THE

LEGAL NEWS.

VOL. XX. FEBRUARY 15, 1897. No. 4.

SUPREME COURT OF CANADA.

OTTAWA, 25 January, 1897.

SALVAS v. VASSAL.

Quebec.]

Title to land—Sale absolute in form—Right of redemption—Effect as to third parties—Pledge.

Real estate was conveyed to S. by notarial deed, absolute in form but containing a provision that the vendor should have the right to a re-conveyance on paying to S. the amount of the purchase money within a certain time. S. subsequently advanced the vendor a further amount and extended the time for redemption. The vendor did not pay the amount within the time and the property having been seized under execution issued by V., a judgment creditor of the vendor, S. filed an opposition claiming it under the deed.

Held, reversing the judgment of the Court of Queen's Bench Q.R., 5 Q.B. 349, that the sale to S. was a *vente à réméré* and was not when the rights of third parties were in question, to be treated as a pledge and set aside on proof that the vendor was insolvent when it was executed. *Pacaud* v. *Huston*, (3 Q.L.R. 214) overruled.

Appeal dismissed with costs.

Geoffrion, Q.C., and *Laverme*, for appellant.

Crépeau, Q.C., and *Beaudin, Q.C.*, for respondent.

25 January, 1897.

MURPHY v. LABBÉ.

QUEBEC.]

Lessor and lessee—Use of premises—Destruction by fire—Negligence —Burden of proof—Art. 1629 *C.C.*

Premises were leased to be used as a furniture factory, the lease containing the usual covenants as to repair. The premises were destroyed by fire of which it proved impossible to discover the origin. In one of the rooms there was a quantity of cotton waste saturated with oil, but nothing to connect it with the fire. In an action by the lessor for the restoration of the premises or equivalent damages,

Held, affirming the judgment of the Court of Queen's Bench, P.Q., Q.R., 5 Q.B. 88, Strong, C.J., dissenting, that there was no obligation on the lessee, by virtue of art. 1629 C.C., to excuse himself from liability by proving that the fire occurred from causes beyond his control; that negligence must be established against him as in other cases of the kind; that he is not liable if he proves that he has used the premises in the manner a prudent owner would use them; and that the presence of the saturated cotton waste was, of itself, no evidence of negligence.

Held, also, that the evidence of workmen of the lessee should not be discredited because they might possibly have feared convicting themselves of imprudent acts.

Appeal dismissed with costs.

Béique, Q.C., and *Trenholme, Q.C.*, for appellant.

Lafleur and *Fortin*, for respondent.

---

25 January, 1897.

CITY OF QUEBEC v. NORTH SHORE RY. CO.

QUEBEC.]

Construction of deed—Ambiguous expressions—Conduct of parties— Presumptions.

On the 21st of August, 1882, the Government of Quebec acquired by deed from the City of Quebec all the proprietary rights that the city had in lands designated on the cadastre as

No. 1937 "situated between St. Paul, St. Roch and Henderson streets and the river St Charles, with the wharves and buildings thereon erected," concerning which there had previously been negotiations and some correspondence between the Government and the City, but the deed however did not follow precisely the designations or terms referred to in the correspondence. On the same day, by another deed, the Government conveyed the same property to the respondent, and subsequently the property passed to the Canadian Pacific Railway under the provisions of 47 V. (D.) ch. 87, s. 3 and 48 and 49 V. (D.) ch. 58, s. 3. Upon the execution of the deeds mentioned the respondent took possession of the grounds and wharves which have been occupied firstly by the respondent and then by the Canadian Pacific Railway ever since that time. In August, 1894, the respondent brought an action to recover part of the lands alleged by them to have been included in the description contained in the deed, which had not been delivered to them, but had remained in the possession and occupation of the city and others to whom the city had sold the same. The difficulty arose from the ambiguity in the description arising from the fact that "Henderson" street did not run to the river but only to a public highway known as "Orleans Place," the limits of which were not in direct prolongation of Henderson street as actually used for a thoroughfare. The respondent claimed that from the correspondence pending the negotiations it appeared that the intention of the parties to the deed was that the boundary should be by Henderson street, and the line of the western limit of that street as then in use prolonged into the river St. Charles, which would entitle them to an additional strip of land and a wharf commonly called the "Gas Wharf," of which they had been improperly deprived during a period of over twelve years through unlawful occupation by the city and those to whom the city sold the property after having conveyed it to the Government by that description.

Held, that in the absence of other means of ascertaining the intention of the parties, ambiguities in the designation of lands should be interpreted against the vendee and in favour of the vendor and his assigns.

In cases of ambiguous descriptions in deeds of lands the manner in which the parties to the deed have occupied and dealt with property which might be affected thereby is strong proof of the boundaries of the lands intended to be conveyed, and sufficient in

law to justify the presumption that the parties by their subsequent occupations correctly executed their intentions at the time of the passing of the deed.

Held, per Gwynne, J., that whatever, if any, right, title or interest, in the disputed portion of the lands did pass by the first deed to the Quebec Government, had become vested in the Canadian Pacific Railway Company in virtue of the statutes and instruments executed thereunder, and consequently the respondents had no right of action whatever to have it declared that they had any right, title, interest or claim thereto.

C. A. Pelletier, Q.C., for appellant.

F. Langelier, Q.C., for respondent.

---

25 January, 1897.

KEARNEY v. LETELLIER.

Quebec.]

Contract—Sale of goods by sample—Price—Delivery of invoice—Presumption—Evidence.

L. agreed to buy from K. a job lot of tea of which he had samples. Before the tea was delivered L. received an invoice charging a uniform rate per lb. for the lot. Some five months after he was asked to accept a draft for the balance claimed by K. on the sale (L. had accepted for part of the price before), but refused on the ground that the amount was too large, alleging for the first time that the sale was according to the prices marked on the respective samples, and not one rate for the lot. In an action to compel acceptance or in default for payment of the amount, K. swore to the uniform rate and L. to the rate per sample, the latter supporting his evidence by that of his son who testified that K. first applied to him to buy the tea at the sample prices, and was referred to his father; and that of a broker present when the bargain was made who was very vague in his recollection of the actual terms. The Superior Court gave judgment in favour of K., which was reversed by the Court of Queen's Bench.

Held, reversing the decision of the Queen's Bench, Gwynne, J., dissenting, that the receipt of the invoice by L. and its retention without objection for five months, raised a presumption that the

price therein stated was that agreed upon, and that L. had not produced the clear and absolute evidence necessary to rebut such presumption.

Held, per Gwynne, J., that in this case no such presumption was raised by the retention of the invoice.

Appeal allowed with costs.

Fitzpatrick, *Q.C.*, for the appellant.

Languedoc, *Q.C.*, & *Dorion*, for the respondent.

---

25 January, 1897.

ADAMS v. MCBEATH.

British Columbia.]

Will—Undue influence—Evidence.

A. brought an action in the Supreme Court of British Columbia, to set aside the will of his uncle in favour of M., a stranger in blood to the testator, alleging that its execution was obtained by undue influence of M. at a time when the testator was mentally incapable of knowing what he was doing. The evidence at the trial showed that A. and the testator corresponded at intervals between 1878 and 1891, and the earlier letters of the latter expressed his clear intention to leave his property to A., while in the latter that intention seemed to be modified if not abandoned.

The circumstances attending the testator's last illness and the execution of his will were as follows: He was 84 years old and lived entirely alone. A neighbour not having seen him go out for two or three days notified one of his friends, who got into the house and found him lying on the floor where he had fallen in a fit, and lain for three days. He sent for a doctor and meanwhile did what he could himself to aid him. When the doctor came he pronounced the testator to be nearing his end, and M, who was notified or heard of the matter, came and had him conveyed to his own house. The next day M., according to his own testimony, at the testator's request, went to a solicitor whom he instructed to draw a will for the testator in his (M's) favour. The solicitor prepared the will, brought it to the house where the testator was, read it over to him, and asked him if he understood it, and having answered that he did the testator executed the will which the solicitor and M.'s brother-in-law witnessed. M. was present all the time the solicitor was in the house. The

doctor who attended the testator swore at the trial that he was, though very weak and low, mentally capable of attending to business, and of understanding what was said to him. It was proved, also, that a short time before his seizure he had had drafted a will in favour of A., his nephew, but did not execute it. He died a week after executing the will attacked in the action.

Held, affirming the judgment of the Supreme Court of British Columbia (3 B.C. Rep. 513) that it was not sufficient for A. to prove merely circumstances attending the execution of the will consistent with the hypothesis that it might have been obtained by undue influence; they must be inconsistent with a contrary hypothesis, and what was proved in this case did not fulfil this condition.

GWYNNE, J., dissenting, held that the facts proved were sufficient to justify the court in setting aside the will.

Appeal dismissed with costs.

Moss, Q.C., for the appellant.

S. H. Blake, Q.C., for the respondent.

COURT OF APPEAL.

LONDON, 29 January, 1897.

Before LORD ESHER, M.R., LOPES, L.J., RIGBY, L.J.

JONES v. GERMAN (32 L. J.)

Justice of the Peace—Jurisdiction—Search-warrant—Information containing no allegation of felony.

Appeal of plaintiff from judgment of Lord RUSSELL, L.C.J., for defendant on further consideration (65 Law J. Rep. M. C. 212).

Action for illegal arrest, false imprisonment, and trespass to goods ensuing upon a search-warrant granted by the defendant as a justice of the peace.

The allegation of the plaintiff was that the warrant was granted illegally and without jurisdiction, because the information, the words of which are set out in the report of the case below in 65 Law J. Rep. M.C. 212, did not charge the commission of any criminal offence and did not specify the goods for which the search was desired.

Lord Russell, L.C.J., gave judgment for the defendant.

The plaintiff appealed.

Their Lordships held that, although it might be that the information was irregular, there was to be collected from it a fair intendment that the plaintiff's master suspected on reasonable grounds that the plaintiff, his servant, had stolen goods, and that the magistrate had jurisdiction to grant the warrant.

Appeal dismissed.

A RETROSPECT OF COMPANY LAW.

Looking back with the experience of thirty-five years, what are we to designate as the chief defect in the working of the company system? Not the statutory machinery. That has worked well. Not the losses of creditors, though they have been considerable. Not the glowing falsehoods of prospectuses. The real defect, the cardinal vice, has been that the company has been too much the mere puppet of the promoter, and has had contracts fastened on it in its helpless infancy which never ought to have existed. We know the *modus operandi* well. The unscrupulous promoter having got something marketable—a patent, a concession, or a mine—sets himself to palm it off on the public at an exorbitant price. For this purpose he forms the company, drafts its memorandum and articles, furnishes it with directors, perhaps qualifies them, and then presents to the company—that is, his director-nominees—for acceptance a cut-and-dried contract made with a trustee for the company. The purchase is improvidently adopted at the first board meeting, and the company stands committed to a ruinous bargain, starts waterlogged, and shortly founders. The directors—good easy men—may not actually mean to betray the company, but they may not be men of business, or they may be dupes of a plausible promoter, or they may say to themselves: "Here is the company's memorandum. The company was formed to carry out this very agreement." The result, whatever the reasoning, is the same: the company is made the prey of the promoter-vendor, and is commercially lost by over-capitalization. Unfortunately, this evil is as rife to-day as it was thirty years ago, only instead of the promoter we have the promoting syndicate.—*Law Journal* (*London*).

THE CHIEF REQUISITE FOR SUCCESS AT THE BAR.

In an address on the above subject, delivered at a recent banquet of the Illinois State Bar Association, by Hon. George R. Peck, the speaker observed:

"If success at the bar were to be measured by me some one worthier should have answered this toast. I suppose the toast means success in getting cases and winning them. But what is the chief requisite in getting cases? Is it learning? Undoubtedly learning is necessary, but it is not the chief requisite. We have all seen too many melancholy examples of learned lawyers who have not been successful. Is it industry? We are told persistent efforts and constant labor will accomplish many things, but they are not the chief requisites in law. Is it eloquence? Eloquence may win over a jury, though the verdict is set aside by the judge a moment later. It may go into a national convention and take away the presidential nomination from gray-haired men who have grown old in the country's service. The chief requisite for success at the bar is judgment and common sense—the harmony of all the faculties which makes the vision true. Judgment and common sense have made all the success achieved at the bar."

SHOOTING OF ESCAPING CONVICTS.

The shooting on Dartmoor of the convict Carter while attempting to make his escape raised the serious question whether the warder was justified in shooting the prisoner, and we are not at all sure that in the interests of prison discipline and public right the whole circumstances should not be re-examined before a Court of assize, notwithstanding the verdict of the coroner's jury, so that a full inquiry may be had into the present system of control over convicts who are working outside their prison walls. The answer to the question turns on the general law, and on the particular instructions of the Home Office as to the duties of warders. Certain instructions issued prior to 1852, and a revised version of that year, were cited to the coroner as justifying the act of the warder. We have vainly endeavoured to obtain a copy of these instructions, and to find any statutory authority for their issue; and they appear to be mere regulations for the conduct and discipline of prisons, and not to have

any effect in altering the common law duties and liabilities of prison officials, who, like soldiers, are subject to the ordinary law. So that in substance the acts of a warder can be justified, if at all, by reference to the duties of gaolers and officers of justice in preventing an escape or in pursuit of a fugitive felon. The convicts by escaping were committing a felony under the Transportation Act of 1824. The deceased convict Carter was in flight, not in resistance, but the day was foggy, and the chances of escape increased by the risk of his getting out of sight if not promptly stopped, and the warder before shooting had called out "Stop, or I will fire." The warder clearly had a legal duty to prevent the escape and to recapture the fugitive if possible, and while one of the Home Office Rules forbade guards to shoot at prisoners except in case of violence or threatened violence (*i.e. se defendendo*), another stated that it was the first duty of a guard to prevent the escape of a prisoner. But his justification must rest on the question whether, having legal authority and duty to apprehend the fugitive, he reserved his fire until it was reasonably clear that without firing he could not prevent his escape, although the circumstances did not involve any direct resistance by the fugitive felon.—*Law Journal.*

CARRIERS—FAILURE TO HEAT CAR—DAMAGES.

In *Taylor* v. *Wabash R. R. Co.*, decided by the Supreme Court of Missouri in December, 1896 (38 S. W. R., 304), the action was for damages, on the theory that plaintiff suffered a severe illness, and impairment of his ability to work, as a direct consequence of a cold which he contracted while a passenger in defendant's railway car. There was evidence to the effect that the car was very cold; that plaintiff notified the trainmen of his suffering, and repeatedly requested them to make a fire; that there were stoves in the car, and defendant could easily have supplied the needed heat. It was held that the merits of plaintiff's case should have been submitted to the jury. It was further held that it was a question for the jury whether plaintiff was chargeable with contributory negligence because he did not leave the car at some station, made no effort to procure additional wraps from his trunk in the baggage car, took off his overcoat at one time to give his wife the benefit of its warmth, and wore

inadequate clothing to meet the demands of the climate and season. The court said, in part:

1. By accepting plaintiff as a passenger upon the train, defendant became obliged to discharge some other duties toward him beyond that of mere safe carriage to the plaintiff's destination. The principles of the common law, as applied to the circumstances of travel at this day and in this country, require of the carrier of passengers by railroad a certain measure of attention which we believe the defendant in this action did not fully meet. To quote a recent writer on this topic: "The duty of the carrier extends, not only to the furnishing of safe vehicles, but also to the supplying them with such accommodations as are reasonably necessary for the welfare and comfort of his passenger. This duty would undoubtedly include the supplying them with seats, if a day car or vehicle; with proper berths, if a sleeping car; with warmth in cold weather; with light at night," etc.; Hutch. Carr. Mechem's 2d. Ed., 1891, Sec. 515*d*. In the case at hand defendant was notified of the plaintiff's suffering from want of proper or sufficient heat in the car. Notwithstanding such notice repeatedly given, defendant omitted to comply with the demands of its duty, although it appears from the evidence that the train made many stops at stations along the route.

Defendant, it may fairly be inferred, had ample opportunity to supply the needed heat, had it seen fit. Such, at least, is the showing of facts which plaintiff makes, and the truth of it he is entitled to have submitted to the proper triers of the facts. The plaintiff's case is not founded on any claim for mere discomfort on his journey. It is founded on the theory that he ultimately suffered a severe illness and impairment of his ability to work, as a direct consequence of the cold he contracted on the ride with defendant of which he complains. His testimony tends to sustain that theory; and he was, we think, entitled to go to the jury upon it; *Turrentine* v. *Railroad Co.* (1885), 99 N. C. 638; *Hastings* v. *Railroad Co.* (1892), 53 Fed. 224; *Railway Co.* v. *Hyatt* (1896, Tex. Civ. App.), 34 S. W. 677.

2. It is insisted by the defendant that the plaintiff is chargeable with contributory negligence in several ways. First, that he did not leave the train at some station along the line, when he found the cold unbearable; second, that he made no effort to get at his trunk in the baggage car, wherein he had wraps that

would have made him comfortable; third, that he took off his overcoat at one time during the night in order to give his wife the benefit of its warmth; and fourth, that he wore inadequate clothing to meet the demands of the climate and the season. It does not seem needful to indulge in any extended comment on this branch of the case. Whatever force the facts above mentioned may rightly have as evidence of negligence on the plaintiff's part, we consider that none of them is of such a nature as would justify a court in declaring as a matter of law that plaintiff was negligent. Nor do all of said facts warrant such ruling. On those facts the question of plaintiff's contributory negligence is one to be decided by the jury. It is only where the plaintiff's own evidence, in a case like this, is of such a character as permits no other reasonable inference than that he was negligent, that the court may properly deny him the right to have the jury say whether or not his conduct comes up to the standard of ordinary care of the average man in the same circumstances. The learned trial judge was in error in taking the case from the jury.

IMPEACHMENT OF ONE'S OWN WITNESSES.

The binding rule of law, inhibiting the impeachment of one's own witnesses, is sometimes denied in cases where the parties to the litigation are called as witnesses, says the *National Corporation Reporter*. But there is no distinction in the law, as again shown by the approved ruling in *Crespi* v. *People* (46 Pac. 863). The action was criminal libel, and a part of the libellous matter was a published charge that the complaining witness, Almagia, himself a newspaper editor or proprietor, was paid by the "camorra" to libel and vilify certain people. (By "camorra" is understood to have been meant a clique, ring, cabal, or confederation of Italians in the city, banded together for dishonest and dishonorable purposes). Defendant undertook to prove the existence of this camorra and Almagia's connection with it. He called Almagia to the stand, as his own witness, and asked him, with specifications of time, place and persons present, if he had not stated that he had instituted the prosecution of defendant at the instance of others. Almagia answered that he had not. Defendant then sought to impeach him by showing that he had made this statement. The Court refused to admit the impeach-

ing evidence. This ruling is complained of. It was clearly right. It was an attempt by a party to impeach his own witness, not because that witness had given hostile evidence which had taken him by surprise, but because he did not admit what was sought to be elicited from him. Indeed, he was apparently questioned for the sole purpose of impeachment. Such practice is not permissible. (*People* v. *Jacobs*, 49 Cal. 384; *People* v. *Mitchell*, 94 Cal. 556; 29 Pac. 1106).

PRIVILEGES OF COUNSEL.

The Supreme Court of Tennessee, in a recent case, passed, incidentally, upon the novel question of the right of counsel to shed tears before a jury. The case was *Ferguson* v. *Moon*, for breach of promise and seduction. It had been assigned as error that counsel for plaintiff in his closing argument, in the midst of a very eloquent and impassioned appeal to the jury, "shed tears and thus unduly excited the passions and sympathies of the jury in favor of the plaintiff, and greatly prejudiced them against defendant." The court confessed itself unable, after diligent search, to find any direct authority on the point, the conduct of counsel in presenting their cases to juries being a matter which must be necessarily left largely to the ethics of the profession and the discretion of the trial judge. The court concluded:

"No cast-iron rule should be laid down. To do so would result that in many cases clients would be deprived of the privilege of being heard at all by counsel. Tears have always been considered legitimate arguments before the jury and we know of no power or jurisdiction in the trial judge to check them. It would appear to be one of the natural rights of counsel which no statute or constitution could take away. It is certainly a matter of the highest personal privilege. Indeed, if counsel have tears at command, it may be seriously questioned whether it is not his professional duty to shed them whenever proper occasion arises, and the trial judge would not feel constrained to interfere unless they are indulged in to such excess as to impede, embarrass, or delay the business before the court. In this case the trial judge was not asked to check the tears and it was, we think, a very proper occasion for their use, and we cannot reverse for this reason; but for other errors indicated the judgment is reversed and cause remanded for a new trial."

COMPANY CASES IN 1896.

Co-operative enterprise has been unparalleled during 1896. The number of companies registered in the past year has been 4,236, without counting reconstructions. Of these at least one-third, according to the estimate of the Registrar of Joint Stock Companies, belong to the category of private companies. In view of this fact—of the frequency of one, two, or three persons incorporating themselves through the machinery of the Companies Act, 1862, and trading with limited liability—incomparably the most important judicial decision of the past year is that of the law lords in *Salomon* v. *Salomon*. To some the novel kind of corporation sole which that decision sanctioned is an alarming phenomenon, but in truth it is only a natural corollary of limited liability. When once the Legislature accepted that principle, it transferred the centre of commercial gravity from the company to its capital. What the persons dealing with the company give credit to is the fund dedicated to the trading, and whether it is contributed by one man, or 100, or 100,000 is as immaterial as it is whether the contributors are French or English, Germans or Jews.

"One-man" companies is not the only matter in which the House of Lords have illuminated the law. They have by a judicial construction of the public examination section cut down its operation to something very harmless (*Ex parte Barnes*); indeed, the official receiver would say, annihilated the utility of the section altogether. Only the promoter or director against whom a *prima facie* case of fraud is found can now be put on the rack; for the rest, the official receiver must do his best with section 115. The significance to officialism of this decision is considerable, for with the exit of the public examination as an all-round method of inquisition, the *raison d'être* of a winding-up by the Court in great measure disappears. Voluntary winding-up is as good, if not better; consequently, for one company that comes to be liquidated in the winding-up department, ten are liquidated outside it. *Hinc illæ lacrymæ!* One more decision of first-rate importance during the year has been that defining the legal position of auditors, their duties and liabilities (*In re The Kingston Cotton Mills Company*). The result is just and fair. The auditor—to sum it up—is an officer of the company, but of him, as of any other professional expert, it is only required that

he should use reasonable care. He is not required to suspect fraud unless there is something to suggest it, still less is he an insurer. He is, in a word, a watch-dog, not a blood-hound. These are the three chief corner-stones which have been added to the edifice of company law during the past year.

Underwriting cases have been specially numerous, evidencing both how common this practice of underwriting has become in commercial circles for securing the flotation of a company, and also the lamentable laxity with which these tripartite contracts are drawn.—*Law Journal (London)*.

ADVANTAGES OF DEFINITE AND CORRECT EXPRESSION.

There is no science, said Judge Bradley, in an address to law students, in which the words and forms of expression are more important than in the law. Precision of definition and statement is a *sine qua non*. Possessing it, you possess the law; not possessing it, you do not possess the law, but only the power of vainly beating the air. It is of the utmost importance to the student of the law to acquire, besides a knowledge of the law itself, the power of expressing it in correct and appropriate language, such as is found in books of authority. One of the best aids to the accomplishment of which I speak is to choose some author of pure and accurate diction, and make his work a *vade mecum*, until you have become so familiar with its contents that, although not absolutely committed to memory, the words and forms of expression will spontaneously suggest themselves whenever you begin to speak or write on the subject. Of course, there can be no doubt what book should be chosen for this purpose. There is nothing to compare with Sir William Blackstone in completeness of scope, purity and elegance of diction, and appositeness, if not always absolute accuracy, of definition and statement. One of the greatest, if not the greatest, of forensic speakers, as well as lawyers, that I ever knew, was the late Mr. George Wood, of New York—in his early days a leader of the Bar of New York. I have often hung upon his lips with chained attention, even when opposed to him in a case, and can truly say that I never enjoyed a greater intellectual treat than in listening to his arguments. Now I happen to have heard.....an

account of the method which he pursued for acquiring his wonderful command of choice juridical diction. It was his custom for many years.....to read a chapter of Blackstone of a morning, and then take a long walk and repeat to himself all that he could remember of what he had read, even to the very words and phrases in those parts that were important, such as definitions and the like.....and in this way he went through the commentaries until they were perfectly mastered, both in matter and form, so that he became almost a walking commentary himself. His case illustrates the oft-repeated injunction, "Beware of the man with one book," and when the one book mastered in this way is such a book as Blackstone's Commentaries, it is easy to comprehend what power and beauty may be acquired and laid by for future use in the display of forensic eloquence.

GENERAL NOTES.

JUDICIAL KNOWLEDGE.—The story runs that the Fellows of the Common Room at Trinity, provoked at the omniscience of Dr. Whewell, once laid a plot to disconcert and humble that *helluo librorum.* With this object they got up 'Chinese Metaphysics' in the 'Encyclopædia Britannica,' and then casually started the topic after dinner and flaunted their recondite knowledge, as they hoped, to the dismay of the Doctor. At last one of them propounded some theory on the subject which aroused the attention of the master. 'Why,' he said, 'that's been exploded long ago. You must have been reading my old article on "Chinese Metaphysics" in the "Britannica"!' We are reminded of this story by the little interlude which took place between Baron Pollock and counsel recently. It was about some dealings in stocks. 'Perhaps I ought to explain to your lordship,' said the ingenuous counsel, 'the meaning of the word "contango," as your lordship may not be acquainted with it. It is a term employed on the Stock Exchange——' 'Thank you, Mr. X.,' said the learned Baron, 'but as I was for several years counsel for the Stock Exchange, you need not labour the point. I think I understand it.' The judicial innocence of mundane matters, whether stage or Stock Exchange, manifested by judges is sometimes amazing, but under this white-robed innocence we not infrequently find an equally amazing amount of worldly wisdom surviving from the experiences of the Bar.—*Law Journal.*

VARNISHING CRIMINALS.—An English custom of not very ancient date was to hang smugglers on gibbets arranged along the coast, and then tar the bodies that they might be preserved a long while, as a warning to other culprits. As late as 1822 three men thus varnished might have been seen hanging before Dover Castle. Sometimes the process was extended to robbers, assassins, incendiaries and other criminals. John Painter, who fired the dockyard at Portsmouth, was first hanged and then tarred in 1776. From time to time he was given a fresh coat of varnish, and thus was made to last nearly fourteen years. The weird custom did not stop smuggling or other crime, but no doubt it had some influence as a preventive.

MARRIAGE AND DIVORCE.—Twice as many widowers marry again as widows. Is this a proof of woman's superior constancy? The return moved for by Mr. Henniker Heaton as to the number of divorce suits tried during 1894 shows that out of a total of 443 suits, 205 were instituted by wives, 238 by husbands. Is this any criterion of the relative fidelity of the spouses? Surely not. One reason that the wife's suits are fewer is that the wife has, rightly or wrongly, more to prove, adultery *plus* cruelty, or adultery *plus* desertion; the husband only adultery. But the main reason is that the wife has a great deal more to lose by the breaking-up of the home, and to save that and for the sake of the children she condones many offences which she might drag before the Court. There are more patient Griseldas in these days than is generally supposed, though Chaucer thought it would be hard to find one. When a wife does bring her suit she more often succeeds—so the statistics show—than the husband does, which is some evidence that she only invokes the Court in gross cases. These considerations are necessary because the return on the face of it would seem to suggest that the husband is more often the injured party than the wife, a conclusion quite at variance with common experience. There is nothing, it has been well said, so fallacious as facts—except figures.—*Law Journal.*

LARCENY.—Two of the most unique cases of thieving on record are being investigated in Haverhill. One is the stealing of 15,000 live fish, and the other the theft of a big stone wall surrounding the cemetery of the Hebrew Burial Association. This is believed to be the first instance ever chronicled of the larceny of a stone wall from a graveyard.—*Albany Law Journal.*