply to the present case, even if damages were proved?

The case of *Hall* v. *Beaudet*, 6 L. C. R., p. 75, (1856) has been cited, as sustaining defendant's views, but a reference to the report will show that while a majority of the Court held that an account for goods sold and delivered might be opposed to a debt due under a notarial obligation, Ch. J. Sir L. H. Lafontaine dissented, and the majority of the Court applied the principle as limited to cases *sounding in money*. That under the old French law limiting the advantage to opposite debts, *claires et liquides*, owing to the development of trade, an evil grew up requiring a remedy, and which, Mr. Justice Badgley says, "was supplied by the jurisprudence of the French Courts, and the opinions of acknowledged and eminent French jurists, by which the principle of compensation was enlarged and extended to a class of debts susceptible of liquidation by a *ready proof at hand*, but refusing the application to such as were conditional, uncertain, dependent upon the settlement of litigated accounts, *comptes de successions, de tutelles*, with all their intricacies and delays of adjustment, or debts not yet due, or when the object set off was not easily appreciable in money, and such like; to all these the rigor of the rule was strictly applied in the same manner as in England, where mutual debts may be set off, *not in actions for unliquidated damages*, nor for costs, as upon the case, trespass, replevin, or *detenue*, but for debts in actions of *assumpsit*, debt and covenant for the non-payment of money, and for which an action of *indebitatus assumpsit* might be maintained, and such like, and where the debts were due at the commencement of the action, and in the same right." "On appelle une dette, claire et liquide, laquelle est due présentement et dont le défendeur peut faire sa demande, étant due par écrit ou autrement, ou que les parties en conviennent."

Is the claim set up by defendant for damages alleged to be sustained by him by reason of former arrest, of such a nature as to entitle him to have it compensate the account sued for goods, wares and merchandize?

To establish his claim defendant is not only bound to prove the amount of damage, but to prove that the plaintiffs are liable to pay these damages.

Lacombe says: "*Extenditur etiam ad ea quæ facile et intra breve tempus, liquidari possunt.*"

Can it be said that a claim for unliquidated damages is of such a nature? The claim, if arising *ex contractu*, would be differently viewed, but arising *ex delicto*, I cannot declare it such a

claim as would compensate the account sued for.

Judgment for plaintiff with interest and costs.

Merry for plaintiffs.

Brown for defendant.

COURT OF QUEEN'S BENCH.

[Crown side.]

MONTREAL, March 19, 1883.

REGINA v. MILLOY *alias* DOOLEY.

The prisoner was on trial for the murder of Wm. Nesbit.

RAMSAY, J., charged the Jury as follows :—

Gentlemen of the Jury, The length of this trial has subjected you to some inconvenience; but you will agree with me, I think, in saying that the counsel for the defence were fully justified in seeking the adjournment on Saturday evening, for it is now evident that we could not have finished the trial that night.

Except for the formal testimony of the Coroner to establish the death of Wm. Nesbit, the evidence of the Crown begins with the departure of the deceased on the morning of the 19th of January last, from his house to go to the stable, where the fatal blow was given. I shall invert the order of the evidence, as thus laid before you, and begin with the death of Nesbit, in order that we may at once get rid of those questions, which do not appear to be susceptible of difficulty.

First, the cause of death is evident. The deceased, a man in high health, leaves his house in the morning, and returns an hour after with a bullet wound in his throat. The ball passed in under the left ear and lodged in the muscles of the right jaw. The wounded man, with the aid of his wife, managed to harness a horse and attempted to reach the house of his brother-in-law, two or three miles distant, but overcome by weakness, he was obliged to stop at the house of another relative, whence he never could be removed, and where he died at the end of a week.

It requires no great effort of science to arrive at the conclusion that he died of the effects of the wound, and I should not have thought it necessary to do more than allude to the cause of death, had it not been for an attempt which has been made by the defence, to show that Nesbit had not died of the wound, but owing to the mal-practice of the medical men who attended him. It is contended that you have to decide as to the immediate cause of death, and that if you think the deceased would have recovered had he been better or differently treated, the prisoner is not liable. You have been further told that the criminal law on this point is unreasonable and barbarous, and that a doctrine more sensible than that of the common law should now usurp its place. Firstly, the law does not attempt to deal with mediate and immediate causes. No one has yet been able to show what an immediate cause is, more than to determine the size of an atom. What the law considers is the proximate cause. Again, as to the doctrine of the common law, it is necessarily in accordance with common sense, for it is the creature of reason and experience; and if it can be shown that a doctrine is opposed to reason, it cannot be that of the common law. With regard to the question before us the rules of law are perfectly clear and reasonable. If a man strikes another with a deadly weapon, or in such a way as to show that he intended to kill him, and he dies, the man striking the blow is guilty of murder. If the assailant strikes another illegally, and without the intention to kill, and the man struck dies, then the one who struck is guilty of manslaughter. In either case the mal-practice or the negligence which has brought about the fatal catastrophe is at the risk of the wrong-doer, unless it can be clearly shown that the death has an origin perfectly independent of the assault. Roscoe, Cr. Ev. 703.

Having established the cause of death, the next step in our inquiry is as to the instrument used. Have we found the pistol with which the fatal wound was given?

On this point we have a mass of evidence. In the first place the pistol was found on the 19th January close to the scene of the murder. It was found in the snow in the angle of the road leading to Nesbit's house from the high road, and on the left side of the road going from Montreal to Longue Pointe. Secondly, the bullet found in the wound fits the pistol. An effort was made to show that the ball would not fit the pistol, but this objection was disposed of by the testimony of the armourer. He tells us that such a pistol required a tight fiting ball to give it force, and that the ball in the wound evidently received a dent by striking some hard substance, (probably the right jaw bone) and that it was this prevented its entering the muzzle. He remarked also that the pistol could be

loaded either by the muzzle or by unscrewing the barrel. Again, we have ammunition and other bullets found scattered along the road in the neighborhood of the place where the pistol was found, and the bullets so found are of the same weight and size as the bullet found in the wound. Lastly, the pistol when found was loaded, the charge has been drawn in your presence, and the charge consists of a bullet, exactly of the same weight and size as that found in the wound, and as those found on the road, also of paper used as a wad of precisely the texture of the paper wad found in the wound, and of shot similar to that found on the road. There was also a piece of a common clay pipe found in the charge, which only becomes important at another stage of our enquiry. It seems to me then to be proved, beyond a shadow of doubt, that the weapon produced in Court during this trial is the instrument used to kill Nesbit.

The third question is, by whom was it used? The evidence on this point is chiefly circumstantial. I say chiefly, for I shall have to draw your attention to one piece of the evidence which is not usually classified as circumstantial.

At different times there has been much discussion as to the respective value of these two kinds of evidence, and also as to their different qualities. As an abstract question, the mind has to perform the same operation in judging on what is called direct evidence, and on what is called circumstantial evidence; but, practically speaking, there is a very notable difference. In direct evidence, the cause and effect are so closely allied that the mind draws its inference without being conscious of the operation it performs, while in circumstantial evidence the inference is drawn deliberately. Taylor on Evidence, § 56; Wills on Cir. Ev., p. 16.

But whether the evidence laid before you be attributable to one class or to another, to be sufficient, it must produce moral conviction of the prisoner's guilt; that is to say, it must be incompatible with any reasonable theory of the prisoner's innocence. Now, let us see whether the facts proved necessarily lead to the inference of the prisoner's guilt.

First, we have the evidence of Gauthier who tells us that between 5 and 6 in the morning of the 19th January, the deceased and he went to the farm-buildings to do their morning work. They had two lighted lamps, they entered by the stable door, and on getting to the cow-house they found the prisoner in the alley between the cows. Deceased began to milk his cows, and the witness to clean out the stable. These operations took about an hour. During this time no conversation passed, except that deceased, addressing the prisoner, asked him if he were smoking, to which the prisoner answered, "no." While witness was at work, prisoner followed him about as if looking at what he was doing, but without helping him, and on one occasion, when the witness carried out some manure into the yard, the prisoner made a movement at witness with an iron shovel, as though he would strike him. At the time witness thought he was playing, and attached no importance to his movements. By the light of what we now know they may, however, not be without significance. He may have been anxious for the departure of the witness.

The witness having finished his work, deceased told him to take the horses, eight in number, to water them at a well further off than the dwelling-house, and a little more remote than the farm-buildings from the dwelling-house. Gauthier had just reached the well when he heard Mrs. Nesbit, from the back door of the kitchen, calling to him that his master was hurt and to come immediately. On going to the house, witness found deceased lying unconcious on the floor. With the aid of Mrs. Nesbit he got deceased up, and supported him to the sofa in the inner room. The moment deceased was raised he rallied a little and said "a lamp exploded," "it's Tim shot me." Tim was the name by which prisoner was known when a servant in the deceased's service. It was proved that in reality no lamp exploded, so that this part of the statement was incorrect, but the other part of the statement is evidence for you to consider. It is not admitted as evidence as a dying declaration, but as being part of the *res gestæ*, and faith is given to it because it could not be concocted and is not likely to be false. Roscoe, 23 and 24. Reg. & Lunny, 6 Cox.

Next we have Gauthier starting to go to Kidd's for assistance, and his recommendation to Mrs Nesbit to fasten the door, as the man, who was still about, might return to finish his work when witness was gone. The advice was well-timed, and Mrs. Nesbit fastened the kitchen door.

No sooner had Gauthier left than the prisoner came to the house, broke open the kitchen door and tried to force an entry into the dining-room. Being resisted and threatened by Mrs. Nesbit, and seeing, probably, that if Gauthier had gone to alarm the neighbours, he might be surprised on the premises, the prisoner took one of deceased's horses and started for the high-way. As to all this part of the case Mrs. Nesbit's evidence is complete and direct. Hearing the kitchen door burst open she opened the door leading from the dining-room into the kitchen, and saw the prisoner making his way across the kitchen to the steps leading to the dining-room. Later, from the front door, she saw him going to the barn for a horse, and start to go down the winter road on horseback.

The next witness, Reeves, saw the prisoner throw something away near Nesbit's gate, and then he saw him trying to cover up something, both on the north and south side of the public road. When witness came up to prisoner he asked Reeves to take him up; and when Reeves refused, prisoner said "I'll lick you.' When passing the gate Reeves saw a black horse going slowly up the road alone towards Nesbit's house.

A little nearer town Leonard saw prisoner, and the prisoner then asked Leonard to take him up, which Leonard refused. Both Leonard and Reeves were struck by the appearance and manner of prisoner. Just as Leonard passed, Mrs. Levasseur, coming from the other direction, and so meeting prisoner, saw him emptying his pockets and bend down to hide something in the snow. You have been told this witness could not see the prisoner five acres off. The distance does not appear to be so great; but whatever the distance was, she says she saw him, and as a proof of this, she sent her little boy to look for what had been left where she had seen prisoner empty his pockets, and the boy brought back bullets and shot.

The evidence as to the attempt of the prisoner to conceal something is not an invention, for Richard, Gauthier, Buchannan, Hogg, Mme. Levasseur and Trempe prove that the pistol, bullets, shot, powder, paper and caps, were all found exactly at the places described by Reeves and Mme. Levasseur as being the places they had seen prisoner engaged in concealing something in the snow.

On the 20th January, the father of the deceased found the cover of a box for holding percussion caps in the stable at Nesbit's.

Again, there is another little link in this chain of evidence. The pistol was found re-loaded, and it seems the prisoner, if it was he who shot deceased, had plenty of time to re-load the pistol after his attack on deceased and his going to the house to force an entry.

The similarity of the known mode of proceeding of the prisoner, and that of the murderer is not unworthy of consideration. The prisoner awaited the departure of Gauthier, to get help, which, doubtless, he saw, before going to break into the kitchen; and the murderer, whoever he was, awaited the departure of Gauthier before making the assault on deceased.

Again, the prisoner remained alone with deceased when Gauthier went to water the horses, and the attack on deceased followed so immediately the departure of Gauthier that it seems almost impossible that any one other than the prisoner could be the assailant. On this point the prisoner could give us some information, but he has persistently refrained from giving any account of what took place between him and deceased after Gauthier left. Where was he from the time Gauthier left until he broke open the kitchen door, is a question one cannot fail to ask. Directly questioned as to the attack, he said he did not even know what they were talking about.

The law does not compel the prisoner to speak, but silence has its indiscretions, and the fact that the prisoner kept silence under such peculiar circumstances may be considered by the jury as adding force to the suspicions which his position and actions naturally created, although not by itself a presumption of guilt.

If we had nothing beyond this to go upon a very strong case of circumstancial evidence would be made out, but we have now to look at facts which even more directly point to the prisoner as the guilty party. He was searched twice at Grece's. Before the second search he was asked if he had any fire-arms about him. He answered, he knew nothing about fire-arms. Nevertheless, on his person were found 17 caps, a ramrod, and a pistol cover exactly fitting the pistol, and a pipe with the end of the stem broken. You will remember that a piece of the glazed end of a clay pipe was found in the pistol when the charge was drawn before you, and this seems

to correspond with the broken stem of the pipe found on the prisoner.

The last point I have to draw your attention to in the evidence of the Crown is the question put by prisoner to deceased after the latter made his statement before Mr. Dugas. As you will remember, the production of Nesbitt's deposition as direct evidence of the assault was objected to on the part of prisoner, and his objection was maintained. It is not a dying declaration, because there is no evidence that Nesbit knew he was dying when he made it, but it is produced as evidence of what took place in the presence of the prisoner, and of his demeanour and action on hearing this grave accusation. The prisoner being asked by the magistrate what he had to say, having heard what Nesbit said about the shooting and the assault with the shovel, he asked: "Is it not true that you ran after me and knocked me down?" The answer was unfavorable and he once more took refuge in silence.

This question is not what is called circumstantial evidence. It is an admission, though only an implied admission, of having fired the fatal shot, but it is a direct admission of an assault.

There are reasons which may be urged and fairly so, to explain why an accused person does not speak when his conduct is open to suspicion. He may fear by some indiscretion to heighten the presumptions against him of guilt, or he may dread misinterpretation. The prisoner is probably an old soldier, his counsel say he is, and he was therefore fully aware of his right to say nothing. But the dangers which suggest this reserve are at an end. He has had two months to arrange his defence, and he has now the aid of learned counsel able and willing to put his defence, if any he has, in the best shape before you. Yet to what does it amount? He says the bullet wound was not the cause of death. We have already dealt with that sophism. He now says, there is no proof of his having shot deceased. I think you will have no difficulty in dealing with that pretention. And finally he says that even if you believe he fired the shot, there is no evidence that he did so with premeditated malice, and that it was, in effect, an accident. In support of this defence it is agreed, that there was no motive for a crime, that an evil intention cannot be presumed, and that no guilty man would have acted as the prisoner did.

Motive, like character, is only important in cases of doubt; it is of no importance when the testimony is conclusive. Again absence of proof of motive, in any case, is of little moment, as a bad man will find sufficient excuse for crime in what appears trivial in the extreme. In fact no motive for crime is sufficient. Again, you are told that you cannot presume the malicious intention. The law says you may gather it from the act. If a man unintentionally inflicts a deadly wound, and the wounded man dies of the wound, it is for the assailant to show that he did not premeditate what is the natural or even possible consequence of his act. Knowing this, the defence says it was an accident, and there was no intentional killing at all. If that were true, how do they explain that the prisoner did not assist the deceased to the house, and that he broke open the door when he did go there? Did he re-load the pistol to give an opportunity for another accident? Why the concealment of the pistol and the amunition? And how did it happen that when he saw the deceased lying at death's door, owing to a wound accidentally inflicted by him, he uttered not a word of regret or sympathy? He would hardly acknowledge that he knew this man who had been his employer up to the day before, and whom he had met not two hours before in high health, and who, but for his act, would be so still. But it is a mere waste of words to dwell further on this defence. It is urged in utter despair, for providentially the Crown has been able to lay before you a chain of circumstances which seems to connect the prisoner indissolubly with the guilty act.

One other point was put forward in favour of prisoner, it is the certificate of good service, found in his possession. In face of the change of name this certificate proves nothing. If he be Timothy Milloy and not Timothy Dooley, then why did he abandon the name under which he obtained a good character? This is unexplained. He, therefore, has no right to any more credit for good character than arises from the ordinary presumption of innocence.

In matters of this kind one does not desire to augment one's responsibility. It is not for me to pronounce the fatal word, but I should be

wanting in my duty if I concealed from you the effect the evidence has had upon my mind. I have only to add that I have no charge to give you as to doubt, for of doubt I have none,—nor shall I speak to you of a possible verdict of manslaughter. If the witnesses are to be believed, the prisoner is guilty of murder as laid in the indictment, and I should regard a verdict of manslaughter as a calamity.

[The jury found a verdict of *Guilty.*]

THE DEATH PENALTY.

Lord Justice Stephen, in his new work on the history of the Criminal Law of England, says: "My opinion is that we have gone too far in laying it"— the punishment of death— "aside, and that it ought to be inflicted in many cases not at present capital. I think, for instance, that political offences should in some cases be punished with death. People should be made to understand that to attack the existing state of society is equivalent to risking their own lives. In many cases which outrage the moral feelings of the community to a great degree, the feeling of indignation and desire for revenge which is excited in the minds of decent people is, I think, deserving of legitimate satisfaction. If a man commits a brutal murder, or does his best to do so and fails only by accident, or if he ravishes his own daughter (I have known several such cases), or if several men acting together ravish any woman, using cruel violence to effect their object, I think they should be destroyed, partly in order to gratify the indignation which such crimes produce, and which it is desirable that they should produce, and partly in order to make the world wholesomer than it would otherwise be by ridding it of people as much misplaced in civilized society as wolves or tigers would be in a populous country. What else can be done with such people? If William Palmer had not been hanged in 1856, he would probably have been alive at this day, and likely to live for many years to come. What is the use of keeping such a wretch alive at the public expense, for say half a century? If by a long series of frauds artfully contrived a man has shown that he is determined to live by deceiving and impoverishing others, or if by habitually receiving stolen goods he has kept a school of vice and dishonesty, I think he should die. These views, it is said, are opposed to the doctrine that human life is sacred. I have never been able to understand distinctly what that doctrine means, or how its truth is alleged to be proved. If it means that life ought to have serious aims and to be pervaded by a sense of duty, I think the doctrine is true, but I do not see its relation to the proposition that no one ought ever to be put to death. It rather suggests the contrary conclusion as to persons who refuse to act upon it. If it means only that no one ought to be killed, I do not know on what grounds it can be supported. Whether life is sacred or not, I think there are many cases in which a man should be ready to inflict, or if necessary, to suffer death without shrinking. As however these views are at present unpopular and peculiar, and in the present state of public feeling on the subject it is useless to discuss this matter at length, no good purpose is served by making specific proposals which no one would entertain; but I may remark that I would punish with death offences against property only upon great deliberation, and when it was made to appear by a public formal inquiry held after a conviction for an isolated offence that the criminal really was an habitual, hardened, practically irreclaimable offender. I would on no account make the punishment so frequent as to lessen its effect, nor would I have any doubt as to the reason why it was inflicted. I suspect that a small number of executions of professional receivers of stolen goods, habitual cheats, and ingenious forgers, after a full exposure of their career and its extent and consequences, would do more to check crime than twenty times as many sentences of penal servitude. If society could make up its mind to the destruction of really bad offenders, they might, in a very few years, be made as rare as wolves, and that probably at the expense of a smaller sacrifice of life than is caused by many a single shipwreck or colliery explosion; but for this purpose a change of public sentiment would be necessary, of which there are at present no signs."

GENERAL NOTES.

Sir George Jessel, Master of the Rolls, has died somewhat suddenly, and has been succeeded by Mr. Horace Davy, Q.C.

The Tichborne claimant, who has now been nine years in prison, is 54 years of age, and his health, thanks to the regimen of English penal establishments, is pronounced to be good.