The Legal News.

VOL. X. MARCH 26, 1887. No. 13.

In connection with the judicial returns published in the *Quebec Official Gazette*, to which further reference will be made in another issue, it may be observed that no mention is made of interlocutory judgments rendered in the district of Montreal, while the returns from other districts include such interlocutories. It appears from a statement prepared by the Prothonotary, that during the year 1886 there were 912 interlocutory judgments rendered in this district on motions, petitions, etc., upon which *délibérés* were had: viz., January, 107; February, 117; March, 75; April, 91; May, 87; June, 95; July, 31: August, 31; September, 68; October, 64; November, 72; December, 74. The fact that interlocutories are not included in the return from the district of Montreal, serves to explain why the number of judgments rendered in this district appears to be much less, compared with the number of actions taken out, than in the district of Quebec.

The venerable authority of Coke has received a rude shock from that impetuous critic, Mr. Justice Stephen. On Coke being cited by counsel at Cardiff, the learned judge is reported to have said, "I know another equally high authority, Lord Blackburn, who never regarded Coke as an authority at all!"

The obligation to appear as a witness is sometimes an onerous one. The defendants in the Plan of Campaign conspiracy case having summoned the Attorney General for Ireland as a witness, it is stated that he was obliged to transfer the brief for the prosecution to the Solicitor-General for Ireland, by which he lost a fee calculated at £700.

A Roman coffin, containing the skeleton of a lady, was dug up at Plumstead lately, on a spot which appears to have been a Roman cemetery. The disposal of the interesting relics gave rise to some difficulty. The vicar of the parish, who does not appear to be an enthusiastic antiquarian, caused the remains to be buried in the parish church-yard. This disposition of the relics was objected to by the owner of the land on which they were found, and was also protested against by a representative of the Kent Archæological Society. The county coroner also complained of the remains being disposed of without his authority, while virtually in his charge, and as the coffin is in some respects unique and in remarkable preservation, the antiquaries intend to make strenuous efforts for its recovery. The *Law Journal* remarks on these pretensions:—"The claim of the coroner that the remains were in his charge was altogether inadmissible. The coroner has no general control over dead bodies, but only when there is reasonable suspicion of death by extraordinary causes; and his jurisdiction being practical, and not historical, does not extend to the investigation of the decease of persons dying some 1,400 years ago. The claim of the proprietor of the soil to the body was equally without foundation. Not only is a dead body incapable of being the subject of property, but to disinter, from whatever motive, a dead body from consecrated or unconsecrated ground is a misdemeanor at common law (*Regina* v. *Sharpe*, 26 Law J. Rep. M. C. 47). The disinterment in this instance was accidental, but none the less a breach of that respectful treatment of a buried body which the law requires; and the least that the discoverer of the body could do was to re-inter it. Different considerations apply to the coffin, which is the subject of property, but although so many centuries have elapsed since the death of the lady, the right of property in the coffin vested in her representatives has never been abandoned. Even if the owner of the soil has any right of property in the coffin it is only as trustee for the purpose to which it was obviously devoted—namely, the reception of the body. He would be relieved from this trust only by the impossibility of finding any one entitled to assert it. Whether the vicar of the parish has any rights or duties in the matter is doubtful. He has duties towards the bodies buried in his churchyard, and he is bound to bury all baptized persons; but to insist on the re-interment in the churchyard of a body

buried for centuries, seems in excess of his power. The proper course is to apply to the Home Secretary, under section 25 of the Burials Act, 1857, for a license to remove the remains. That section provides that it shall not be lawful to remove any body or the remains of any body which may have been interred in any place of burial, without license from the Secretary of State, and a disregard of the section subjects the offender to a penalty, summarily recoverable, not exceeding £10. The words 'place of burial' have no technical meaning, and apply to the present grave, especially if it turn out, as supposed, to be a cemetery."

SUPERIOR COURT.

QUEBEC, June 4, 1884.

Before CASAULT, J.

COURTEAU v. GAUTHIER et al.

Immovable—Description—Tutorship of widow—Second marriage.

HELD:—1. *In a hypothecary action against the "tiers-détenteur" of an immovable, situate within the limits of a registration-division, wherein art.* 2168 *of the C. C. is in force, that immovable must be described by its cadastral number and by the description of it given in the cadastral book of reference;* (1)

2. *The tutorship of a widow to her minor children ceases, on her second marriage.* (2)

The judgment is as follows:—

"Considérant que l'action est hypothécaire et que la description de l'immeuble n'est pas celle voulue par la loi;

"Considérant que le convol en secondes noces et même en troisièmes noces de la défenderesse, Julie Bertrand, a mis fin à sa tutelle à ses enfants;

"L'exception à la forme est maintenue et l'action est renvoyée avec dépens, sauf à se pourvoir."

Belleau & Stafford, for plaintiff.

Morrisset & de St. George, for defendants.

(J. O'F.)

(1) Art. 2168 C. C.
(2) Art. 282 C. C., par. 3.

COURT OF REVIEW.

QUEBEC, Nov. 30, 1886.

Coram CARON, ANDREWS, LARUE, JJ.

DUFOUR v. DUFOUR, & ANGERS, oppt.

Petitory action—Improvements—Rights of hypothecary creditor.

HELD (*confirming the judgment of the Court below*):—1. *That neither the law nor the judgment itself extended the right of retention for re-payment of any sum of money, paid to the experts, as the plaintiff's share of their costs;*

2. *That the prosecuting creditor, under the peculiar circumstances of the case, should, within* 15 *days, put in good and sufficient security for securing the amount of the opposant's claim; but that, on failure to give such security, the sale should take place free from any such reserve or charge.*

In this suit, a petitory one, for the recovery of an immovable occupied by a *bonâ fide* possessor, the Court awarded the immovable to the plaintiff, but reserved to the defendant the right of retention, until payment to him of whatever sum might thereafter be awarded to him for his improvements, under an *expertise* ordered by the judgment.

The *experts'* award was $400; and the judgment, homologating their report, ordered that each party should pay his own witnesses, that the costs of the *expertise* should be borne equally between them, and that the plaintiff should pay the other costs of the defendant, awarded by way of distraction, to Mr. J. S. Perrault.

For those costs, Mr. Perrault caused the immovable to be seized and advertised for sale, "*subject to the right of the defendant to retain the immovable until payment to him of whatever sum he might have paid, as the plaintiff's share of the costs of the experts.*"

Charles Angers, having a hypothecary claim on the immovable, opposed the sale being made subject to that condition, which specified no particular sum, but consented to the sale taking place, subject to said condition, if Mr. Perrault would give security that the price of sale should be sufficient to cover the opposant's claim.

The judgment of the Superior Court (Dis-

trict of Saguenay, A. B. Routhier, J.) which was confirmed in Review, was as follows:—

"Considérant que la réserve faite en faveur du défendeur, dans les annonces de saisie-exécution en cette cause, de son droit de rétention sur l'immeuble saisi, "pour toute "somme qu'il peut avoir payée aux experts "pour le demandeur," est indéterminée, sans aucun montant fixé, et pour cette raison irrégulière et illégale;

"Considérant en outre que ni la loi, ni le jugement rendu en cette cause, n'étendent le droit de rétention du défendeur à la créance qu'il peut avoir contre le demandeur pour sommes payées aux experts à son acquit;

"Maintient l'opposition de Charles Angers, créancier du demandeur, et ordonne que la vente de l'immeuble saisi en cette cause ne soit soumise à la réserve du droit de rétention pour sommes payées aux experts, que si bonne et suffisante caution est donnée que l'immeuble sera vendu à un prix suffisant pour assurer au dit opposant le montant de sa créance, savoir: $100, avec les intérêts; et si tel cautionnement n'est pas fourni dans un délai de 15 jours, la Cour ordonne que l'immeuble soit vendu libre de telle réserve ou charge."

Jos. S. Perrault, for J. S. Perrault.
Charles Angers, for Charles Angers.
(J. O'F.)

SUPERIOR COURT.

SHERBROOKE, Jan. 31, 1887.

Before BROOKS, J.

KIPPEN v. STERLING.

Tender—Costs.

Where an action was instituted for $300.38, *and a tender of* $99 *and costs, made before return, was held insufficient, and judgment was given in favor of plaintiff for* $126.50, *costs were allowed plaintiff.*

PER CURIAM. This action was for $300.38, being for the balance of account alleged to be due to plaintiff for the rent of a certain saw mill property in Lennoxville, under three separate agreements; and several other items.

Defendant pleaded, denying the agreements as alleged by plaintiff with reference to the mill, and produced a *contra* account against plaintiff, alleging that before the return of the action into Court, he had tendered $99.00 and costs to plaintiff, which more than covered any balance due him, and bringing said amount into Court, and renewing the tender by his pleas.

The amount due for the mill, under the first agreement, is agreed upon at $300.46. As to the second and third agreements, plaintiff has failed to prove the same as alleged by him; on the contrary, the weight of evidence is in favor of defendant's pretensions. The evidence of Wm. Mitchell for defendant, is reasonable as to the new agreement and is not contradicted.

Under the circumstances, I can allow plaintiff nothing more than is credited by defendant for the mill, with the exception of $28, for sawing 28,000 feet of lumber which was done by Bond Little, about the middle of June, @ $1.00 per 1000 feet,-$28.00. It is evident this sawing is not credited, for Little says it was done after the middle of June, and that he sawed several days, and I find that credit is given by defendant for certain hours only, and in only one case, June 23rd, as many as six hours.

Plaintiff should also be allowed $30.00 for the use of the grist mill, during said season, being one half the proceeds of grinding.

As to claims for extras, and counter claims for reductions, in connection with building plaintiff's house, nothing is allowed either party.

Adding the above items, plaintiff's account stands as follows:—

Due for mill under 1st agreement..	$ 300.46
Sawing by Little, 28,000 feet @ 1.00.	28.00
Use of Grist Mill.....	30.00
Paid for Insurance.....	15.67
Drawing wood.....	22.75
Potatoes.....	5.40
Use of mill 144 hours, being 14 days and 4 hours, June 10th to Aug. 13th, @ 2.00	28.80
	$ 431.08

Of defendant's account, plaintiff admits in his deposition $275.83, and to this amount must be added $28.75, the balance charged by defendant for roofing, which, under the

evidence, must be allowed. This makes defendant's account $304.58, which being deducted from plaintiff's account of $431.08, leaves a balance in his favor of $126.50, for which amount, judgment will go for plaintiff, with costs.

Hall, White & Cate, Attys. for plaintiff.

Camirand, Hurd & Fraser, Attys. for defendant.

(H. R. F.)

CHANCERY DIVISION.

LONDON, Feb. 17, 1887.

Before STIRLING, J.

PHIPPS v. JACKSON. (22 L.J.)

Injunction — Mandatory — Covenant in Husbandry.

By an agreement for letting a farm it was stipulated that the tenant should at all times keep on the farm a proper and sufficient stock of sheep, horses, and cattle. The tenant had advertised the whole of the stock for sale. The landlord moved for an injunction to restrain the tenant from allowing the farm to remain without a proper and sufficient stock of sheep, horses, and cattle.

STIRLING, J., held that the Court could not superintend the execution of a stipulation in a farming agreement involving a series of continuous acts, and that an injunction could not be granted.

CHANCERY DIVISION.

LONDON, Feb. 21, 1887.

Before STIRLING, J.

CHALMERS v. WINGFIELD. (22 L.J.)

Domicil — Domicil of Choice — Intention to Abandon — 'Animus manendi.'

This was a summons to vary the certificate of the chief clerk, who had found that the domicil of the testator was German. The testator was born in India, his father being an officer in the service of the East India Company. He was himself an officer in that service, and never left India until the year 1870. He was married at Madras to a lady of Dutch extraction, by whom he had four children, all born in India. He left the service in 1868, and from that time until his death, he was in receipt of a Government pension. After 1868, he entered the service of the Nizam of Hyderabad. In 1871 (being then a widower) he left Hyderabad and went to reside at Darmstadt, where in 1872 he purchased a house. He lived there until his death, only leaving it to pay short visits to England in the years 1871 to 1874, and to India in 1874, for the purpose of obtaining a pension from the Nizam, and to friends in different parts of Germany. It appeared, from a letter written by him in 1871 to a friend in Germany, that on the occasion of his leaving India, the Nizam had refused to let him go for good, not wishing to lose his services, but had given him a furlough of fifteen months, hoping that he would be disgusted with Europe and would desire to return to India. In this letter, he referred to the Franco-German war of 1870-71, and identified himself with the German side. In July, 1871, he wrote a letter, stating his wish to marry, and that he preferred a German wife, and asking permission to pay his addresses to a certain young lady of that nationality. He made his will in Germany in 1874 in English form. By it he gave his property to his grandchildren to the exclusion of his children. By the German law, a testator is not allowed to disinherit his children; therefore, according to the finding of the certificate, the will was inoperative. There was also evidence to show that the testator was dissatisfied with Germany and wished to live in England.

STIRLING, J., said that the main properties of the law as laid down in *Bell* v. *Kennedy*, L. R. 1 Sc. App. 307, and *Udny* v. *Udny*, L. R. 1 Sc. App. 441, were, that the domicil of origin adhered to the subject until he acquired a new domicil of choice; that the burden of proving a change of domicil lay on the persons who asserted that such change had taken place; that in order to acquire a domicil of choice, two things were necessary—actual residence in the country of choice, and an intention to remain there permanently; and that the domicil of choice was put an end to by actual residence in another place, and by an intention permanently to reside there. The question, therefore, was whether the testator had during

his lifetime indicated an intention to reside in Germany. It was contended that if the domicil was held to be German the will would be ineffectual; but it was established by *In re Steer*, 3 H. & N. 594, that even an expressed wish to retain the domicil of origin would not prevail against evidence which proved the *animus manendi* in the domicil of choice; still less could a desire to retain rights according to the law of one country prevail in opposition to the fact that the man was domiciled in a different country. The most important fact, although not conclusive, was the purchase of the house in Darmstadt, wich appeared to him to be strong *primâ facie* evidence of an intention to settle in Germany. On the evidence, he was of opinion that the testator had acquired a German domicil at the time of his will and of his death, and that if he had any intention of abandoning that domicil, he failed to carry that intention into effect.

LIBELS ON THE DEAD.

At Cardiff, on February 10, before Mr. Justice Stephen and a special jury, the case of *Regina* v. *Ensor* was heard. It was an indictment against the defendant, a solicitor practising at Cardiff, charging him with having, on July 23, 1886, maliciously published a certain libel intending to injure the character of one John Batchelor, knowing the same to be false, by reading and publishing the same to one Taylor and others, and by publishing it in the *Western Mail*. A second count charged him with having done so intending to throw scandal on the character and memory of the said John Batchelor and to injure his family and posterity. A third count charged that the libel had a tendency to create a breach of the peace, and that it did cause an assault to be committed. A fourth count alleged that it had a tendency to excite the friends and relatives of the said John Batchelor to revenge by a breach of the peace, and that it did cause an assault to be committed by the sons of the said John Batchelor. The prosecution, alleged that the defendant, who was in the habit of writing articles for the *Western Mail* under the name of "Censor," had gone to the office of this newspaper on the evening of July 23, and read a suggested epitaph on John Batchelor before the staff. On the next morning there appeared in the columns of the paper the following statement:—"Our esteemed correspondent "Censor" sends us the following suggested epitaph for the Batchelor statue: 'In honour of John Batchelor, a native of Newport, who in early life left his country for his country's good; who on his return, devoted his life and energies to setting class against class, a traitor to the Crown, a reviler of the aristocracy, a hater of the clergy, a panderer to the multitude; who, as first chairman of the Cardiff School Board, squandered funds to which he did not contribute; who is sincerely mourned by unpaid creditors to the amount of 50,000*l.*; who at the close of a wasted and misspent life, died a pauper, this monument, to the eternal disgrace of Cardiff, is erected by sympathetic Radicals. Owe no man anything." The innuendo "that he had been transported as a felon" was alleged upon the words "left his country for his country's good."

Mr. Justice STEPHEN, after hearing counsel for the prosecution, directed an acquittal on grounds which he stated he had put into writing. These were as follows:—

There can be no question that if John Batchelor were living, the language applied to him would be libellous. But he died more than three years before it was published, and this raised the question whether and in what cases, a libel upon a dead man is, by the law of England, a crime. The authorities upon the subject are few. Practically, there are only three. The latest is the case of *Regina* v. *Labouchere*, 53 Law J. Rep. Q. B. 363; L. R. 12 Q. B. Div. 320. It has, in reality, little to do with the matter, as the question there was whether an *ex officio* information should be granted for such a libel, and it was held that the fact that the person said to have been libelled was dead was a reason why the Court should not in its discretion grant an extraordinary remedy, which is granted only in special cases. It does not follow that, because the Court in that case refused to grant an *ex officio* information for various reasons of which that

was one, an indictment for this libel will not lie. As we have heard, when an application was made to the Court to quash the indictment in this very case, the two judges to whom the application was made, and who formed part of the Court which decided *Regina* v. *Labouchere*, said that the judgment in that case was not intended to decide the point which arises in this. The other authorities are Lord Coke and Lord Kenyon. Lord Coke (in 5 Reports, 125*a*) distinguishes libels as made against a private man or a magistrate; and then says: "Although the private man or the magistrate be dead at the time of the making of the libel, yet it is punishable; for in the one case, it stirs up others of the same family blood and society to revenge and to break the peace; and in the other, the libeller traduces and slanders the State, which dies not." If this is or ever was good law, it would follow that all history is unlawful, for every true history must in many cases traduce the State, which dies not. Lord Coke, in the latter part of his long life, was distinguished for his independence as a judge and his defence of the subject against the encroachments of the royal prerogative. But his earlier character was different. In his history of the Star Chamber, it is said: "In all ages, libels have been severely punished in this Court, but most especially they began to be frequent about 42 & 43 Elizabeth" (1600, when Sir Edward Coke was her Attorney-General). In this passage, therefore, he was probably giving his impression of the Star Chamber practice, which no one would now regard as of any authority. There are, I think, many instances in which Lord Coke's views of the criminal law are doubtful, and go far beyond the authorities he refers to. In this passage he refers to none. The only real authority on the subject, as far as I know, is *Rex* v. *Topham*, 4 T. R. 126, in which Lord Kenyon delivered the considered judgment of the Court. In this case, judgment was arrested upon an indictment which charged Topham with libelling Lord Cowper deceased, "intending to defame his memory," and to cause it to be believed, in short, that he was a wicked man. The substance of the reasons for the judgment is given in these words: "Now to say in general that the conduct of a dead person can at no time be canvassed, to hold that even after ages are passed, the conduct of bad men cannot be contrasted with the good, would be to exclude the most useful part of history; and therefore it must be allowed that such publications may be made fairly and honestly. But let this be done whenever it may, whether soon or late after the death of the party, if it be done with a malevolent purpose to vilify the memory of the deceased and with a view to injure his posterity (as in *Rex* v. *Critchley*, 4 T. R. 129), then it comes within the rule stated by Hawkins—then it is done with a design to break the peace, and then it becomes illegal." The judgment seems to me to show that a mere vilifying of the deceased is not enough. Judgment, indeed, was arrested in *Topham's Case* because it was not enough. There must be a vilifying of the deceased with a view to injure his posterity. The dead have no rights and can suffer no wrongs. The living alone can be the subject of legal protection, and the law of libel is intended to protect them, not against every writing which gives them pain, but against writings holding them up individually to hatred, contempt, or ridicule. This, no doubt, may be done in every variety of way. It is possible, under the mask of attacking a dead man, to attack a living one. There are, in our own and other languages, well-known coarse terms of abuse which, taken literally, reflect only on the character of a man's mother, but which, if applied to a living man in writing, would certainly be libellous, whether his mother was living or dead, because they are known to attribute to the son the qualities which such a mother might be supposed to transmit; and if the mother were mentioned and vice were imputed to her, in order to bring disgrace upon the son, it seems to me that though the son was not expressly mentioned, the law would be the same. If the object appeared clearly to be to bring James I. into contempt, it would, I think, make no difference whether you said, "James was the son of an adulterous murderess," or, "Mary Stuart was an adulterous murderess." In cases of libel, the intention is everything. If you wish to cause Haman to be hanged, it makes no

difference whether you say, "Behold also the gallows which Haman has made," or, "On no account look at the gallows which Haman has made." It is sometimes said that, as a man must be held to intend the natural consequences of his acts, and as the natural consequence of the censure of a dead man is to exasperate his living friends and relations, and so to cause breaches of the peace, attacks on the dead must be punishable as libels, because they tend to a breach of the peace, whether they are or are not intended as an indirect way of reflecting on the living, unless, indeed, they are privileged as fair comments on matters of public interest or the like. My brother Wills, in charging the grand jury in this case, seemed to take this view. I have the most unfeigned respect for whatever falls from him, but I cannot agree to this in its full extent. It seems to me that if it were correct, Lord Coke's view would be correct. But the case of *Rex* v. *Topham* distinctly holds that it is not, for in that case judgment was arrested, because no intention to injure the family was alleged. This shows that the intent to injure the family was a fact requiring proof and necessary to be found by the jury, and not an inference by which they were bound from the terms of the writing reflecting on the dead man. I wish to add that I regard the silence of the authorities and the general practice of the profession as a more weighty authority on this point than the isolated statements of Lord Coke and the few unsatisfactory cases referred to in *Rex* v. *Topham*. I am reluctant in the highest degree to extend the criminal law. To speak broadly, to libel the dead is not an offence known to our law. If an extension of it is required, it is for Parliament and not for the judges to extend it. I think it is a fatal objection to several of the counts of the indictment that they aver only a tendency and not an intention to injure and to excite a breach of the peace. To define the crime of libel with reference to the tendency of the matters written, and not by the intention of the writer, might or might not be an improvement of the law; but, if it is, it must be effected by the Legislature and not by the judges. For these reasons, I think that, as it is not and cannot be suggested that the observations made on the late Mr. Batchelor were intended to injure and bring contempt on his family, but only to injure the character of the late Mr. Batchelor himself, the defendant must be acquitted.

The jury returned a verdict of not guilty.

APPEAL REGISTER—MONTREAL.

Tuesday, March 15.

The Queen v. *Cole* or *Bowen*.—Two reserved cases; continued to 23rd inst.

Bondy v. *Valois;* and *Falardeau* v. *Valois*.—Motion for appeal from interlocutory judgment. C. A. V.

Laurier v. *Legris*.—Motion for leave t appeal from interlocutory judgment, rej .cted with costs.

Cie Minière de Colraine & McGauvron.—Heard *de novo* on merits. C. A. V.

Lebeau & Poitras.—Heard on interlocutory appeal. C. A. V.

Canadian Pacific Railway Co. & McRae.—Heard. C. A. V.

Garth et al. & La Banque d'Hochelaga, & Taillon, & Mercier.—Petition for *reprise a'instance;* granted by consent.

Wednesday, March 16.

Lanctot & Ryan.—Heard on motion for leave to appeal from interlocutory judgment. C. A. V.

La Cie. de Navigation de Longueuil & Les Commissaires d'Ecole de la Ville de Longueuil.—Heard on motion for appeal from interlocutory judgment. C. A. V.

Fellows Medical Co. & Lambe.—Motion that Mr. Beausoleil be substituted for Messrs. Lacoste & Cie. Mr. Brosseau asks for production of authority for substitution. C.A.V.

Lapalme & Barré.—Heard on motion to quash writ. C. A. V.

Judah & Boxer et al.—Heard on motion to quash writ. C. A. V.

Goodall & Exchange Bank.—Heard on merits. C. A. V.

Bryson & Cannavon.—Part heard on merits.

Thursday, March 17.

Bryson & Cannavon.—Hearing concluded. C. A. V.

Benoit & Benoit.—Heard. C. A. V.

Mail Printing Co. & Canada Shipping Co.—Heard. C. A. V.

Aubry & Rodier.—Part heard.

Friday, March 18.

Bondy & Valois, and *Falardeau & Valois.*—Motion for leave to appeal rejected without costs.

Papineau & Corporation N. D. de Bonsecours. Motion for leave to appeal to Privy Council, rejected.

Judah & Boxer.—Motion granted; writ of appeal quashed with costs.

Fellows Medical Co. & Lambe.—Motion for substitution ordered to be put on the roll for the 21st, for the attorneys of record to give their objections to the substitution.

Beaudry & Dunlop et al.—Judgment reversed.

Allan & Pratt.—Judgment confirmed.

Evans & Foster.—Judgment reversed, each party paying his own costs of appeal.

Leroux, Elie, Duval & Prieur.—Judgment confirmed with costs of first instance; each party paying his own costs in appeal.

Aubry & Rodier. — Hearing concluded. C. A. V.

Cantlie & Coaticooke Cotton Co.—Part heard.

Saturday, March 19.

Cantlie & Coaticooke Cotton Co.—Hearing concluded. C. A. V.

APPOINTMENTS.

The Hon. Hugh Nelson, Burrard Inlet, to be lieutenant governor of the province of British Columbia.

Thomas Robertson, Q. C., Hamilton, to be a judge of the Chancery Division of the High Court of Justice for Ontario.

Charles James Townshend, Q. C., Amherst, N. S., to be a *puiné* judge of the Supreme Court of Nova Scotia, *vice* Mr. Justice Rigby, deceased.

Télephore Ouimet to be warden of the St. Vincent de Paul Penitentiary, *vice* Godfroi Laviolette, resigned.

Thomas McCarthy to be deputy warden.

William E. Sanford, Hamilton, to be senator, *vice* Sir A. Campbell, resigned.

GENERAL NOTES.

A Use for the Imperial Institute.—Mr. Sydney H. Preston writes to the London *Law Journal*:—"Should the Imperial Institute prove a grand success, a room might be set apart therein where not only information concerning Colonial Intestates could be obtained, but copies of wills and letters of administration be consulted, as similar documents relating to persons who have died in India can now be at the India Office."

The Four Courts.—The Four Courts in Dublin were discovered one day last month to be on fire. The whole pile of buildings was enveloped in smoke, and flames were issuing from the windows. The fire brigade effected an entrance and directed their efforts to the centre of the blaze, the Vice-Chancellor's Court in the west wing, which was entirely gutted, and the books and furniture destroyed. The fire originated in the passage to the Vice-Chancellor's Court. After two hours' exertion, the fire was subdued and prevented from extending. The damage is estimated at thousands of pounds. The absence of wind and the thickness of the walls favoured the exertions of the fire brigade to save the building.

Trade Marks.—The decision of the Court of Appeal in the cases of *Van Duzer* and *Leaf* will make the owners of all names registered as trade-marks anxiously cross-examine themselves whether the name can be said to be a 'fancy name.' Grave doubts are, by the decision, thrown on any geographical name or descriptive word, and that independently of its appropriateness to the article in respect of which it is registered. No one, probably, would suppose that at Melrose there was a factory for hair wash, or that 'electric' very aptly described velveteen. The Lords Justices, however, decide that neither of these can be registered as 'fancy words,' contrary to the view which has been taken in several cases in the Courts below, especially by Vice-Chancellor Bacon. Thus Mr Justice Chitty's acceptance of Alpine as applied to embroidery, the application by Mr. Justice Kay of Strathmore to whiskey, and perhaps even the adoption of 'Gem' as applied to a gun, must go by the board. Designers of trade-marks must, it would seem, not attempt to give a reflected value to the goods, unless they can do so by coining an entirely new word. Those who desire to register a single word are, therefore, relegated to such monstrosities as Cyanochaitanthropopoion, from which infliction Vice-Chancellor Bacon's decision delivered the English language.—*Law Journal* (London).

Trial of Peers.—The trial and acquittal of Lord Graves by a jury on his 'waiving his privilege as a peer' must not be taken as a precedent. To speak of a peer 'waiving his privilege' is insensible, as there is no privilege to waive. Peers are, by law, tried for felony by peers, and commoners by commoners, and it would be as correct to speak of a commoner waiving his privilege of trial by jury as it is of a peer waiving trial by his peers. No one has ever suggested that a commoner might waive trial by jury and be tried for murder, say, by an official referee. Even if there were anything to waive, nothing in a criminal case can be waived by the prisoner. Coke (3 Inst. p. 30) says, 'A nobleman cannot waive his trial by his peers,' and this view is supported by all the other authorities except *Lord Dorset's Case*, reported on the authority of Dallison in the reign of Philip and Mary. Lord Coleridge, when he referred to *Lord Ferrer's Case* as an example of the trial by jury of a peer for felony, was probably thinking of *Dorset's Case*. The verdict of 'Not guilty' entered in *Regina* v. *Graves* on the charge of felony is, therefore, a nullity, not the less because of the studied absence of Sir H. James, the defendant's counsel, from the Court while it was recorded. It will be necessary for the Attorney-General to enter a *nolle prosequi*, or to obtain a pardon from the Crown which may be pleaded in the Queen's Bench. The mistake made in granting a *certiorari* of the charge of felony into the Queen's Bench was pointed out at the time by a learned correspondent on April 3 last.—*Ib.*

Locking the Side-door.—Some time ago a Scottish law agent went to Australia and demanded the right to practise in Queensland without conforming to the regulations of the colony. His application was refused. After his refusal, he went to Victoria, where the same objection did not prevail as in Queensland, and he was admitted in due course. As between Victoria and Queensland there is free trade in solicitors, those of either colony being entitled to admission in the other. Being now a Victorian solicitor he again applied to the Supreme Court of Queensland for admission in his new capacity. The Chief Justice, however, characterised his second application as an attempt to evade the rules which had been laid down there for admission.—*Scottish Law Review.*