The Legal News.

Vol. IV. JULY 16, 1881. No. 29.

DISCLOSURE OF PROCEEDINGS BEFORE GRAND JURY.

In the recent case of *United States* v. *Farrington*, (2 Crim. L. Magazine 525), the Court held that whenever it becomes necessary to the protection of public or private rights, any person may disclose in evidence what transpired before a grand jury. But the Court, being of opinion that it will not subserve any of the purposes of justice to disclose how individual jurors voted, or what they said during their investigations, held that these facts cannot be shown in evidence. In the case in question the attorney representing the private prosecutors had appeared as a witness before the grand jury with a number of bank books, and had read such selections as he pleased. His testimony was interspersed with comments upon the force and effect of the testimony, in the nature of an argument, which, in the language of the district attorney, was "animated, spirited and excited." On motion to quash the indictment, the judge remarked: "It is not the province of the Court to sit in review of the investigations of a grand jury, as upon the review of a trial when error is alleged; but in extreme cases, when the court can see that the finding of a grand jury is based upon such utterly insufficient evidence, or such palpably incompetent evidence, as to indicate that the indictment resulted from prejudice, or was found in wilful disregard of the rights of the accused, the Court should interfere and quash the indictment." In a note to the report two English cases are cited. In *Reg.* v. *Hughes*, 1 Car. & K. 519, it was held that, upon an indictment for perjury for giving false evidence before a grand jury, a person who was in the grand jury room at the time, as a witness upon the indictment then being considered, is competent to prove what was sworn to during the examination, on the ground that he was not sworn to secrecy, as the members of the grand jury were. In admitting the testimony, Tindal, C.J., said it was for the purposes of public justice, and should be received. And in *Reg.* v. *Gibson*, 1 Car. & M. 672, which was a prosecution for a felony, a witness for the prosecution was asked, in cross-examination, whether he had not stated certain facts to the grand jury. Parke, B., said he saw no objection to the question, and thought the witness was bound to answer it.

THE LATE LORD HATHERLEY.

The death is announced of Lord Hatherley—William Page Wood. The deceased was the second son of the late Alderman Wood. He was born November 29, 1801, graduated at Trinity College, Cambridge in 1824, was called to the bar in 1827, and was made Queen's Counsel in 1845. He represented the city of Oxford in Parliament from 1847 to 1852. In 1849 he was nominated Solicitor-General, succeeding the late Sir Alexander Cockburn. He left office in February, 1852, on a change of administration, but in December of the same year he was appointed a Vice-Chancellor on the promotion of the late Sir George J. Turner. This office he held for fifteen years, until in March, 1868, he was made one of the Lords-Justices of Appeal in Chancery. In December, 1868, he was appointed Lord Chancellor in the place of Lord Cairns, and created a peer, by the title of Lord Hatherley. As a judge the deceased was always held in great esteem by the bar and the public, though his decisions do not take the highest rank as authority.

THE BAR EXAMINATIONS.

The examinations at Montreal, of candidates for admission to study and practice, have been concluded, and the result is announced as follows:—

Admitted to practice:—E. McMahon, J. B. Berthelot, T. T. Brousseau, A. David, J. O. Drouin, J. U. Emard, G. Foster, E. Guerin, E. Lamirande, W. Lighthall, H. G. Lajoie, C. A. Madore, A. S. Mackay, G. Raynes, L. J. B. Taché, L. E. Turgeon, A. G. Ingalls, W. A. Polette, J. E. Paradis, W. A. Weir, S. Jackson, A. G. Cross, E. Gauthier, J. D. Leduc, and R. S. Weir.

Admitted to study:—Auguste Delisle, R. Forest, A. Franchère, C. Lanctot, C. B. Daoust, L. P. Brodeur, C. Bruchesi, A. Bonneau, F. Charbonneau, J. H. Rogers, G. E. Malette, H. Pelletier, N. Rielle, C. S. Campbell, F. McLennan, A. N. Desautel, M. Landreville, F. Gerin Lajoie.

NEW PUBLICATIONS.

McGLOIN'S REPORTS:—Courts of Appeal of the State of Louisiana.

We have received part 2 of Vol. I of the above reports, edited by one of the judges of the court of appeals for the parish of Orleans, the object of the work being to preserve opinions of interest which may be rendered from time to time by the various courts of appeal of the State of Louisiana. Many of the cases reported in the present issue are of special interest in the Province of Quebec, and the reporter's work is very well done.

LOVELL'S GAZETTEER OF BRITISH NORTH AMERICA: containing the latest and most authentic descriptions of over 7,500 cities, towns, villages and places, in the Provinces of Ontario, Quebec, Nova Scotia, New Brunswick, Prince Edward Island, Manitoba, British Columbia, the North West Territories, and Newfoundland; and general information drawn from official sources, as to the names, locality, extent, etc., of over 2,300 lakes and rivers; with a table of routes, showing the proximity of the railroad stations, and sea, lake and river ports, to the cities, towns, villages, etc., in the several provinces. Montreal, John Lovell & Son, Publishers.

The above is a new and revised edition of a work which appeared in 1871. The growth of the country is attested by the fact that the present edition contains over fifteen hundred places not to be found in the former edition. The book is neatly got up, in convenient form for reference, and evinces the care and accuracy which mark the publications of the Lovell publishing house. A good map of the Dominion is contained in it. The Gazetteer, we are glad to learn, has been very favorably received by the public, and the examination which we have made of the work shows that its success is due to its unquestionable merit.

STATUTES OF CANADA, 1880–1. Queen's Printer, Ottawa.

The complete edition of the Statutes of the Dominion passed in the last session has been issued by the Queen's Printer. The profession will be pleased to have the work so promptly to hand.

NOTES OF CASES.

SUPERIOR COURT.

MONTREAL, July 8, 1881.

Before TORRANCE, J.

BELCOURT v. MACDONALD.

Contract—Breach—Failure to make connection.

This was an action of damages against the late lessee of the Q. O. & O. R. R. for breach of contract. The defendant agreed to run the railroad trains between Hochelaga and Calumet in connection with a steamer run by Belcourt between Ottawa and Calumet. The chief complaints of Belcourt were that Macdonald had failed to provide a proper wharf and shed at Calumet, or to deepen the channel so as to allow his steamer to approach the landing place, that on or about the 18th June he had suddenly changed the hours of departure and arrival of his trains so as to break the connection with Belcourt to his great damage, and he had also broken his agreement as to an excursion train on the Queen's Birthday in 1877.

Macdonald answered the action by complaining that Belcourt omitted to render him accounts of his receipts of money: that he had a judgment against Belcourt for $125 on a draft of date 13 June 1877, accepted by Belcourt as an acknowledgment of such money, and that the steamer provided by Belcourt had been seized by the owner thereof, and taken away from Belcourt. Macdonald denied any breach of contract or liability on his part.

PER CURIAM. The Court finds that Macdonald did change the hours of his trains on or about the 18th of June, without the consent of Belcourt in a manner which was not justified by the contract. As to the alleged want of access to and accommodation at the wharf at Calumet, the Court does not find the evidence sufficiently clear or free from contradiction. On the other hand, looking at the defence of Macdonald, it is true that he has a judgment against Belcourt for $125 for moneys due in connection with this contract, but the judgment went by default, and I do not see that it is any answer to the complaint of Belcourt of a breach of contract in changing the hours of the trains at a subsequent date. For this change Belcourt is entitled to some damages, and the

seizure of the steamer which took place about the 27th or 28th June, 10 days later, does not destroy this claim. I think that I shall be doing justice between the parties by allowing the claim of Belcourt to the amount of $105. It can be offset by him against Macdonald's judgment, but the Court here cannot pronounce compensation as it is not asked. As to the neglect to render accounts complained of by Macdonald, the agreement does not specify any date at which they should be rendered, and I cannot say that Belcourt was at this early date in June in default.

Macmaster, Hutchinson & Knapp for plaintiff.
Loranger & Co. for defendant.

SUPERIOR COURT.

MONTREAL, July 8, 1881.

Before TORRANCE, J.

BEAUDRY et al. v. BOND.

Contract—Interpretation—Insolvency.

Where a lease, made during the existence of the Insolvent Acts, was to be terminated by the insolvency of or the making of an assignment by the tenant, held, that the making of a voluntary assignment by the tenant after the repeal of the Insolvent Acts, did not terminate the lease.

The action was by landlord against tenant under a lease, of date 6th February 1878, for 5 years, from the 1st May 1878. The action began with a conservatory process to attach the moveables furnishing the house to answer for the rent of two years beginning the 1st May 1881, and assessments.

The rent had been paid up to the 1st May 1881, before the action began, and the defendant contended that his lease terminated at the last mentioned date under an assignment which he had made as an insolvent to H. B. Picken Jr., on the 31st December 1880. His plea invoked this assignment, and a clause of the lease in the following words: "In case of insolvency of said lessee or his making any assignment of estate, this lease shall *ipso facto* become null and void, after the expiry of the year then current during which such assignment is made, for the remainder of the term thereof, without notice to the assignee or to any other person or persons whatever." Plaintiffs answered the plea by alleging that the lease was made when the Insolvent Act of 1875 and its amendments were in force, and that the clause in question had only been inserted in view of an insolvency and assignment under this Act; that the parties to the lease had not in view a voluntary assignment such as that invoked by defendant; that he was not insolvent and had not made an assignment such as contemplated by the lease; that said clause was inserted for the benefit of the lessors.

PER CURIAM. The Court holds that the answer of the plaintiffs is well founded, and that the clause in question does not apply to the present case. The plea is therefore over-ruled.

Judgment for plaintiffs.

Lacoste, Globensky & Bisaillon for plaintiffs.
L. H. Davidson for defendant.

SUPERIOR COURT.

MONTREAL, July 8, 1881.

Before TORRANCE, J.

BOWES v. RAMSAY.

Malicious prosecution—Reasonable and probable cause.

A trading firm, by making false statements to a mercantile agency as to their capital, obtained a high and incorrect rating, on the strength of which they got credit for goods, which they handed over to a relative in payment of an antecedent debt, and, within a month after, a writ in insolvency issued against them. The vendor of the goods on discovering the facts, and being so advised by counsel, prosecuted the firm on the charge of obtaining goods by false pretences.

Held, that there was reasonable and probable cause for the prosecution, and an action of damages would not lie.

PER CURIAM. This is an action of damages for a malicious criminal prosecution. Plaintiff and his brother, members of a Toronto firm of A. Bowes & Co., were charged by Ramsay with having conspired to obtain from the firm of Ramsay, Drake & Dods by false pretences certain goods. Plaintiff was arrested at Toronto under a warrant issued on Ramsay's information, and brought down to Montreal by a constable, and discharged after a long preliminary examination.

The defendant pleads reasonable and probable cause for the information and prosecution. The main issue is whether the defendant had reasonable and probable cause.

The facts are shortly these: Bowes & Co., consisting of Archibald and David Bowes, went into partnership as warehousemen in Toronto in 1877. In the fall of 1877, two of the agents of the mercantile agency of Dun, Wiman & Co., called upon them in succession, and the second of these agents, Mr. Hutton, says that plaintiff represented to him that each of the partners was putting $5,000 into the business. They were thereupon rated in the books of the agency as worth $5,000.

On the 14th November, 1878, the firm of A. Bowes & Co. bought from defendant's firm to whom they were entirely unknown, 10 barrels of oil of the value of $207.75. This purchase was made by plaintiff, and he referred Ramsay & Co. to the mercantile agency for a report as to the position of Bowes & Co. On the 28th November, 1878, Bowes bought more oil from Ramsay & Co., 7 barrels of the value of $141.31. This last lot was handed to one Bowes a farmer, a relative, in payment of an antecedent debt. This fact comes out in consequence of proceedings being taken against the recipient of the oil on the subsequent insolvency of Bowes & Co., to return the oil or the value to the assignee of Bowes & Co. The Court gave an order accordingly and the oil or value was returned.

On the 26th December, 1878, Bowes & Co., were put into insolvency, this being within one month after the purchase of the second lot of oil. It was in consequence of the answers made by plaintiff to the questions put by his creditors, that the facts were put before Mr. W. H. Kerr, Q. C., of this city, with a view to criminal prosecution, and he advised a criminal prosecution and prepared an information to be sworn to by defendant and laid before the magistrate. It would appear that the magistrate after hearing several witnesses decided not to commit the plaintiff, but to discharge him. It further appears that Bowes & Co. procured a composition at 25 cents in the dollar from their creditors, bearing date 30 April, 1879. A year afterwards the county judge confirmed the discharge by his judgment of date 26 April, 1880, but with the proviso that it shall only operate and have effect as a discharge as to Archibald Bowes in two months, namely, on and after the 26th April, 1880, and as to the plaintiff, in one month after his judgment, namely, in one month after the 26th April, 1880. These are the facts which have been very carefully put before the Court by the counsel charged with the prosecution of the present suit and its defence.

Does an action for damages lie in such a case? The important question is not whether the defendant Ramsay was actuated by malice in the criminal prosecution, though here there is evidence that he took criminal proceedings in the hope of coercing plaintiff into paying the debt, and the action would not lie without proof of malice. Nor is the important question whether the accusation by Ramsay was true or false. The important question here is whether Ramsay had reasonable and probable cause for the criminal prosecution. "Probable cause," says 2 Greenleaf's Evidence, in chapter on Malicious Prosecution, § 455, "does not depend "on the actual state of the case, in point of "fact, but upon the honest and reasonable "belief of the party prosecuting." Next we have the advice of counsel. "It is agreed that "if a full and correct statement of the case has "been submitted to legal counsel, the advice "thereupon given furnishes sufficient probable "cause for proceeding accordingly." Idem, § 459. On the whole case, the conclusion of the Court is that the plea of Ramsay has been made out. Perhaps there was nothing more than imprudence on the part of the plaintiff, but he was the means of Dun, Wiman & Co. certifying that Bowes & Co. had a capital of $5,000. Again, the appropriation of the oil purchased within a month before a writ in insolvency issued against Bowes & Co., to pay a debt due a relative, is an unfortunate circumstance, and the conclusion of the county judge suspending the discharge shows that he was not satisfied that the insolvents had clean hands.

Action dismissed.

Doutre & Joseph, for plaintiff.

L. N. Benjamin, for defendant.

SUPERIOR COURT.

MONTREAL, July 8, 1881.

Before TORRANCE, J.

GORRIE et al. v. OGILVIE et al.

Married woman—Payment of husband's debt.

A transfer of a claim or of money made by a wife séparée de biens to a creditor of her husband, in payment or part payment of her husband's debt, is valid, and the wife is not entitled to have such transfer or payment set aside.

The question was as to the validity of a deed of transfer executed by a wife on behalf of her husband. The plaintiff authorized by her husband seeks to set aside a transfer by which she transferred to the defendant Ogilvie for Ogilvie & Co., with promise of warranty, "all her right, title and interest as one of the legatees and legal representatives of her father, the late Daniel Gorrie deceased, to the sum of $3,000, part and parcel of the amount coming to her under and by virtue of a certain sale by authority of justice of certain real estate the property of the estate of the late Daniel Gorrie, * * * * with all interest to accrue thereon." The consideration of the deed is stated to be "the like "sum of $3,000 paid in cash at the execution "hereof." Plaintiff declared that no money was paid at the execution thereof; that she never received any consideration for the transfer thereof; that she never was indebted to defendant; and that in fact said deed was made as security *pro tanto* of the indebtedness of her husband to Ogilvie & Co, of which firm defendant was a partner, under the importunities and influence of her husband, acting in connivance with Ogilvie; and said transfer, she alleged, was absolutely null, and the plaintiff was entitled to have the return of all the moneys received by defendant under the same and interest.

The pretention of the defendant is that the main question is whether a transfer of a claim or of money made by a wife to a creditor of her husband, as part payment of her husband's debt, is valid. The plaintiff relies upon C. C. 1301.—"A wife cannot bind herself either with "or for her husband, otherwise than as being "common as to property; any such obligation "contracted by her in any other quality is void "and of no effect."

Kerr, Q.C., for defendant, urged that so long as no responsibility or obligation on the wife's part is involved, she is at liberty to pass deeds and do acts. Thus she can pay her husband's debts. The case of *Hogue*, insolvent, *Cousineau*, collocated, and *La Société de Construction Montarville*, was cited by Mr. Kerr; 2 Legal News 308, 9, where Mr. Justice Jetté is reported to have said: "She may make any deeds which "do not involve any responsibility or obligation "on her part. Thus she may pay for her hus- "band, for that is not obliging herself for him."

PER CURIAM. The plaintiff truly says that she made the transfer in the first instance as security for her husband's obligations, but the question here is not the enforcement of her obligation, but whether having made a payment which has inured to her husband's benefit, she can have the payment cancelled. I agree with Mr. Justice Jetté that the code, C C. 1301, does not go that length. She has chosen to give over to her husband's creditor a valuable security which has discharged her husband *pro tanto*. If she is ever called upon to guarantee the transfer under the warranty clause, the code 1301 may be invoked for her benefit, but she is not now called upon to fulfil any obligation violating C. C. 1301. Action dismissed.

L. H. Davidson, for plaintiff.

Kerr, Carter & McGibbon, for defendant.

SUPERIOR COURT.

IN INSOLVENCY.

MONTREAL, July 4, 1881.

Before MACKAY, J.

PAQUET, insolvent, CANADA GUARANTEE CO., claimant, and BANQUE D'HOCHELAGA, contesting.

Guarantee Insurance—Privilege.

PER CURIAM. In this case the Bank contests a claim by the Guarantee Company. By the dividend sheet the Guarantee Co. is collocated for $2750. The Court was under the impression at first that the claim was well founded, but an examination of the bond shows that its terms make the Company liable *in solido* with Paquet. The two jointly and severally promise that Paquet will account for *all* that he ought, and pay *all* that he may owe. There is a limitation however, so that the Guarantee Company may not be harassed beyond $10,000. It has paid the $10,000 since the Bank proved, and has filed a claim for $10,000 against the estate in bankruptcy of Paquet. It claims to rank *pari passu* with the Bank on what remains of Paquet's assets, diminishing the dividend for the bank seriously, and *recouping* itself over $2000 of the $10,000 guaranteed. Seeing that the Guarantee

Co. is debtor *in solido* for all Paquet's indebtedness it must not be allowed to *concourir* with the creditor, the Bank, but the Bank must first be paid what remains due to it, which is forty thousand dollars beyond all that Paquet's estate can pay; even after crediting the $10,000. The dividend sheet must be reformed. Contestation maintained, with costs against the Guarantee Company.

Hatton & Nicolls, for Canada Guarantee Co.
Beique & McGoun, for contestants.

RECENT SUPREME COURT DECISIONS.

Life Insurance—Insurable Interest—Transfer—Wager Policy — Payment of Premium — One Gendron applied to respondent's agent at Quebec for an insurance on his life, and signed the application. The applicant was personally subjected to a medical examination, and the application, the medical examiner's report, together with the certificate of a friend answering certain questions put to him by the company, were transmitted to the head office at New York. The application of Gendron was acceded to, and the policy, which is set out in the declaration, executed, whereby Gendron's life was insured from the date of the policy for one year upon payment of a certain premium, and to be continued in force by the annual payment of the premium. The policy was then transmitted from the head office to the agent in Quebec, to whom the application had originally been made. The policy was not delivered for some time as Gendron was unable to pay the premium, when one Langlois, approached by Michaud, who had been entrusted by Gendron with a blank assignment, paid the premium, and thereupon the transfer of the policy was made to Langlois who received the policy and held it as the assignee of the assured. Subsequently Langlois assigned the policy to the appellant, and all premiums up to the death of Gendron were paid by the assignees of the assured. The principal question which arose on the appeal was whether this was a wager policy obtained by Gendron's assignees, and whether there was an insurable interest in it. Prior to Gendron's death the general agent enquired into the circumstances of the case, and authorized the agent, Michaud, to continue to receive the premiums from the assignee.

Held, (reversing the judgment of the Queen's Bench, Montreal, 3 Legal News, 322,) that at the time Gendron applied for an insurance on his own life, and his application was acceded to, and the policy sued upon executed, he effected *bona fide* an insurance for his own benefit, and as the contract was valid in its inception, the payment of the premium when made had relation back to the date of the policy, and the mere circumstance that the assignee (the insurance having been effected without his knowledge, and there being no collusion between the parties) paid the premium and obtained an assignment, could not make it a wager policy. (Gwynne, J., dissenting).—*Vezina* v. *New York Life Insurance Co.*

Writ of Prohibition to Municipal Corporation —Assessment Roll.—Appeal from a judgment of the Court of Queen's Bench for the Province of Quebec, (3 Legal News, 274,) maintaining a writ of prohibition issued in the Superior Court of the Province of Quebec, at the instance of the respondents, to prohibit the appellants from proceeding to sell the property of the respondents for taxes due under a certain assessment roll of 1876.

In 1875, a valid assessment roll for the municipality in which the properties were situated was made, which by law continued to be in force for three years. On complying with certain formalities, the council had power to amend such roll. In 1876, another roll was made, and the evidence showed that it was a triennial roll which was made, and not an amended roll as contended for by the appellants. By their *requête libellée* the respondents demanded that a writ of prohibition should issue out of the court addressed to the defendants, enjoining them from selling the real property of the plaintiffs so seized, or to proceed in any manner upon the said assessment roll of 1876, or to collect any taxes in virtue of that roll, and that the proceedings taken against the plaintiffs' property might be declared to be illegal, void and of no effect.

Held, per Henry, Taschereau and Gwynn, JJ., that respondents were entitled in this case to an order from the Superior Court to restrain the municipal corporation from selling their property as prayed for, and as it made no difference what name was given to the proceedings in the case, the writ of prohibition

issued in the case should be maintained. *Contra* Ritchie, C.J., Strong and Fournier, JJ. The Court being equally divided, the judgment appealed from was affirmed, but without costs.—*Cote et al.* v. *Morgan et al.*

RECENT ENGLISH DECISIONS.

Criminal Law—Trial—Cumulative Sentence Valid.—The appellant was indicted for perjury; the indictment contained two counts, the first alleging perjury committed on the trial of an action of ejectment in 1871, the second alleging perjury committed in some proceedings in 1868. The assignments of perjury in the two counts were not identical, but the object of the proceedings in 1868 and in 1871 was the same, namely, to establish the appellant's right to certain landed estates. The jury found a general verdict of guilty upon both counts of the indictment, and the appellant was thereupon sentenced to seven years' penal servitude upon each count, the second term to commence upon the expiration of the first term.

Held (affirming the judgment of the court below,) that such a sentence might be lawfully passed, although the statute (2 Geo. II, chap. 25, § 2, as amended by the subsequent acts,) makes seven years' penal servitude the maximum punishment for a single perjury. *Held*, further, that the statute of George II does not require the infliction of a common law punishment in addition to that prescribed by the statute. Cases referred to: Regina v. Wilkes, 4 Burr. 2527; Rex v. Robinson, 1 Mood. C. C. 413; Tweed v. Lipscombe, 60 N. Y. 559; Young v. The King, 3 T. Rep. 98; Rex v. Jones, 2 Campb. 131; Rex v. Kingston, 5 East, 41. House of Lords, March 11, 1881. *Castro* v. *The Queen*. Opinion by Lord Chan. Selborne, Lord Blackburn and Lord Watson, 44 T. Rep. (N. S.) 350.

THE PERILS OF DOCTORS.

The case of *DeMay* v. *Roberts*, Michigan Supreme Court, June 8, 1881, 9 N. W. Rep. 146, so far as we know, is unique, at least since the time when Clodius in disguise penetrated the mysteries of the *Bona Dea*. It was there held that where a physician takes an unprofessional unmarried man with him to attend a case of confinement, and no real necessity exists for the latter's assistance or presence, both are liable in damages; and it makes no difference that the patient or husband supposed at the time that the intruder was a medical man, and therefore submitted without objection to his presence. The physician testified that the layman, who bore the misleading name of Scattergood, accompanied him reluctantly, on foot, on a dark and stormy night, when the roads were too bad to drive or ride a horse, to carry a lantern, an umbrella, and some instruments. The physician told the husband that he had brought Scattergood along to help him carry these things, and Scattergood was admitted without objection. The house was only fourteen by sixteen feet in size, and the doctor and the intruder were necessarily in the same room with the suffering lady. At the doctor's request, Scattergood once gave some trifling manual assistance, but did not obtrude himself, but behaved in a proper manner. The court remarked: "Dr. DeMay therefore took an unprofessional young unmarried man with him, introduced and permitted him to remain in the house of the plaintiff, when it was apparent that he could hear at least, if not see all that was said and done, and as the jury must have found, under the instructions given, without either the plaintiff or her husband having any knowledge or reason to believe the true character of such third party. It would be shocking to our sense of right, justice and propriety even to doubt that for such an act the law would afford an ample remedy. To the plaintiff the occasion was a most sacred one, and no one had a right to intrude unless invited, or because of some real and pressing necessity which it is not pretended existed in this case. The plaintiff had a legal right to the privacy of her apartment at such a time, and the law secures to her this right by requiring others to observe it, and to abstain from its violation. The fact that at the time she consented to the presence of Scattergood, supposing him to be a physician, does not preclude her from maintaining an action and recovering substantial damages upon afterward ascertaining his true character. In obtaining admission at such a time and under such circumstances without fully disclosing his true character, both parties were guilty of deceit, and the wrong thus done entitles the injured party to recover the damages afterward sustained, from shame and mortifica-

tion, upon discovering the true character of the defendants." The action was brought by the wife.—*Albany Law Journal*

THE PRACTICE OF LAW.

The address of Hon. J. M. Woolworth, before the Iowa State Bar Association, May 10th, contains a remarkably ingenious account of the manner in which custom becomes law. Judge Woolworth also utters the following which is timely: "The practice of law, considered merely as a business, is the least satisfying of all human employments. Considered as a business merely, I say; that is, prosecuted like any craft, or trade, or adventure, solely for the purpose of gain. He who plies this art in that spirit stands in the market and lets himself to hire, and at the end of the day the fee in his hand is his reward; or if with a great enterprise of viciousness, he conceives the law as a dexterous art, contrived by lawyers for lawyers, in order to transmute the property of others into their own possessions, he answers St. Paul's description of certain Gentiles who were 'given over to work all uncleanness, with greediness.' The profession of law is not a craft, or a trade, or a venture. It is not a contrivance for the benefit of lawyers. It cannot be worthily or even decently practiced simply for gain. I do not say that the lawyer may not take rewards for his work; it ought to bring him gain—the gain at once of 'flowing fees' and honor among his fellow-men; and he ought to demand and care for these his dues. But they must be the incident of his service; they must come of themselves and not by much seeking. If in the act of plying this art the counsellor be intent on the fee, if he pursue it as his one object of desire, no matter how much it may increase and multiply, it will be a poor, sordid thing in his hands. On the other hand, if he will keep it in its due place, it will be the *honorarium* of the Roman jurisconsult and the English barrister. In this commercial age when wealth is held before the eyes of men as the one object of desire, and the getting and displaying of it is the chief end of man, the lawyer, whose life is in the very wildest of the strife, is apt to lapse into the mercenary spirit. They who resort to him are busy in getting or recovering or fortifying the possession of property. The strifes of his days and the studies of his nights are to serve them in their pursuit of money. The very atmosphere of his office is redolent of gold. In the midst of such influences and constraints what is so natural as that he relax his hold upon any conception of the law which is not mercenary; how shall he resist the solicitations to make merchandise of it and pursue it as men follow trade?"—*Albany L. J.*

THE LATE LORD JUSTICE JAMES.

Of this distinguished English judge, who died on the 7th June, the *Solicitors' Journal* says:—"In Lord Justice James the nation has lost a judge who possessed in no ordinary degree that integrity which, as Lord Bacon says, is above all things the 'portion and proper virtue' of judges. He had a passionate loathing for injustice, oppression and trickery; restrained only by the strong common sense which taught him that settled rules of law must not be displaced to avoid individual hardship. In knowledge of real property law he was probably unrivalled on the bench, and in force and clearness of diction he had few equals. His grasp of the facts of the most complicated case was singularly rapid and accurate. Perhaps it was this facility of apprehension which led him sometimes into a rather too early expression of opinion as to the legal bearing of facts. He was not always 'swift to hear and slow to decide.' He was not always patient with counsel whose sense of duty to their clients led them to combat the view which he had taken up. But with all this, he was a judge who inspired great confidence. His opinion, if sometimes prematurely expressed, was seldom wrong; and it was usually supported by a clear enunciation of principle and a careful analysis of cases. His place at Lincoln's Inn will be hard to fill."

GENERAL NOTES.

In the New York Court of Appeals there is a two hours' limit to the addresses of counsel, but more than one hour is seldom taken.

Ex-Judge Tyler, of California, the other day, finding himself opposed by a woman lawyer, Mrs. Clara S. Foltz, lost his temper, and told her that "a woman's proper place was at home, raising children." The lady answered him promptly: "A woman had better be engaged in almost any business than raising such men as you are, sir."