The Legal News.

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INCREASE OF SENTENCE.

The *New Jersey Law Journal* notices an incident which occurred lately in one of the Courts of Special Sessions in New Jersey, and which, it says, provoked comment in the daily papers. A young man was sentenced to two years' imprisonment for some offence. As he left the dock, he was heard to mutter some words of disrespect to the Court. The Court called him back, and added two years to the term of his imprisonment. This sentence has been criticized on the ground that it was in reality sentencing the prisoner for his disrespect under the form of sentencing him for his former offence; but, it is urged, if his crime deserved four years' imprisonment, it should have been imposed at first, and if not, the angry words did not warrant a new sentence. The *N. J. Law Journal* remarks:—"The Court no doubt justified itself by the argument that the angry words showed a depraved disposition in the criminal, which made a greater punishment necessary. But it is not safe to judge of a man's depravity by words uttered at the moment of receiving a sentence to the State Prison. It is often a question of self-control rather than of disposition. And a sentence rendered in reply to angry words has not the appearance of judicial calmness which is necessary to give it the dignity and weight of the impersonal judgment of the law."

There is some force in these observations, and it would appear as if the Court was dealing with a case and inflicting a punishment not provided by law. But the practice, if lacking in dignity, is not without the sanction of authority. One case which we remember occurred in England in 1867, and will be found briefly mentioned in 3 *Lower Canada Law Journal*, p. 26. Two burglars, whose sentences had just been pronounced, furiously attacked the jailers. Half a dozen policemen leaped into the dock, whereupon a terrible conflict took place before the refractory convicts were reduced to submission. The Judge then ordered the men to be again placed at the bar, and enlarged their terms of penal servitude from eight and ten years to twelve and fifteen years respectively. The *Law Times* on that occasion declared that the legality of such a proceeding did not admit of a doubt, and cited *Reg.* v. *Fitzgerald*, 1 Salk. 401; *Inter the Inhabitants of St. Andrews, Holborn, and St. Clement Dames*, 2 Salk. 667; and *Rex* v. *Price*, 6 East, 328. A more severe punishment is noticed by Chief Justice Treby in a note to Dyer's Reports:—"Richardson, C. J. de C. B., at Assizes at Salisbury, in summer 1631, fuit assault per Prisoner la condemne pur Felony; qui puis son condemnation ject un Brickbat a le dit Justice, que narrowly mist. Et pur ceo immediately fuit Indictment drawn pur Noy envers le Prisoner, et son dexter manus ampute et fixe al Gibbet sur que luy mesme immediately hange in presence de Court."

MANSLAUGHTER.

The recent case of *Reg.* v. *Morby*, L. R. 8 Q. B. D. 571; 46 L. T. Rep., N. S. 288, affords another illustration of a peculiar kind of manslaughter. Morby was convicted of the manslaughter of his son, a child of tender years, who had died of confluent small pox. The prisoner, though able to do so, did not, owing to certain religious views he held, employ any medical practitioner, nor afford to the child during its illness any medical aid or attendance. The Court, composed of Coleridge, C. J., Grove, Stephen, Matthew and Cave, JJ., held that the conviction could not be sustained, the proof being to the effect that proper medical aid and attendance might have saved or prolonged the child's life, and would have increased its chance of recovery, but that it might have been of no avail; and there was no positive evidence that the death was caused or accelerated by the neglect to provide medical aid. In other words, a mere refusal to call in a medical attendant is not manslaughter, unless it be shown by positive testimony that the lack of medical attendance caused or accelerated death. This seems to be only fair and reasonable to the accused, but on the other hand we think it will be found a very difficult thing in most cases to prove by positive evidence that a person who has died without medical attendance would have lived if a doctor had been called in.

THE IRISH CRIME BILL.

This bill, according to the *Solicitors' Journal*, shows that the measure is to a very large extent a repetition of former enactments, the chief novelties being the "anti boycotting clauses." These provide punishment for "intimidation," for "rioting," for "within six months after execution of a writ of possession of any house or land, taking possession of such house or land without the consent of the owner," and for membership in any "unlawful association." An "unlawful association" is defined as "an association formed for carrying on operations (*a*) for the commission of crimes, or (*b*) for encouraging or aiding persons to commit crimes;" "crimes" including "any offence against this Act." The clauses empowering the Lord Lieutenant to issue a special commission to any three judges to try certain crimes without the assistance of a jury, though not without precedent, go beyond the prior enactments *in pari materia*.

NOTES OF CASES.

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

June 20, 1882.

Before SIR BARNES PEACOCK, SIR MONTAGUE E. SMITH, SIR ROBERT P. COLLIER, SIR JAMES HANNEN, SIR RICHARD COUCH.

THE QUEEN v. BELLEAU et al., & E. CONTRA.

Debentures issued by Trustees of Quebec Turnpike Roads—Liability of the late Province of Canada to pay principal and interest of debentures.

PER CURIAM. This is a petition of right against the Crown, by the holders of certain debentures issued by "the Trustees of the Quebec turnpike roads," for payment of the principal and interest of their debentures.

No question has been raised as to the form in which the suppliants seek to have the question in dispute determined, which is, whether the late Province of Canada was liable to pay the principal and interest of the debentures sued on. By "The British North America Act, 1867," the debts and liabilities of each province existing at the union were transferred to the Dominion of Canada, and it was conceded by the Crown that if the debentures created a debt on the part of the province, the suppliants are entitled to a decision in their favour.

The debentures purport on their face to be and were in fact issued under the authority of an Act of Parliament of the Province of Canada (16 Vict., c. 235), entituled "An Act to authorise "the Trustees of the Quebec turnpike roads to "issue debentures to a certain amount, and to "place certain roads under their control."

The debentures are in form of certificates by the Trustees, that under the authority of the said Act there had been borrowed and received from the holder a certain sum bearing interest from the date of the certificate, which sum was reimbursable to the holder or bearer on a day named.

The Act, after reciting that it was expedient to extend the provisions of a certain Ordinance (4 Vict. c. 17) to certain roads other than those to which they then extended, and to such further improvements through the Trustees of the roads established under the said Ordinance, and that in order to construction and completion of the roads then undertaken by the Trustees, it was expedient to provide for the raising of the necessary funds by the issue of debentures by the said Trustees, enacted that the provisions of the said Ordinance, and the provisions of all Acts and Statutes in force amending the said Ordinance, and the powers of the Trustees appointed under the said Ordinance, should extend or apply to the roads in the said Act mentioned, in the same manner as if the said roads had been mentioned and described in the said Ordinance.

By the 2nd and subsequent sections down to and inclusive of the 6th, the Trustees were required to execute certain works, and were authorized to execute others, and the roads are enumerated to which the provisions of the Ordinance were to be extended.

By the 7th section it is enacted that, in order to make the completion of certain roads described in a previous Act, and the making of the various improvements above mentioned, "it should be lawful for the Trustees to raise "by loan a sum not exceeding 30,000*l.* currency, "and this loan and the debentures which shall "be issued to effect the same and all other mat-"ters having reference to the said loan, shall "be subject to the provisions of the Ordin-"ance above cited with respect to the loan au-"thorized under it."

This is followed by a proviso which it will be necessary to refer to hereafter. Thus we are obliged, in order to see what were the obligations created by the debentures issued under the 16th Vict. and now sued on, to examine the provisions of the Ordinance 4 Vict., c. 17.

By that Ordinance the Governor was empowered to appoint not less than five nor more than nine persons to be and who and their successors should be Trustees for the purpose of opening, making and keeping in repair the roads hereinafter specified.

By Section 3 it was enacted that the said Trustees might, by the name of the Trustees of the Quebec Turnpike Road, sue and be sued, and might acquire property and estates moveable and immoveable, which being so acquired should be vested in Her Majesty for the public use of the province, subject to the management of the said Trustees for the purposes of the Ordinance.

By the 18th section it was enacted that the roads should be and remain under the exclusive management, charge, and control of the said Trustees, and the tolls thereon should be applied solely to the necessary expenses of the management, making, and repairing of the said roads, and the payment of the interest on and the principal of the debentures thereinafter mentioned.

The 21st section is the most important, and is as follows:—"21. And be it further ordained "and enacted that it shall be lawful for the "said Trustees, as soon after the passing of this "Ordinance as may be expedient, to raise by "way of loan, on the credit and security of the "tolls hereby authorized to be imposed, and of "other moneys which may come into the pos-"session and be at the disposal of the said "Trustees, under and by virtue of this Ordinance, "and not to be paid out of or chargeable against "the general revenue of the province, any sum "or sums of money not exceeding in the whole "25,000*l.* currency."

Unless, therefore, it can be shown that some qualification of these words is to be found expressed or implied in the Ordinance or the statutes amending it, it is clear that the suppliants lent their money on the credit and security of the tolls, "and not to be paid out "or chargeable against the revenues of the "province."

Their contention is that, nothwithstanding these words, the province was bound to pay the debentures.

The Trustees, it is said, were the agents of the province, and in that character they borrowed money for the province, to be applied to provincial purposes; thus the province became the principal debtor, and the tolls are to be regarded only as a first source of repayment of the debt of the province.

These general propositions cannot afford assistance in the consideration of the question we have to determine. It is of no avail to call the Trustees agents of the province if it is admitted, as it must be, that the extent and limits of their agency must be sought in the Act of the Legislature which gives them existence. To make the Trustees the agents of the province, it must be shown that, by their constitution, they have authority to act for the province, and to create obligations binding upon it. But this has not been shown. The Trustees are a corporate body, the absolute creation of the Legislature, and their rights, duties, and powers are exclusively contained and defined in the instrument by which they were incorporated. Such corporations are well known to the law as well of this country as of Canada. They are created for a great variety of purposes, some of local, others of general importance. In the present instance the corporation is created for the local object of improving the roads round Quebec, and to this end the Trustees are empowered to borrow money on certain specific terms, for the purposes of the trust as defined in the Ordinance. The benefit which the province may be supposed to derive from the expenditure of the money borrowed no more imposes such a liability on the province to repay it than it imposes such a liability on the adjoining landowners, the value of whose property may be increased by the construction of the roads authorized to be made.

In order to ascertain the powers of the Trustees we must examine the provisions of the Ordinance.

By the 21st section it appears that the loan is to be raised on the credit and security of the tolls authorized to be imposed, and other moneys which may come into the possession, and be at the disposal of, under and by virtue of the Ordinance. On this it is observed, that it does

not say the "sole" credit and security of the tolls, &c., but, in the absence of any other credit or security defined by the Ordinance, those only can be looked to which are expressly mentioned. It is, however, evident that it was for the very purpose of guarding against the possibility of the present claim that, in addition to the affirmative words already quoted, negative words were introduced that the loan is "not to be paid "out of or be chargeable against the general "revenue of the province."

It does not appear possible to use language more carefully framed to exclude from the minds of proposed lenders the idea that they were in any case to look to the province for repayment of the moneys advanced by them.

The only criticism which has been offered upon this passage is that it does not negative the contention that the loan is to be paid out of revenue other than the "general" revenue of the province. But no other revenue can be suggested.

The Government has no power to raise or apply revenue in any other way than is authorized by law. It is obvious that revenue already appropriated to particular objects cannot be diverted from them, and, when it is forbidden to apply the unappropriated or general revenue to the payment of the loan, all possible sources of reimbursement out of revenue of the province are excluded. It is a contradiction in terms to say that that which the province is by express enactment forbidden to pay out of its revenue remains nevertheless a liability of the province.

The 26th section enacts that it shall be lawful for the Governor, if he shall deem it expedient at any time within three years from the passing of the Ordinance, and not afterwards, out of any unappropriated public moneys in his hands, to purchase for the public uses of the province and from the said Trustees debentures to an amount not exceeding 10,000*l.* currency, the interest and principal of and on which shall be paid to the Receiver General by the said Trustees in the same manner, and under the same provisions, as are provided with regard to such payments to any lawful holder of such debentures.

Thus the Governor is enabled to purchase, on behalf of the province, debentures, and so to become the creditor of the Trustees, but this power is limited to three years.

This is the wholly inconsistent with the idea that the province was already the debtor for the whole amount of the loan.

The province cannot stand in the relation both of debtor and creditor to itself; and if the process be regarded as a means of redeeming the debt of the province, no reason can be suggested why this power of purchasing debentures should be limited in amount and to a period of three years.

The 23rd section enacts that the debentures shall bear interest, and concludes thus:—"Such interest to be paid out of the tolls upon "the roads, or out of any other moneys at the dis- "posal of the Trustees for the purposes of this "Ordinance."

Here there are no negative words excluding the liability of the province, but the obligation to pay interest primarily follows that of paying the principal, and it lies upon the party asserting that it is imposed elsewhere to establish it.

So far from there being anything in the Ordinance to support the contention that the interest is to be paid by the province, everything on the subject of interest tends strongly in the opposite direction.

By the 27th section it is enacted that all arrears of interest shall be paid before any part of the principal sum, "and if the deficiency be "such that the funds then at the disposal of the "Trustees shall not be sufficient to pay such "arrears, it shall be lawful for the governor for "the time being, by warrant under his hand, to "authorize the Receiver General to advance "to the Trustees out of any unappropriated "moneys in his hands such sums of money as "may, with the funds then at the disposal "of the Trustees, be sufficient to pay such arrears "of interest as aforesaid, and the amount so ad- "vanced shall be repaid by the Trustees to the "Receiver General."

This provision, empowering the Governor General to authorize a loan to the Trustees to enable them to pay interest, is inconsistent with the idea that the province was already under an obligation to pay the interest.

If then the case had rested upon the effect of the Ordinance alone, their Lordships are of opinion that no liability on the part of the province for payment of either the principal or interest could be established; but it has been argued that by subsequent legislation and con-

duct the Province of Canada has recognized its liability to pay the principal and interest of the debentures issued under the authority of the Ordinance of 4 Vict.

The first which is relied on is the 12th Vict., c. 5, by which it was provided that it "should "be lawful for the Governor to redeem or pur- "chase on account of the province all or any "of the debentures constituting the public debt "of the Province of Canada, or such or any of "the debentures issued by Commissioners or "other public officers under the authority of "the Legislature of Canada, or of the late Pro- "vince of Canada, the interest or principal of "which debentures is made a charge on the "consolidated revenue fund of the province."

It is said that the Government, under the authority of this Act, paid off the debentures issued under the Ordinance.

It appears highly probable, as is stated in the very able judgment of Mr. Justice Gwynne, that the power given to the Governor by the 27th section of the Ordinance to advance, by way of loan, money to the Trustees to pay arrears of interest did, in fact, lead to the idea that the province was under a legal liability to pay the interest, and it would seem, though the manner in which the transaction was carried out is very obscure, that the debentures issued under the Ordinance were, in fact redeemed under the powers supposed to be conferred by the 12 Vict., c. 5.

All that need be said upon this subject is that, if the Governor did suppose himself to be acting under the authority of this statute, he mistook his powers. The debentures issued under the Ordinance did not constitute part of the public debt of the province, and neither the interest or principal of them was made a charge on the consolidated revenue fund of the province.

But, whatever considerations may have led to the redemption by the Government of the debentures issued under the Ordinance, it is clear that they cannot affect the construction of the 16th Vict., c. 235, under which the debentures now in suit were issued.

The 7th Section of that Act authorized the Trustees to raise a loan, which "loan, and the "debentures which shall be issued to effect the "same, and all matters having reference to the "said loan, shall be subject to the provisions of "the Ordinance with respect to the loan author- "ized under it;" but this important proviso is added,—"provided nevertheless that the rate of "interest shall not exceed 6 per cent., and no "moneys shall be advanced out of the provin- "cial funds for the payment of the said "interest."

Thus the power to make advances out of provincial funds for payment of interest which was given by the 27th section of the Ordinance as to the debentnres issued under it, and which had possibly led to misconception as to the liability of the province, is expressly taken away by the 16th Vict. as to the debentures now in question.

They must therefore be treated as issued not merely on the express condition that they were not to be paid out of or chargeable against the general revenues of the province, but with the further express condition that no moneys should be advanced out of provincial funds for the payment of interest.

And again, as though for the purpose of guarding against the possibility of the debenture holders contending that the debentures issued under the 16th Vict. had the provincial guarantee, the proviso to the 7th section enacts that "all the debentures which shall be issued "under this Act, so far as relates to the interest "payable thereupon, shall have a privilege of "priority of lien upon the tolls, &c., in prefer- "ence to the interest payable upon all deben- "tures which shall have been issued under the "provincial guarantee, or which shall hereafter "be issued by the said Trustees under the pro- "vincial guarantee."

What debentures had been or could be issued under the provincial guarantee does not appear, but this at least is clear, that the debentures issued under the Act, and now sued on, have no provincial guarantee, since they have a preference given to them over all that have, and are thus distinguished from them.

It remains only to consider some general arguments which have been advanced on behalf of the suppliants. It has been urged that the Government of the province, by redeeming the debentures issued under the Ordinance, induced the belief that the same course would be pursued with regard to the debentures issued under the Act of 16 Vict., c. 235, and that without such belief the debenture holders would not have lent their money on the security of the

tolls, &c., which had proved entirely insufficient even to pay the interest of the former loan.

Their Lordships do not desire, by any observations, to diminish the force of these arguments, if addressed to the proper tribunal. It may be that the Legislature of the Province of Canada or that of the Dominion may see reason to listen to the prayer of the suppliants to be relieved in whole or in part from the loss of their money, which has been expended for the benefit of the province. But this tribunal cannot allow itself to be influenced by feelings of sympathy with the individuals affected. Its duty is limited to expressing its opinion upon the legal question submitted to it, and upon that their Lordships entertain no doubt.

Another argument of a similar kind has been based upon a subsequent statute of the Province of Canada, 20 Vic., c. 125, by which the Quebec turnpike roads were divided into two parts, and by which it is contended some of the debenture holders have been deprived of a part of the special fund created for the payment of their loan.

Assuming the correctness of this contention, it might have been made a ground for opposing the later enactment, or it may now be used by way of appeal to the Legislature for redress, but it cannot supply a reason for putting a construction on the obligations created by the 16th Vict., c. 235, different from that which must have been put upon them immediately after the passing of that statute.

Some minor points have been relied on by the learned Judges who have held that the suppliants were entitled to succeed on this petition. It is from no disrespect to those learned judges that these points have not been particularly dealt with, but from a belief that, however they may tend to fortify the general argument in support of which they are used, they do not by themselves afford a basis upon which their Lordships' judgment can be founded.

For these reasons, their Lordships are of opinion that the judgment of the Exchequer Court of Canada, as well as the judgment of the Supreme Court confirming the judgment of the Exchequer Court so far as it decided that the Respondents were entitled to the principal of their debentures, but varying the same by declaring that the Respondents were entitled in addition to the principal to interest from the date of filing the petition of right, are erroneous, and their Lordships will humbly advise Her Majesty that they should be reversed and judgment entered for the Crown.

Their Lordships are further of opinion and will advise Her Majesty that the Cross Appeal of the Respondents asserting the liability of the Crown to pay interest on the debentures from the date of their falling due should be dismissed, and that the costs of the Appeal and of the Cross Appeal and of the proceedings in the Courts below should be paid by the Respondents.

SUPERIOR COURT.

[In Chambers.]

MONTREAL, July 27, 1882.

Before MATHIEU, J.,

McCORD v. McCORD.

Appeal--Security--Action to set aside deed of donation

The action was instituted for the purpose of having a deed of donation declared null. In July, 1880, McCord, the plaintiff, made a donation to his brother, the defendant, of his undivided share in the father's estate, about one-third of which consisted of an emphyteutic lease which was to expire in eight years. The remainder of the estate consisted of immoveable property in the City of Montreal. In 1881, the donor brought an action *en nullité*, alleging fraud on the part of the donee, and by his conclusions he prayed that the deed might be set aside, and declared null and void, and that the defendant be condemned to cancel the registration of the deed of donation within a certain delay, and that in default of his so doing, the judgment of the Court should effect the discharge of the registration.

The Court of Review, on the 30th June, 1882, reversing the judgment of the Superior Court, maintained the action and granted the plaintiff all the conclusions of his action.

The defendant appealed from that judgment, and contended that he was bound to give security for costs only, on the principle that there was no other condemnation in the judgment than to have registration cancelled, and that the judgment itself would have this effect if nothing was done by the defendant towards that end.

The plaintiff contended that although it was not expressly declared in the judgment, the

practical effect of it and its true meaning was that the defendant was condemned to hand over to his brother, the plaintiff, his share of the estate, and that as his appeal stopped the execution of the judgment appealed from, the defendant was bound to give security for the value of the plaintiff's share in the emphyteutic lease and immoveable property, or to file a declaration that he did not object to the execution of the judgment.

MATHIEU, J., held, reversing the judgment of the Prothonotary of the District of Montreal, that according to the Code of Procedure, the defendant in such case is obliged to give security not only for costs, but also that he will effectually prosecute the appeal, and that he will satisfy the condemnation, in case the judgment appealed from shall be confirmed, unless he declares in writing that he does not object to the judgment being executed against him. The judge having no discretion to exempt the defendant from submitting himself to the law if he wishes to go to appeal.

The defendant was ordered to give security accordingly. As to the amount of justification the judge would leave that to the Prothonotary to decide in conformity with the judgment now rendered. The parties might come back before him if they were not satisfied.

Barnard & Beauchamp, for plaintiff, respondent.

Ritchie & Ritchie, for defendant, appellant.

RECENT QUEBEC DECISIONS.

Deposit in Bank—Claim by third party—Absence of notice to depositary.—Where monies have been deposited from time to time in a Bank to the credit of A., of whom the Bank was creditor to an amount far exceeding the balance of such deposits, and on the understanding that such deposits were to enure to the benefit of the creditors of A. generally, B. and others cannot legally sue the Bank to recover a proportion of such deposits, on the ground that a portion of said monies really belonged to B. and others, in the absence of any notice to, or knowledge by, the Bank of the existence of any such right on the part of B. and others, whilst such deposits were being made.—*La Banque Jacques Cartier & Giraldi et vir*, 26 L. C. J. 110.

Saisie-Revendication.—Dans une saisie-revendication, il n'est pas obligatoire de donner au défendeur l'alternative de remettre au demandeur les effets revendiqués ou de lui en payer la valeur. Le but de la saisie-revendication est de recouvrer la possession de la chose même et le prix ou la valeur de cette chose.—*Watso* v. *Labelle*, 26 L. C. J. 120.

Accountant, Reference to.—In an action to recover back monies alleged to have been paid to respondent as his share of certain supposed profits which appellant alleges afterwards proved to be losses, the Court may, without consent of the parties, refer the matters in dispute to an accountant, when the Court is of opinion that the evidence adduced is contradictory and unsatisfactory.—*Canada Paper Co.* v. *Bannatyne*, 26 L.C.J. 124.

Registration, Improvident—Damages.—A person who improvidently registers a claim against an immoveable property, without having a legal right so to do, is liable to the registered owner of such property for all damages caused by such improvident registration; and the owner of the property has a right of action to cause the entry in the books of the registrar to be cancelled.—*Daigneault* v. *Demers*, 26 L. C. J. 126.

GENERAL NOTES.

An Irish judge tried two most notorious fellows for highway robbery. To the astonishment of the Court, as well as of the prisoners themselves, they were found not guilty. As they were being removed from the bar, the judge, addressing the jailor, said: "Mr. Murphy, you will greatly ease my mind if you would keep those respectable gentlemen until seven or half-past seven o'clock, for I mean to set out for Dublin at five, and I should like to have at least two hours' start of them."—*Criminal Law Magazine.*

Speaking of flogging—some Irish members of Parliament have introduced a bill providing for the punishment of the pillory for woman-beaters, with the labelling of the offender "wife-beater" or "woman-beater." The bill also provides for whipping for a second or third offence. The measure is to be confined to England, as of course no gallant son of Erin ever beats his wife—at least, without getting as good as he sends. The *Law Times* strongly deprecates the pillory, and the inefficacy of all punishments whose principal effect is ignominy and disgrace, but praises flogging, observing, "similar measures have been adopted with most beneficial results in more than one of the United States." Virginia has just abolished flogging, and we know of no State except Delaware that now practices it.—*Albany Law Journal.*

A young butcher, subject to epileptic fits, escaped from Bicêtre, and soon afterwards stabbed a policeman in a street brawl. Dr. Legrand du Saulle hesitated to say whether the prisoner, who was perfectly composed at his trial, was quite responsible; but Dr. Blanche, another expert, emphatically declared that he was so. "If he had committed a common assault with his "hands, I should have held him irresponsible," said Dr. Blanche, "because he is a man of violent temper, who when his fits are coming on, takes offence at the smallest prevocation but in hottest paroxysms he knows quite well that he must not use deadly weapons. He never did so in the asylum, and his only excuse in this particular instance is that he had been drinking; but he is no more guiltless on that account than an ordinary drunkard." This opinion procured the prisoner's conviction, and it was held to be an important opinion, as establishing the fact that the responsibility of alleged lunatics cannot be settled by any rules of general application but must be decided in each individual case, according to the circumstances. In short, the doctrine now accepted by the French medical jurists is that, before a lunatic can be declared irresponsible for a crime, it must be ascertained whether his malady predisposed him to the perpetration of that particular crime.—*N. Y. Sun.*

Serjeant Ballantine tells a good story, illustrating the danger of taking things for granted in matters judicial:—"A Mr. Broderip," he says, "became colleague with my father upon the decease of Captain Richbell. A barrister, a good lawyer and refined gentleman, he was a fellow of the Zoological Society, and took great delight in the inmates of the Gardens. I cannot refrain from mentioning an anecdote that occurred many years after, when he had been transplanted to the Marylebone Police Court. I was then in some criminal practice, and appeared before him for a client who was suggested to be the father of an infant, and about which there was an inquiry. Mr. Broderip very patiently heard the evidence, and, notwithstanding my endeavours, determined the case against my client. Afterward, calling me to him, he was pleased to say: 'You made a very good speech, and I was inclined to decide in your favor, but you know I am a bit of a naturalist, and while you were speaking I was comparing the child with your client, and there could be no mistake, the likeness was most striking.' 'Why, good heavens!' said I, 'my client was not in court. The person you saw was the attorney's clerk.' And such truly was the case."

It is dangerous to quote even when the quotation is familiar. In the course of the trial of *Doherty* v. *Lowther*, Baron Huddleston remarked that he would have to interpret the rules of racing and of the Jockey Club, however incompetent to do so. Whereupon the defendant's counsel said gallantly: "'I would not hear your enemy say so,' my lord," quoting Hamlet's protest against Horatio's self-imputed "truant disposition." This was reported as "I do not hear, my lord, your enemies say so;" as if the judge had enemies who went about saying that he knew too much about racing, whereas in truth and in fact, the learned baron has no enemies at all. Next day the report was corrected by substituting, "I would not hear your enemies say so," which scarcely mends the matter.—*London Law Journal.*

GERMAN OPINION ON THE HAYVERN CASE.—A notice of approval of Dr. Kiernan's article in the *Chicago Medical Review* of February 1st, 1882, on the Hayvern case, appears in the *Central blatt fur Nervenheilkunde* in which the great German alienist, Dr. Voigt, takes the ground that Hayvern was an epileptic, and cites the following old observation about epileptic insanity from Paul Zacchias (Quæst. Med. legal. Tom. III., cons. 27, u. 7, 8. Frankfurt, 1688):—"Epileptici gravi morbi occasione tentati *ante occasionem et post occasionem per aliquot dies extra mentem sunt.*"—W. A. P.

APPOINTMENTS.—The following judicial appointments have been made:—Hon. Alex. James, of Dartmouth, one of the puisne judges of the Supreme Court of Nova Scotia, to be a judge in Equity of the said court; John S. D. Thompson, Q.C., of Halifax, to be a judge of the Supreme Court of Nova Scotia. In the Province of Quebec, M. H. E. Cimon, Q.C., of Chicoutimi, has been appointed a puisne judge of the Superior Court, *vice* Hon. M. Laframboise, deceased.

MINISTERIAL CHANGES.—Some changes have taken place in the Dominion Ministry, the offices of ministers being now as follows:—Sir John A. Macdonald, Premier and Minister of the Interior; Sir Charles Tupper, Minister of Railways; Sir Hector Langevin, Minister of Public Works; Sir Leonard Tilley, Minister of Finance; Hon. J. H. Pope, Minister of Agriculture; Hon. M. Bowell, Minister of Customs; Sir Alex. Campbell, Minister of Justice; Hon. D. L. Macpherson, President of the Council; Hon. A. W. McLelan, Minister of Marine and Fisheries; Hon. John Costigan, Minister of Inland Revenue; Hon. Jno. Carling, Postmaster General; Hon. A. P. Caron, Minister of Militia; Hon. J. A. Chapleau, Secretary of State; Hon. Frank Smith, without portfolio.

The Provincial Ministry has also been re-constituted under Hon. Mr. Mousseau, as premier and attorney-general.

A writer in *Popular Science* for August gives a curious account of the origin of the legal phrase, "Witness my hand," etc. He says that it was derived from the practice prevailing when none but clerks and learned men could write, of daubing the hand with ink and slapping it down on the paper, thus leaving the imprint. We suspect that this is too deep. Probably unlearned men made their mark instead of resorting to such awkward and unnecessary palmistry. Even the North American Indians had each his peculiar and ingenious device, generally in the form of an animal. When one writes his signature to an instrument he "puts his hand to it." So one is said to put his hand to a work. A man's writing is called his "hand."—*Albany Law Journal.*

Probably few cases of modern times have reached the acme of vicissitude and delay attained by the action of *Neill* v. *The Duke of Devonshire*, now in the course of hearing before the House of Lords. The dispute arises out of a claim to a right of fishery in the county of Cork, and is said to have been constantly before the courts of Ireland for the last thirteen years. The proceedings commenced in 1869 in the form of an action for trespass, which after a trial of more than a fortnight ended in a verdict for the defendants. A similar result attended another action four years later. Next, an order having been granted for a new trial, the jury disagreed. The following year a verdict was obtained by the Duke, but was subsequently set aside. Then came another trial, at which the jury again disagreed; then a seventh hearing, which ended in favor of the Duke. Shortly afterwards application was made to the Divisional Court for a new trial, but was refused, and the refusal was subsequently affirmed by the Court of Appeal, by a majority of two judges to one. The further appeal from this judgment is now before the House of Lords. If the decision is upheld the litigation will of course be concluded, but, if otherwise, the whole matter will be reopened for another indefinite period. Admitting the dispute to be intricate and voluminous to the last degree—the muniments of title, we believe, extend over six centuries and a half—the possibility of justice being so procrastinated betokens the hardly disputable fact that our judicial system is still far from absolute perfection.—London *Law Times.*