THE

LEGAL NEWS.

VOL. XIX. OCTOBER 1, 1896. No. 19.

CURRENT TOPICS AND CASES

The anticipation of a return of activity in the Court of Appeal, after the election period, was fulfilled at Montreal last month. The September list contained 48 cases, of which 23 had been continued from the May term, when only nine out of 32 cases on the roll were actually heard. The first two days of the recent term, with great liberality, were ceded by the Court, to permit the bar to give their attendance at the inaugural meetings of the Bar Association, which were held in Montreal on those days. But subsequeutly business proceeded very actively, and satisfactory progress was made with the list, which was fully called over before the term was declared closed.

The most important case of the term, as regards the magnitude of the interests involved, was one which did not appear on the list, the appeal being taken about the middle of the term, and heard by privilege. This was the case of *City of Montreal & Standard Light & Power Co.*, in which the Court affirmed the decision of Acting Chief Justice Tait, to the effect that the local legislature has power to authorize a private company to open the streets

of a city for the purpose of laying the wires used in their business, without being obliged to obtain the permission of the city. Apparently the law did not give the court any alternative; but the fact that such powers can be sought and obtained by private individuals or private companies without instantly attracting the attention of the city government, and exciting the most earnest and active opposition, is a significant illustration of the lamentable deficiencies of our system of municipal administration.

The Canadian Bar Association was organized successfully at the meetings held at Montreal on September 15th and 16th, when a constitution was adopted, and over a hundred members were enrolled. Nova Scotia was well represented, but the attendance from the other provinces, and especially from Ontario, was noticeably weak. This apparent lack of interest may probably be ascribed in part to some rather injudicious observations reported to have been made at a meeting held at Halifax, which obtained wide circulation in the press. "Legal education," it was remarked by one speaker, "was in a most unsatisfactory condition, and in all the provinces below the standard in Nova Scotia. It was not much use trying to raise the standard in Nova Scotia with the low averages about us of New Brunswick, Prince Edward Island, Quebec and Ontario!" This was a style of address hardly calculated to enlist the sympathy and co-operation of the Provinces whose benighted condition was described as being so pitiable. There was also a suspicion in some quarters that the association was formed to promote the assimilation of the law throughout the Dominion. Of course this notion was unfounded, though it is probable that suggestions may be made by the association from time to time for the adoption of such modifications as may commend themselves after full inquiry and discussion; but it will lie with the legislatures of the provinces to accept or reject such sug-

gestions. Upon the whole the meetings at Montreal may be regarded as fairly successful, and it may be hoped that at next year's meeting—probably at Toronto or Halifax—a large attendance will be secured. The meetings in future will usually be held before the close of the vacation, so as not to clash with the work of the courts.

NEW PUBLICATION.

A MANUAL OF COMMON SCHOOL LAW, by C. W. Bardeen, editor of the *School Bulletin*.—Publisher, C. W. Bardeen, Syracuse, N.Y.

The title of this work indicates its nature. It is not a wholly new production, for the first edition was published in 1875, and new editions have appeared almost every year, with additions and changes required by statutory amendments. But the book has now been entirely re-written, and adapted to the existing condition of the law. The first part treats of the school officer, and the second, of the school teacher. Considerable space is devoted to the law concerning the status of the teacher, the extent of his authority as teacher, and his control over the child. There are more than 750 references to legal decisions. One of the perplexities of teachers managing unruly children in country schools has been the extent of their authority to punish, and a great many decisions are referred to on this subject. The later decisions tend to restrict considerably the authority of the teacher with respect to corporal punishment. In one of the earlier cases a male teacher was sustained for whipping a female pupil 21 years of age. Later cases show that juries have sometimes found against the teacher even where the chastisement was both moderate and appropriate. Teachers everywhere will be interested in this valuable manual, and it will also be serviceable to the legal profession.

COURT OF COMMON PLEAS, OHIO, FRANKLIN CO.

IN RE "PRESS-POST."

Proceedings for contempt—Right of newspapers to report court proceedings—Abuse of such right—What will amount to contempt of court.

PUGH, J.—Passing to the oral charge that the *Press-Post* has been publishing matter calculated to obstruct the administration

of justice in this case, for the purpose of determining whether a formal charge of contempt should be ordered against that newspaper, I have read all the editorials and reports published in its columns since the trial began. The inquiry could not be extended back of that period, for the contempt of law only reaches and regulates publications made during the trial of a case.

A newspaper is granted immunity from responsibility for fair, accurate and impartial reports of a trial held in open court, and for editorial comments upon the manner of administering justice therein, which are made fairly and in good faith. If the editor criticises the court or any of its officers, attorneys, witnesses or parties, unjustly or intemperately, or, if the reporter publishes a false or unfair report, during the pendency of the case, tending to prejudice the public or the jury, and tending to obstruct the administration of justice in that particular case, they make themselves liable for contempt.

It is just as pernicious and reprehensible for either the editor or the reporter, by such publications, to cast unjust reflections on the conduct of witnesses, parties, counsel, jurors or judges, during the pendency of the trial, or in any other way to unlawfully seek to influence the administration of justice, when such publications are liable to be read by the jurors, as it would be for an individual to write a letter containing such reflections which would be liable to be read by the jurors. These observations are fully supported by the decisions of our Supreme Court in the *State* v. *Myers*, 46 Ohio St. 473. Indeed that court goes much farther in the statement of the law.

An editor or reporter who loves Anglo-Saxon fair play will not, in this way, invade the temple of justice even to promote and hasten punishment upon what seems to him to be a great municipal or public wrong, because such conduct is calculated to destroy that benign and humane principle which presumes that the accused are innocent till the proof establishes their guilt; and because it tends to deprive the accused of his imprescriptible right to be tried by an unprejudiced court and an impartial jury.

In addition to the punishment for contempt by fine or imprisonment, or both, there are four other remedies for such a transgression of the law by the press.

1. Trial may be deferred till the inflamed temper of the public caused by such publications, disappears.

2. When the verdict is adverse to the accused, and is, in whole or in part, the product of such inflammation of the public mind, it may be set aside.

3. The jury may be locked up and guarded, during the trial, at public expense, to prevent such injurious publications from reaching it.

4. The reporter may be excluded from the court room.

From the necessarily hasty perusal and analysis of the editorials and reports in the *Press-Post*, published during the time mentioned, I cannot conclude that the editorials transcended the legal limits for editorial comment and criticism. Some are quite pungent, others are picturesque, but they are on the windward side of the law. There are some generalizations in other editorials that are very censorious in character, but since they are not addressed to this case, they are not the proper subject of inquiry.

I cannot, however, reach this conclusion about the reporter's work in the issue of the 17th inst., and especially in the head lines. They are inflammatory in their character. If they have been read by the jurors, or if they should be read by them, as they may have been, or may be—a thing which the court cannot prevent, they would tend to prevent that calm, deliberate and impartial judgment on their part to which the defendants are entitled.

The abuses of the freedom of the press are not as dangerous as its suppression would be. The press is a necessary, important, and valuable institution in imparting information with respect to the conduct of every department of government—the judiciary as well as the legislative and executive authorities—information to which the people are entitled; but the preservation of the right of persons who are accused of crime to a fair and impartial trial is just as essential and important in our democratic system of government.

While I think the reporter's work in the issue of the 17th inst. exceeded the limit of fair and legal reporting, still my judgment is that it is not of such a magnitude that the court should pause in the trial of this case long enough to hear a contempt case based upon it.

What has been said may serve as a warning against the repetition of the encroachment upon the law, and as an admonition that if it is repeated the court will be obliged to adopt one or more of the remedies found in the armories of the law.

ELECTION LAW.

The election petitions being over, it is possible to give a *résumé* of the most important points which the election judges have had to decide.

In the first case, that of the *Elgin Petition*, the Scotch judges gave a startling decision on the question when an election begins, a question of vital importance in relation to the return of election expenses. They held that the election commences when the dissolution of Parliament or issue of the writ is imminent (or perhaps when it is thought by the candidate to be imminent), a ruling which would make the statutory limitation of a candidate's expenditure a nullity. This decision has, however, been discredited by the judgments in the *Lichfield* and *Lancaster Cases*. The English judges declined to lay down a general rule as to when an election begins, and said it was a question of fact in each case. At Lichfield they held that the election commenced many weeks before the dissolution, when the candidate, a stranger to the district, sent forward an agent, provided money for political institutions, ran a newspaper at his own expense, and announced his intention to stand. At Lancaster the Court ruled that the fact that an individual was asked to stand and did not refuse (or accept) did not make him a candidate; and they held that a resident in the district who has always taken an active interest in politics does not under these circumstances become a candidate because he continues to support objects to which he has always contributed.

On the question when charitable relief amounts to a corrupt practice the judges differed in the *Haggerston Case;* but the ruling of Mr. Justice Bruce agrees with the decision of the Court in the *St. George's Case*. As a result of the two cases, it may be accepted that for a candidate to spend money in the relief of the poor is not a corrupt practice when the relief is not distributed through a political institution or given with an improper motive. According to Baron Pollock the distribution of charity only amounts to bribery when it is accompanied by a request for a vote, or when it is made colourably on a large scale and without due consideration of the needs of the recipients, whence a corrupt motive may be inferred.

Charges under the Corrupt and Illegal Practices Act, 1895, were brought at Sunderland and at St. George's. The only point

worth noticing is the ruling in the *Sunderland Case* that a false statement of fact, calculated to affect the result of the election, is within the Act, though it may not be defamatory at common law. Thus, to use Baron Pollock's illustration, the Act might apply to a statement in a hunting county that the candidate had shot foxes, or to one in a manufacturing constituency that he hunted five days a week.

The payment of an elector's tram fare by an agent was held at Lancaster not to be an illegal practice, because it was not made with the object of inducing the elector to vote. In that instance the parties were friends, going together to the polling-station, and the agent paid 6*d.* for the fare of both, an act of kindness which is probably done frequently every day in every tramcar or omnibus.

A payment by a candidate for the baiting of horses used in the conveyance of voters to the poll was held in the *Lichfield Case* to be within section 7, sub-section 1 (*a*), of the Corrupt Practices Act, 1883, and therefore an illegal practice.

The question of treating at public meetings arose at Lancaster and St. George's. It has been decided not to be corrupt treating on the part of a political association to attract the public to a meeting by means of refreshments, an election not being imminent. Nor is it treating for the chairman at a smoking concert, not given for the purpose of influencing voters, to "stand drinks" to the persons who surround him.

One result of the petitions has been an expression of grave discontent with the present state of election law, though for widely different reasons. On the one hand, it is said that the Act of 1883 is too severe. A member may be unseated because of a single indiscretion on the part of some person over whom he can exercise no control, as happened at Southampton to Mr. Chamberlayne, because an ardent supporter paid two shillings to bring one voter from Winchester. Again, a candidate may in ignorance commit acts trifling in themselves but disastrous in their results. The cross-petition against Mr. Benn, for instance, succeeded because he paid for some laths used in making banners for the display of his portrait, and because, having a committee-room in his own house, he failed to include the expenses connected therewith in his return. On the other hand, there are austere politicians who think that the decisions as to charitable

gifts point out to a wealthy candidate an easy method of corrupting the constituency which he desires to represent. On one matter, however, men of all shades of opinion ought to be agreed—viz., that the manner in which some of the cases have been prolonged, and the recklessness with which unfounded charges have been made, are a public scandal. The most flagrant, though not the only example, is the *St. George's Petition*. In that case, 352 distinct charges were made against Mr. Marks, of which 76 were struck out before the hearing by order of the Court, and about 125 were withdrawn during the hearing, while on several others no evidence was offered. The discretion which the Court has in the matter of costs, which in former cases has more than once been exercised against successful petitioners, does not seem to be a restraint on such abuses. They might to some extent be checked if there were power to order security for more than £1,000, according to the number and return of the charges, and also to order an increase of the security in the course of the hearing. Such an alteration of the law is the more desirable, because men of straw are sometimes put forward as the nominal petitioners.—*Law Journal* (*London*).

THE CANADIAN BAR ASSOCIATION.

The preliminary meetings for the organization of a Bar Association for Canada, were held at Montreal on Sept. 15th and 16th, and were well attended. The *bâtonnier général*, Mr. Robidoux, Q. C., presided. On the second day the following constitution was unanimously adopted and office-bearers were elected:—

Hon. President—Hon. Sir Oliver Mowat, K.C.M.G., Q.C.
President—Hon. J. E. Robidoux, Q.C.

Vice-Presidents:

Ontario—O. A. Howland, M.P.P., Toronto.
Quebec—Hon. T. C. Casgrain, Q.C., M.P., Quebec.
Prince Edward Island—Hon. Frederick Peters, Q.C., M.P.P., Charlottetown.
Nova Scotia—C. Sidney Harrington, Q.C., Halifax.
New Brunswick—Hon. Wm. Pugsley, Q.C., M.P.P., St. John, N.B.
Manitoba—J. S. Ewart, Q.C., Winnipeg.
North-West Territories—Hon. F. W. G. Haultain, Regina.
British Columbia—Aulay Morrison, M.P., New Westminster.

Secretary—J. T. Bulmer, Halifax.
Treasurer—C. B. Carter, Q.C., Montreal.

Council:

Honorary—The Hon. Sir Oliver Mowat, K.C.M.G., Q.C., Minister of Justice.
" Hon. C. Fitzpatrick, Q.C., Solicitor-General.
Ex-officio—The President, the Vice-Presidents, the Secretary, the Treasurer.
Elected—Hon. Sir Charles Hibbert Tupper, Q.C., M.P., Halifax.
" Hon. F. Langelier, Q.C., Quebec.
" D'Alton McCarthy, Q.C., M.P., Toronto.
" J. A. Gemmill, Ottawa.
" Geo. F. Gregory, Q.C., Fredericton, N.B.
" Hon. D. McNeil, Q.C., Halifax, N.S.
" Hon. L. H. Davies, Q.C., M.P., Charlottetown, P.E.I.

CONSTITUTION.

Article 1—This Association shall be known as the Canadian Bar Association. Its objects shall be to advance the science of jurisprudence and international law; to promote the administration of justice; to secure proper legislation; to uphold the honor and dignity of the profession of the law, and to encourage cordial intercourse among the members of the profession in Canada.

Article 2—Any person shall be eligible to membership in this Association who is a barrister of any Province of Canada, and who shall be nominated as hereinafter provided.

Article 3—The following officers shall be elected at each annual meeting for the year ensuing: An Honorary President, a President, one Vice-President for each Province, a Secretary, a Treasurer, and a Council, consisting of the President, the Vice-President from each Province, the Secretary, the Treasurer and eight other members; of which Council five shall be a quorum. The Minister of Justice and the Solicitor-General of Canada for the time being shall be ex-officio members of the Council.

Article 4—The Council shall be the Executive Committee of the Association. It shall appoint such committees as it shall deem proper and necessary for the carrying out of the objects of the Association. All by-laws shall be made by the Council; shall be reported to the next annual meeting ensuing their adoption, and may be repealed or amended by the Association.

Article 5—All members of the conference signing the constitution shall become members of the Association upon payment of the entrance fee.

Article 6—Subseqnently election of all members shall be made by the Council, in such manner as the by-laws may prescribe.

Article 7—Each member shall pay five dollars to the Treasurer as entrance fee and each year thereafter such annual fee not exceeding five dollars, as the by-laws shall prescribe.

Article 8—The word "province" whenever used in this Constitution, shall be deemed to be equivalent to "Province and Territory of Canada."

At 4 p.m., on Sept. 16th, Sir Alexander Lacoste, Chief Justice of the Court of Queen's Bench, addressed the meeting as follows:—

"Mr. *Bâtonnier* and gentlemen of the Bar, I was not prepared for such eulogistic remarks as those with which I have been introduced. The *Bâtonnier* and I are old friends, and I think he wanted in the first place to create a favorable impression upon your minds concerning me before the delivery of my address. I must thank him most cordially for what he has said, and thank you also for the most gratifying reception which you accord me.

"Now, gentlemen of the Bar, it is indeed, as the *Bâtonnier* said yesterday, a great honor for Montreal to be the birthplace of the Canadian Bar Association. I am proud of addressing such a distinguished assembly on such a memorable occasion. This Association, established upon a firm basis, conducted and managed in a liberal spirit, will no doubt have a beneficial influence on the future of our country. Our people is composed of heterogeneous elements which sometimes generate misunderstandings and clashings that trouble the mind of good and peaceful citizens. These misunderstandings arise from want of mutual confidence, and the want of confidence is due to the absence of frequent and intimate relations, which would afford us the means to know and appreciate each other. No doubt this is the reason why prejudices are so strong, why in some cases we despise instead of appreciating each other. We see divisions when harmony ought to reign, that harmony which is so indispensable to promote the prosperity and greatness of our fatherland. (Applause.)

"An Association whose object is to draw closer and tighter the bonds which unite the citizens of the different provinces, which seeks to call them together more often and more intimately, naturally commends itself to the attention and good will of every true Canadian, but your Association is of special interest because it concerns the union of the members of a profession whose influence is greater, I dare say, than any other upon society, and which is more apt than any other to dispel those prejudices which we deprecate. (Hear, hear.)

"Associations grow more numerous in our days. Almost every class of laborers and trades now seek protection by associating together. Their chief purpose is the personal interest of their members, and in their zeal to save their rights they sometimes encroach upon those of other classes and thus become a cause of danger to the commonwealth. The main object of your Association is not the personal interest of its members. It is true that the profession at large as a body will benefit by it; but, as the lawyer's functions concern the welfare of society at large, that society especially shall reap the fruits of your work.

"I do not believe that your Association will endeavor to assimilate the law of the Province of Quebec to that of the others, nor will it try to

assimilate the law of the other provinces to our own. But I am sure that no one would object to borrow from one another certain changes and modifications (Hear, hear, and cheers) which, though not destroying the spirit nor the ensemble of each other's laws, would adapt themselves better to the needs of our time and of our country, or would favor the intercourse between the provinces. (Hear, hear.)

"But, in matters falling under the control of the Parliament of Canada, the legislation, as a rule, is common to all. As to these matters, your Association may be of great service, by suggesting reforms that will answer the needs of the people, by pointing out the dangerous results of the passing of some bills laid before Parliament, by watching and criticising Federal Legislation. In order to be of more usefulness to society, you will likely devote yourselves to the betterment of your profession by endeavoring to keep it on a proper level.

"Honesty, dignity and learning are the principal attributes of an advocate. The Association as a corps will set an example to its members by being honest, learned and full of dignity. You will, no doubt, facilitate the knowledge of the jurisprudence of each province and thus help in the good administration of justice.

"I must not take any more of your precious time; let me, however, congratulate those who prompted the formation of your Association and the work towards it; let me, with my colleagues now present, wish you a complete success. But to obtain success, you must all be actuated by the desire of serving our country and moved by that broad mind, by that high respect for each other's opinion, which members of the Bar display in the exercise of their profession." (Prolonged applause.)

LIST OF SIGNATURES.

Hon. J. E. Robidoux, Q.C., Montreal; J. T. Bulmer, Halifax; Frank Arnoldi, Q.C., Toronto; L. H. Davidson, Q.C., Montreal; John A. McGillivray, Q.C., Uxbridge, Ont.; Hon. Charles Hibbert Tupper, Q.C., M.P., Halifax, N.S.; R. L. Borden, Q.C., M.P., President Barristers' Society of Nova Scotia; J. Netterville Driscoll, Montreal; C. A. Stockton, St. John, N.B.; Robert G. Murray, St. John, N.B.; D. R. Murphy, Montreal; Thos. H. Oliver, Quebec; James Kirby, Q.C., Montreal; W. A. Weir, Montreal; H. Archambault, Q.C., Montreal; R. Dandurand, Montreal; A. W. MacRae, St. John, N.B.; Geo. F. Gregory, Q.C., Fredericton, N.B., David Grant, Moncton, N.B.; P. B. Mignault, Q.C., Montreal; R. D. McGibbon, Q.C., Montreal; Jas. Crankshaw, Montreal; F. S. Maclennan, Montreal; F. L. Béique, Q.C., Montreal; Percy C. Ryan, Montreal; G. B. Cramp, Montreal; Geo. Ritchie, Halifax, N.S.; L. J. Cannon, Quebec; A. E. Poirier, Montreal; John L. Morris, Q.C., Montreal; C. S. Roy, Montreal; W. C. Languedoc, Q.C., Quebec; C. S. Harrington, Q.C., Halifax; O. A. Howland, M.P.P., Toronto; J. C. Noel, Inverness, Que.; Hector McInnes, Halifax; P. H. Roy, Montreal; Arthur Olivier, Three Rivers; P. N. Martel, Three Rivers; Geo. E. Kidd, Ottawa; R. G. Code,

Ottawa; M. J. Gorman, Ottawa; H. A. Hutchins, Montreal; Maxwell Goldstein, Montreal; A. J. Brown, Montreal; Æneas A. Macdonald, Charlottetown, P.E.I.; Fred. Peters, Q.C., Premier P.E.I., Charlottetown; A. Falconer, Montreal; J. A. Gemmill, Ottawa; W. H. Barry, Ottawa; Ernest Desrosiers, Montreal; P. Sheridan, Montreal; R. L. Murchison, Montreal; Daniel McNeill, Q.C., Halifax, N.S.; Hon. Wm. Pugsley, Q.C., M.PP., St. John, N.B.; A. R. Oughtred, Montreal; W. Herbert Burroughs, Montreal; J. M. Ferguson, Montreal; Charles A. Duclos, Montreal; J. T. Cardinal, Montreal; Alf. E. Merrill, Montreal; C. B. Carter, Q.C., Montreal; Horace St. Louis, Montreal; L. Forget, Montreal; John Dunlop, Q.C., Montreal; S. Beaudin, Q.C., Montreal; J. U. Emard, Montreal; H. Lanctot, Montreal; G. A. Marsan, Montreal; Arch. McGouin, jr., Montreal; F. R. Latchford, Ottawa; H. C. St. Pierre, Q.C., Montreal; Ernest Pelissier, Montreal; F. Topp, Montreal; J. E. Farewell, Q.C., Whitby, Ont.; Hon. C. A. Geoffrion, Q.C., M.P., Montreal; P. J. Coyle, Montreal; F. S. Lyman, Q.C., Montreal; W. S. Stewart, Charlottetown, P.E.I., Edmund Guerin, Montreal; J. B. Abbott, Montreal; D. R. McCord, Q.C., Montreal; S. W. Jacobs, Montreal; D. C. Robertson, Montreal; Eug. Lafontaine, Q.C., Montreal; R. G. de Lorimier, Montreal; Arthur Globensky, Montreal; Eug. A. Primeau, Montreal; A. E. Beckett, Montreal; D. McCormick, Q.C., Montreal: F. X. Choquet, Montreal; H. Abbott, Q.C., Montreal; A. Gagnon, Montreal.

HOMICIDE—SELF-DEFENCE.

In a case tried at Philadelphia—*Commonwealth* v. *Bouchet*—the defendant, François Bouchet, was indicted, first count, for manslaughter, and second count for involuntary manslaughter, in causing the death of Adam Wilson, a sailor. Bouchet is a West Indian. He dressed himself in the white apron and hat of a pastry cook and sold cream-puffs on the streets.

On July 17, 1895, Bouchet was singing and selling his puffs on Walnut street near Second, dressed in a spotless costume of white. Wilson began teasing him and pulling at his coat, when Bouchet told him to leave him alone, and three times walked away from Wilson. At the last time Wilson gathered up a handful of dirt and threw it at Bouchet, striking him on the shoulder, the mud scattering over his coat, necktie, falling into his basket and on his puffs. Bouchet then turned and struck Wilson two or three blows on the cheek and gave him a kick on the hip. Wilson, who was drunk, put up his hand as though to grasp Bouchet, slipped and fell on his hip, and rolled over and struck his head upon Belgian blocks which were piled in the street. He died the same day.

ARNOLD, J., charged the jury, *inter alia*, as follows:—The old rule of law that a man who is assaulted by another must submit to the assault, and retreat until he can retreat no further, or retreat to a wall, as it is called, has been superseded by a more sensible rule, that a person who is attacked may oppose force by force and advance in his defence if he deems it necessary. Persons are no longer under an obligation to submit to a beating, when by defending themselves they may avoid harm. They may return blow for blow, and it is now agreed that retreat is not obligatory. This is wise and just.

In the present case it appears that the defendant was assaulted by a drunken sailor, and, in defending himself, the act, which was an assault and battery on the part of the sailor and a justifiable defence by the defendant, resulted in the accidental death of the sailor. As the defendant was not engaged in the commission of a crime, he ought not to be held for the result of an accident brought on by the deceased.

The jury rendered a verdict of not guilty.

In a note to the above case the *Legal Intelligencer*, of Philadelphia, says:

"A great change has been made in the law of self-defence since the day when Blackstone wrote. In Book III., p. 3, in treating of redress which is obtained by the mere act of the parties, Blackstone enumerates 'the defence of one's self or the mutual and reciprocal defence of such as stand in the relations of husband and wife, parent and child, master and servant. In these cases, if the party himself, or any of his relations, be forcibly attacked in his person or property, it is lawful for him to repel force by force, and the breach of the peace which happens is chargeable upon him only who began the affray. . . . It (the law) considers that the future process of law is by no means an adequate remedy for injuries accompanied with force; since it is impossible to say to what wanton lengths of rapine and cruelty outrages of this sort might be carried, unless it were permitted a man immediately to oppose one violence with another. Self-defence, therefore, as it is justly called the primary law of nature, so it is not, neither can it be in fact, taken away by the law of society. In the English law, particularly, it is held an excuse for breaches of the peace, nay, even for homicide itself;

but care must be taken that the resistance does not exceed the bounds of mere defence and prevention; for then the defender would himself become the aggressor.' In Book IV., pp. 184-5, he says: 'The law requires that the person who kills another in his own defence should have retreated as far as he conveniently or safely can, to avoid the violence of the assault, before he turns upon his assailant; and that not factitiously or in order to watch his opportunity, but from a real tenderness of shedding his brother's blood. . . . The party assaulted must, therefore, flee as far as he conveniently can, either by reason of some wall, ditch or other impediment, or as far as the fierceness of the assault will permit him, for it may be so fierce as not to allow him to yield a step without manifest danger of his life or enormous bodily harm, and then in his defence he may kill his assailant instantly.'

"In Blackstone's time nearly every offence triable in the oyer and terminer was punishable by death. There seemed to be more solicitude for the life of the brawler than for his victim, who was told that he must use no more force than is necessary, instead of the better phrase, that a person assaulted may use as much force as is necessary to repel the assault, and he should not be punished for an excess in the heat of passion, when reason is silent and has lost her sway. But a gradual change has been going on, and now it may be said that persons who are assaulted will not be treated as criminals if they follow a natural impulse and defend themselves as soon as they are assaulted, instead of running away. The German proverb, 'If I choose to become a sheep I will be devoured by the wolf,' is suggestive of the law of self-defence.

"In Wharton's Criminal Law, 10th ed., § 486*a*, it is said that the phrase retreating to the wall is used in a figurative sense, indicating a retreat to the limits of personal safety; that a person assaulted is not bound to wait until a blow is received, § 485; that the party attacked may follow his adversary until he himself is secure, § 486, note 2; and that a person about to be assaulted with a deadly weapon may anticipate the blow. The opinions of Judge Conyngham, of Luzerne county, in *Com.* v. *Seibert*, reported in Wharton on Homicide, 2nd ed., 1875, § 507, and of Judge Parker, of Massachusetts, in *Selfridge's Case*, reported in Wharton on Homicide, § 509, note 4, are emphatic de-

clarations of the law on this subject. Apparent imminent danger is enough if there is a reasonable and honest belief in its existence: Wharton's Criminal Law, § 488, and cases in note; among which are *Murray* v. *Com.*, 79 Pa. 311; *Pistorius* v. *Com.*, 84 Pa. 158; *Abernethy* v. *Com.*, 101 Pa. 322. See also *Logue* v. *Com.*, 38 Pa. 265, and *Com.* v. *Carey*, 2 Brewster, 404.

"The Supreme Court of the United States has lately (April 20, 1896) decided the law the same way. In *Alberty* v. *U. S.*, 162 U. S., the defendant was indicted and convicted of murder of the first degree in shooting and killing a man named Duncan. The defendant was separated from his wife because of Duncan's attentions to her. On the night of the homicide, Alberty saw a man trying to get through his wife's bedroom window. He accosted the intruder, who immediately threatened to shoot him and advanced towards him. Alberty thereupon shot Duncan, whom he recognized by his voice. The district judge instructed the jury that this was not justifiable self-defence, because Alberty did not retreat as far as he could and try to disable his assailant without killing him.

"The Supreme Court reversed the judgment, saying, *per* Brown, J.: 'We think that, under the circumstances, seeing a man endeavoring to force an entrance into his wife's bedroom, the husband was justified in pursuing his investigation, and to prevent by force, if necessary, the accomplishment of the intruder's purpose. And if, in the course of that investigation, he is threattened with great bodily harm or put in fear of his life, *he is not bound to retreat*, but is justified in resisting attack by any weapons within his power.'"

GENERAL NOTES.

INCIDENTS OF LORD RUSSELL'S TOUR.—The Lord Chief Justice and Sir Frank Lockwood, when they reached New York the other day, received the usual amount of attention on the part of the newspaper representatives. Lord Russell, we are told by one of them, was "dressed in a suit of plaid cassimere, and wore a soft brown hat and russet shoes." But what chiefly attracted the reporter's eye was the fact that "he was the only member of the party who wore his trousers turned up at the bottom." This little characteristic, we are further told, is attributable to the

circumstance that, "even more than Mr. Justice Jeune, the President of the English Divorce Court, he is a thorough follower of the fashion-plates." When Sir Frank Lockwood was approached by the interviewer, he hurriedly remarked, with "a *naïveté* that is so thoroughly characteristic of the man," "Oh! I'm only Lockwood, you know; it is Russell that you want to see." Questioned as to his plans, Sir Frank Lockwood said he intended to go to Saratoga, but it was uncertain whether he would deliver an address. "Russell and Crackanthorpe will do all the talking, and I can assure you that they are quite capable in that direction. After leaving Saratoga," Sir Frank added, "I intend to go to a place called Ni-Ni-Niagara, I think the place is called. At any rate, it's a village at which they have some kind of waterworks, I believe. Niagara is the name, is it not."—*Law Journal, (London.)*

Dog-Law in England.—Section 2 of the Dog Owners' Act, 1865, provides that the occupier of any house or premises where any dog is kept or permitted to live is (with qualifications) to be deemed to be the owner of such dog. Such occupier *harbors* the dog. This legislative attempt to fix responsibility leads to legal results, interesting indeed to the lawyer, but highly disquieting to the mind of the common innkeeper, whether at Leicester (from which town the tale comes to us) or elsewhere. That useful personage, mine host, is entertaining at his hostelry two guests—say Box and Cox. Box is the owner of a dog. Cox, in Box's absence, humanely hires a fly and takes Box's dog out for a drive. Now Box's is a bad dog—as Mr. Mantelini would say, "a demned ungrateful bow-wow"—and he makes a base return for his pleasant airing by flying at the cab-horse and biting it. This *mens rea*, however, of Box's dog is immaterial. The result is the cab-horse is bitten; his driver seeks compensation. Against whom? The ingenuous layman who has not had the advantage of a legal training will at once exclaim, "Against Cox, or, if not, against Box!" The driver—could he have been a barrister in reduced circumstances?—was more astute. He went, not for the true owner, not for the vicarious owner, but for the astonished innkeeper, under the section, and he triumphed before a Divisional Court composed of the Lord Chief Justice and Mr. Justice Wright. What with valuables left in his charge, or not left; what with drink, licenses, lien, horses, and now dogs, an innkeeper's life is a troubled one, even for this "vale of tears."—*Ib.*