The Legal News.

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THE AFFIRMATION BILL.

The *Bystander* has taken up a somewhat pretentious position. He seeks to convey the idea that he is writing of those amongst whom he lives, but not *as* one of them. He seems to criticize from an imaginary elevation. Without great reputation, some unusual talent, striking originality, or all three combined, such an affectation must become instantly ridiculous. Unfortunately the editor of the *Bystander* has none of these protections. People who have thought it worth while to note the operations of our self-constituted mentor's mind, remark that he has learned and unlearned not a little by his American and colonial experiences. His argumentative powers are not overwhelming, and his efforts at persuasion are generally rather repulsive than the reverse.

Among the illustrations of his least captivating peculiarities is his article, in the July number, on the rejection of the English Affirmation Bill. What purports to be argument amounts to this: There are many unbelievers in the world, those who are not unbelievers worship different gods, therefore to a Christian the oath must be regarded with a feeling of abhorrence. In order to avoid the accusation of having misrepresented the reasoning of this apostle of toleration, we give the argument as it appears twice, in different forms, in one short article. "Tens, and perhaps hundreds, of "thousands are now wavering between belief "and unbelief. To all of these it is proclaimed "that religion cannot afford to dispense "with a political test, and a political test "so utterly tainted and discredited by "the lips which have taken it in avowed "mockery, or in thinly veiled hypocrisy, that it "is difficult to see how any genuine Christian "can regard it with any feeling but abhor-"rence. * * * But the absurdity of the oath "stands confessed when we consider that the "God to whom the Jews appeal is not the God "of the Christian, the Christian God being the "universal Father of all, while the Jewish God "is the Deity of a race; so that the pious "formula on which the religious character of "the nation and its title to Divine favour are "supposed to depend, is in fact a miserable "equivoque, and might be taken conscientiously "by a believer in Allah, in Vishnu, or in the most "degraded divinity of the Pantheon." It would not be easy to compress more errors, nonsense and "equivoques" into a few lines. If it were established that hundreds of thousands were unbelievers, (by that, of course, must be understood, unbelievers in the moral government of the world) it would not in the least affect the question. It is not religion which cannot dispense with a political (?) test, but society which cannot afford to assume that there is no God. Therefore we establish a *legal* test, which is probably what is really meant by the artful use of the word "political." In the repetition of the argument it is again assumed that the religious character of the nation and its title to Divine favour, are supposed to depend on the use of a pious formulary. This is in fact more than a *miserable equivoque*, it is unfair clap-trap. It is not the argument of any one. The use of the oath, as now administered, is to exclude those from the material government of the nation who do not believe in the moral government of the universe, and hence it is, the form of the oath has been changed to admit of its being taken by Roman Catholics and by the Jew, much-dreaded by the *Bystander*.

The attempt to persuade his readers into the idea that the oath should be abolished, (with a view to the next session at Ottawa) is a little more prolix. They are assured that all good men are in favour of the abolition of the test, all bad and unspiritual people, except Mr. Bradlaugh and Mrs. Besant, (who are flung overboard with pitiless severity, as too much for even radical susceptibilities) and perhaps Mr. Morley, and those who are intolerant, are against it. The chief of Christian statesmen, and the "truest followers of Jesus," and Cardinal Newman are in favour of the Affirmation Bill. Lord Randolph Churchill, "who," as we are elegantly told, "displays his appetite for place with as little shame as a dog its hunger for a bone;" the unspiritual Cardinal Manning; the Irish, who are to have no conscience but that which inspires gratitude to Mr. Gladstone for his legislative robberies; Ritualists and Jews, and above all Baron de Worms, who "has not degenerated from the partisans of Caiaphas,"

are opposed to the bill. This tirade finishes with the following curious admission: "The "Christians and Jews of the Stock Exchange no "doubt worship at heart the same God, and "alike regard the test as a protection of the "strong box." It seems that if the test were nothing more than a protection to property, it would be a sufficient reason to preserve it.

The motives for the extraordinary changes in the political views of Mr. Gladstone, "the chief Christian statesman" of the *Bystander*, have been exemplified too recently by the indiscreet publication of his correspondence with Bishop Wilberforce, to leave much force in an appeal to the moral weight of his expressed opinions. Who "the truest followers of Jesus" are, we are left to guess—haply Mr. John Bright and Lord Coleridge. The former of these religious guides told us a few years ago that "be it in town or be it in the country, you will find the church is never a centre of political light, but of political darkness." And the latter owed some of his preferment to his joining Mr. Gladstone in despoiling the Irish branch of the Church of which he is a member. This great jurist, "whose religious character and zeal in the church's cause, (*i.e.* the cause of the centre of political darkness, according to Mr. Bright) are above question," is incidentally commended for putting "a rational construction on the *dictum* that Christianity is a part of the law of the land." We are then told in what sense the *Bystander* thinks it was commonly understood, until we were suddenly enlightened by a ruling of the Lord Chief Justice. He (*Bystander*) says "that *dictum* would be a restraint not only on "the utterances of the free thinker, but on all "theological discussion; for the Christianity "which is a part of the law, must be the "Christianity by law established, and thus no "one could be permitted to question any one "of the myriad propositions of theology em-"braced in the Articles, Homilies and Prayer "Book of the Church of England. But the "Lord Chief Justice has ruled that fair argu-"ment, though it may be directed against "Christianity, is free, and that nothing is pro-"hibited except those outrages upon the "religious feelings of the community, which "are breaches, not of orthodoxy, but of public "decency."

The legal discoveries of the Lord Chief Justice and the *Bystander* are worthy of serious consideration; but they are not precisely what they are represented to be in the article before us. The *dictum* was not commonly understood as is above set forth. It was the Divinity of Christ that was protected by the *dictum*, not "all the myriad of propositions," etc. This was a tangible rule, before the admission of Jews to Parliament. Since, it is logically untenable. The ruling of Lord Coleridge is in the last degree arbitrary and illogical. It lays down as a rule what has no metes or boundaries, and is really no more than a tub to the whale of popular prejudice, as Lord Coleridge very well knows. If reviling Christ, denouncing his miracles as impostures, and denying his Divinity, be not "a breach of orthodoxy," it is dishonest in an educated man to say he pretends to think it is "a breach of decency." If Christ was not God, it is a perfectly fair proposition to maintain that he was an impostor.

It is rather hard on so pure-blooded a liberal as Mr. Morley, to have a friendly hand declare that the oath has been utterly tainted and discredited by the lips which have taken it, in avowed mockery, or in veiled hypocrisy. We should be glad to know what Mr. Morley thinks of the *dictum* of the Lord Chief Justice in the case of the "Free-thinker," and of the *Bystander's* estimate of that valuable addition to the doctrine of the common law.

It is unnecessary to pursue further the consideration of the *Bystander's* crudities and appeals to small jealousies and popular passions, which its editor assumes for a purpose as unscrupulously as he has misrepresented the argument in favour of the legal test. There is, however, one misstatement so gross as to deserve special mention. He declares, without qualification of any kind, that Cardinal Newman was *in favour* of the Affirmation Bill. Here is what the Cardinal says, on the occasion referred to by the *Bystander*, writing to Mr. F. W. Chesson, on the 8th May last:

"BIRMINGHAM, May 8, 1883.

"*Dear Sir*,—I do not know how to answer your question without using more words than I like to trouble you with. I feel myself to be so little of a judge on political or even social questions, and religious ques-

tions so seldom come before us, that I rarely feel it a duty to form and to express an opinion on any subject of a public nature. I cannot consider that the Affirmation Bill involves a religious principle; for, as I had occasion to observe in print more than thirty years ago, what the political and social world means by the word "God" is too often not the Christian God, the Jewish, or the Mahommedan—not a personal God, but an unknown God: as little what Christians mean by God as the fate, or chance, or *anima mundi* of a Greek philosopher. Hence, it as little concerns religion whether Mr. Bradlaugh swears by no God with the Government, or swears by an impersonal, or material, or abstract and ideal something or other, which is all that is secured to us by the Opposition. Neither Mr. Gladstone nor Sir Stafford Northcote excluded from Parliament what religion means by an "atheist." Accordingly it is only half my meaning if I am made to say that "I do not approve, in any sense of the word, of the Affirmation Bill." I neither approve nor disapprove. I express no opinion upon it, and that, first, because I do not commonly enter upon political questions; and next, because, looking at the Bill on its own merits, I think nothing is lost to religion by its passing, and nothing gained by its being rejected.

"I am, dear sir, your faithful servant,

"JOHN H. CARDINAL NEWMAN."

What Cardinal Newman says then, by this drivel, is, that he does not enter on the political question, and that from a religious point of view he is neither in favor of the Bill nor against it, because it does not exclude atheists and those who do not believe in a personal God. Not being a theologian, it would be impertinent to say that the Cardinal's view does not accord with the doctrine of the Church of his adoption, or of that in which he was brought up; but certainly in the practice of England and of France, the test has not usually been the belief in a personal God, a Christian God, the Jewish or the Mahommedan God, but belief in responsibility in a future state.

The readers of the *Bystander* will do well, before allowing their minds to be prejudiced by the fallacies of its periods, to consider two things with regard to an Affirmation Bill as a test for the admission of members to Parliament; first, that all the arguments now used against the test, may with equal force be used against the oath as a sanction for judicial proceedings; second, that the question is a practical one, affecting society, not religion, and that if it be a protection to society, it is no more intolerant to uphold the test than to execute a political assassin who is pleased to justify his crime. R.

QUEEN'S COUNSEL.

The following appointments to be Queen's Counsel have been made by the Governor General:—

Ottawa, 26th June, 1883.

PROVINCE OF QUEBEC.

William W. Robertson, Esquire,		*Montreal.*
William White,	"	*Sherbrooke.*
Hubert C. Cabana,	"	"
George O. Doak,	"	*Coaticooke,*

28th June, 1883.

PROVINCE OF ONTARIO.

Valentine MacKenzie, Esquire,		*Brantford.*
Richard Bayley,	"	*London.*
Salter Jehoshaphat Vankoughnet, Esq.,		*Toronto.*
James Tilt,	"	"
William Purvis Rochford Street,	"	*London.*
George Milnes Macdonnell,	"	*Kingston.*
John Bain,	"	*Toronto.*
Frederick Drew Barwick,	"	"
Hugh McKenzie Wilson,	"	*Brantford.*
Robert C. Smyth,	"	"
James Joseph Foy,	"	*Toronto.*
Walter Gibson P. Cassells,	"	"
Norman Fitzherbert Paterson,	"	*Port Perry.*
Thomas Horace MacGuire,	"	*Kingston.*
Henry J. Scott,	"	*Toronto.*

NOTES OF CASES.

SUPERIOR COURT.

MONTREAL, July 9, 1883.

Before TORRANCE, J.

CAMPBELL, Atty Gen., *pro Regina* v. BATE.

Patent of Invention—Default to file model.

The omission to file a model of an invention for which letters patent are applied for, is fatal to to the validity of the patent issued without such model, and without any dispensation by the Commissioner of Patents from filing a model.

This was the merits of an information by the Attorney-General of Canada, demanding the issue of a writ of *scire facias*, summoning

the defendant to show cause why a patent of invention and the extensions thereof should not be set aside and declared null.

On the 11th January, 1877, a patent of invention issued from the office of the Commissioner of Patents for Canada, granting to John Jones Bate the exclusive right of manufacturing and vending an invention as a system of ventilation and refrigeration for five years from that date, and on the 12th December, 1881, the patent was extended for another five years, and on the 13th December it was extended for another five years. When granted, no model had been filed with the Commissioner, and he had not dispensed with the filing. But he refused to deliver the patent to the applicant until the model had been filed. The model was filed on the 18th June, 1878, more than a year and five months after the granting, issue, and registration of the patent. The information complained of this omission, and the defendant answered that the default to file a model was not fatal to the validity of the patent, and further that the subsequent compliance would cure any defect and make the patent valid from its date, or, at any rate, from the date of the compliance.

PER CURIAM. By 35 Vic. cap. 26, s. 15, (Canada) the applicant shall deliver to the Commissioner, unless specially dispensed from so doing for some good reason, a neat working model of his invention. By Sec. 6, he is entitled to a patent on compliance with the requirements of the Act. The authorities cited at the Bar and in the elaborate factum of the petitioner, satisfy me that the Act has not been complied with, and therefore the conclusions of the information should be granted.

Judgment for petitioner.

Archibald & McCormick, for Attorney General.
Church, Chapleau, Hall & Atwater, for defendant.

SUPERIOR COURT.

SHERBROOKE, June 26, 1883.

Before BROOKS, J.

WOODARD v. BUTTERFIELD.

Damages—Inducing a person to cross the boundary line in order to have him arrested for a pretended debt.

Held, that the defendant was liable to the plaintiff in damages for having induced the plaintiff to go across the international line, and for causing him to be arrested in Vermont for an alleged debt, which, it appeared, did not exist.

The plaintiff resides in the Township of Melbourne, in the district of Saint Francis. The defendant has a machine shop at Rock Island, in Canada, close to the boundary line. The plaintiff and defendant had some business transactions together, and each of them claimed that the balance was in his favor. Under these circumstances the plaintiff wrote defendant demanding a settlement and threatening suit. The defendant replied that if the plaintiff would go to Rock Island, he would send him a railway ticket to that place and pay his expenses, in order that they might arrive at a settlement of their acconnt. The plaintiff accepted the offer and went to the defendant's shop at Rock Island, where he was told that he would find the defendant at the hotel at Derby Line in Vermont. The plaintiff walked across the line to the hotel and was there arrested at the instance of the defendant. After the trial had been postponed and put off a number of times upon the application of the defendant, judgment was entered up by the Justice Court at Derby Line in favor of the present plaintiff for the amount of the balance claimed by him, namely, about forty dollars.

The plaintiff now brought an action in the Superior Court, district of Saint Francis, claiming damages for false arrest. The defendant is described in the writ as of Rock Island, and was personally served at Rock Island in this province, but the evidence would go to show that he boards at the hotel at Derby Line.

PER CURIAM. It is clearly established in this case that the plaintiff was induced to go across the line by the defendant, with the object of having him there arrested. It is proved that on the night previous the defendant had called upon the deputy-sheriff "to be on hand at the hotel in the morning, as he had a job for him," and defendant pointed out plaintiff to the deputy-sheriff in the morning. The proceedings before the Justice of the Peace were continued from day to day at the instance of the defendant, and the plaintiff was subjected to considerable cost and annoyance.

Considerable evidence has been given in this case by legal gentlemen from Vermont, as to the law there in regard to the arrest of for-

eign debtors who may be found in the State; and some attempt has been made to show that in Vermont it is considered less detrimental to arrest the body than it is to attach the property. This idea cannot, however, be allowed to prevail here. Whatever may be the law of Vermont as to the right of arrest, it is the duty of the Courts here to protect the citizens of this country in a case so outrageous as the present one. And one of the lawyers who was examined on behalf of the defendant has admitted that even under the law of Vermont an action of damages would lie for an arrest, showing that artifice had been used to entice a party across the line in order to have him arrested.

In this case I think that substantial damages ought to be given. The defendant is condemned to pay the plaintiff $250 and costs.

Ives, Brown & French for plaintiff.

H. M. Hovey for defendant.

Wm. White, Counsel for defendant.

COURT OF REVIEW.

MONTREAL, June 28, 1883.

Before SICOTTE, J., DOHERTY, J., and RAINVILLE, J.

THE MERCHANTS BANK OF CANADA v. THE MONTREAL, PORTLAND & BOSTON RY. Co., and W. J. INGRAM, *mis en cause*, and DE. O. VERRETTE, *Intervenant par rep. d'instance.*

Execution—Guardian.

Held, 1.—*A guardian of goods seized in execution is not guilty of contempt of court for having refused to comply with an interlocutory judgment appointing a new guardian, and ordering him to deliver the goods seized to such new guardian, when before service upon him of such judgment the first guardian has been served with a number of saisie-arrêts after judgment attaching these goods in his hands.*

2.—*The seizure of the goods of a defendant by process of saisie-arrêt in the hands of the judicial guardian in whose custody they are, is valid.*

The Merchants Bank, being judgment creditors of the Montreal, Portland & Boston Ry. Co., had seized in execution a number of bonds belonging to that Company, and the seizing bailiff had appointed Mr. W. J. Ingram (then Assistant General Manager of the Bank) to the guardianship of these bonds. Shortly after this the defendants obtained an order substituting Mr. McIntyre as guardian, and requiring Mr. Ingram to deliver the bonds over to the new guardian. Before this order had been obtained, however, Mr. Ingram had been served with a number of *saisies-arrêts* after judgment issued at the instance of divers creditors of the Railway Company, ordering him in the usual terms not to dispossess himself of these bonds until the further order of the Court respecting the same. In consequence of these conflicting orders, the *mis en cause* refused to give up the bonds to the new guardian when called upon to do so, until the Court should have rendered a judgment on the *saisies-arrêts* served upon him.

Thereupon the defendants petitioned for a rule to have him declared in contempt of Court for refusing to obey the order first mentioned. Before the final hearing on this petition, one of the seizing creditors intervened to prevent the rendering of a judgment ordering the *mis en cause* to part with the bonds, on the ground that the seizing creditors had acquired rights against the first guardian, which would be lost if the bonds were delivered over to the second.

At the hearing it was contended by the defendants in support of their petition, 1st. That the honorable judge who gave the order for a change of guardian had adjudicated upon the *saisies-arrêts* which were then in the record, and that his order had been given notwithstanding their existence; 2nd. That the *saisies-arrêts* pleaded by the *Mis en cause* and the Intervenant were null and void, because the effects seized were always the property of the defendants, and not at any time that of the Garnishee who had no legal quality of third party, and whose possession was merely that of an officer of the Court, and whatever was seized was really in the hands of justice and could not be attached by *saisie-arrêt*. These seizures being no better than waste paper, the Intervenant had no *status* in the case at all, and as for the *Mis en cause* he should be declared in contempt of Court for choosing to obey the order contained in these worthless writs of attachment rather than the judgment served upon him.

The first contention of the defendants was not sustained by the record, which contained nothing to show that the judge who rendered the judgment changing the guardian, had had the attachments brought under his notice, and his judgment contained no reference to them·

On the second point the Intervenant maintained that the seizure of the bonds in the hands of Ingram, who was in physical possession of them was perfectly legal and valid.

On behalf of the *Mis en cause*, it was submitted that the question of the validity or invalidity of these attachments was not a question for him to decide. Served on the one hand with a judgment ordering him to deliver these bonds to another guardian, and on the other hand with several writs requiring him not to dispossess himself of them until further ordered, he adopted the only prudent course, namely, to await the decision of the Court. Such conduct on the part of a guardian could not be construed into a contempt of Court.

On the 31st day of May, 1883, Torrance, J., rendered a judgment declaring the answers of the *Mis en cause* good and valid, dismissing the Petition of the defendants, and maintaining the Intervention.

The Court of Review unanimously confirmed this judgment.

J. O'Halloran, Q. C., for Plaintiffs.

M. S. Lonergan, for Defendants.

Wotherspoon & Lafleur, for *Mis en cause*.

Judah & Branchaud, for Intervenant.

UNITED STATES DECISIONS.

Maritime Law—Demurrage—Detention of Boat by Business at Wharves.—Where the voyage described in the charter-party was a voyage "to San Francisco, or as near thereto as the vessel can safely get," and the cargo was to be delivered "along-side of any craft, steamer, floating depot, wharf, or pier, as may be directed by the consignees," and the consignees named a wharf to which, by reason of its crowded state, the vessel could not enter for a time greater than that within which, by other provisions in the charter-party, the discharge was to be effected after it had been commenced, *held*, that the charterer was liable for the detention. It appears to be well settled in England, that where, by the charter-party, the ship is to be brought to a particular dock, or as near thereto as she can safely get, and she is prevented from getting to her primary destination by any permanent obstacle other than an accident of navigation, the ship-owner is entitled to damages for the detention by reason of the charterer's refusal to receive the cargo at the alternative place of delivery, although the obstacle which prevented her from getting into the docks (viz., their crowded state) was not an obstacle endangering her safety. *Nelson* v. *Dahl*, 12 L. R., Ch. Div. 568, 583; *Ford* v. *Cotesworth*, L. R., 4 Q. B. 127; *Cross* v. *Beard*, 26 N. Y. 85. It is also settled that where the contract specifies a certain number of days for loading and unloading, and provides that for any detention beyond the lay days demurrage is to be paid at a fixed rate per day, the shipper is held very strictly to its terms; neither a municipal regulation of the port prohibiting the unloading for a limited period, nor delay occasioned by frost, tempest, or by the crowded state of the docks, will relieve him from the payment of demurrage. *Randall* v. *Lynch*, 2 Camp. 352. But where no particular period for loading or unloading is stipulated in the contract, the freighter is bound to receive the cargo within a reasonable time, and for the breach of his implied contract to that effect he is liable in damages. Thus, where the freighter was allowed "the usual and customary time" to unload the ship in her port of discharge, and the crowded state of the docks delayed the discharge, Lord Ellenborough held that as the evidence showed that it was usual and customary in the port of London for ships laden with wines to take their berths in the dock by rotation and to discharge into bonded warehouses, there was no breach of the implied covenant to discharge in the usual and customary time. *Rodgers* v. *Forrester*, 2 Camp. 483. In a subsequent case where the charter-party was silent as to the time for unloading, it was held by Sir James Mansfield that "the law could only raise an implied promise to do what was usually stipulated for by express covenant, viz., to discharge the ship in the usual and customary time for unloading such a cargo, and that had been rightly held to be the time within which a vessel can be unloaded in her turn, into the bonded warehouses." *Burmester* v. *Hodgson*, 2 Camp. 488. The case of *Davis* v. *Wallace*, 3 Cliff. 123, closely resembles the case at bar. The vessel was detained at the wharf designated by the charterer four days,—three because the berth was occupied, and one by lack of teams. The charterer was held liable for the detention. But the charter-party in that case provided for "*quick dispatch*" at the

port of delivery; and this contract, it was held, "overrides any customary mode of discharging vessels by which they are to take their turn at the wharf. The naming of a wharf is a warranty that a berth can be had there." *Thacher* v. *Boston Gas-light Co.*; 2 Low. 362; *Keene* v. *Audenreid*, 5 Ben. 535; *Bjorquist* v. *Steel Rails*, 3 Fed. Rep. 717. (U.S. District Court, California, January, 1883.) *Williams* v. *Theobald*, 15 Federal Reporter.

Common Carriers.—At common law, a common carrier is an insurer of the goods which he undertakes to carry; and a contract of exemption from liability as insurer for loss by fire, etc., must, like other contracts, be founded upon some consideration.—*Taylor* v. *Little Rock M. & T. R. R. Co.*; Supreme Court of Ark., 39 Ark.

Personal Property inadvertently left on premises.—The owner of a tannery, when removing his hides, omitted to remove all. The tannery was sold, and many years after, the plaintiff, while labouring for the defendant in erecting a factory on the premises, discovered the hides so left. *Held*, that the owner of the hides or his representative, had not lost their title to the same; that the finder acquired no title to the same, they being neither lost, abandoned, nor derelict, nor treasure trove.—*Livermore* v. *White*, Supreme Court of Me. 74 Me.

Indictment—Describing stolen property.—Under an indictment for stealing chickens, a conviction upon proof of stealing hens will be sustained. Louisiana Supreme Court; *State* v. *Bassett*, 15 Rep.; May 9.

RECENT ENGLISH DECISIONS.

Agency—Privileged statement of agent to principal not admissible against principal.—A statement made by an agent to his principal cannot be used against the latter by a third party; nor where the agent is the common agent of a body of persons, such as the chairman of a company, can a statement by him to the members of the body, *e. g.*, at a statutory meeting, be used against the body by one of its own members, *e. g.*, a shareholder. A. applied to have his name removed from the list of members of a company on the ground that he had been induced to take shares by false representations contained in a prospectus. At the hearing of the application he sought to use, in support of his contention as to the falsity of the prospectus, a statement made by the chairman of the company (after the issue of the prospectus) in course of explaining the company's affairs at a statutory meeting. *Held*, that he could not be allowed to do so. Meux's Executors' case, 2 De G. M. & G. 522, distinguished. Ch. D., Jan. 22, 1883. *Matter of Devala Gold Mining Co.* Opinion by Fry, J. (48 L. T. Rep., N. S. 259.)

Evidence—Parol to explain writing—False representation.—(1) S. signed a written contract with R. to purchase a brickfield for a "£17,000," to be paid as follows: £16,000, in cash, and £1000, in freehold equities, to pay on the £1,000, 12 per cent. per annum. Before signing S. had made out and given to R. a list of freehold houses, in which he was entitled to the equity of redemption, but this document was not referred to in the contract. *Held*, that such list was permissible by way of parol evidence to explain the meaning of freehold equities in the contract. (2) In the negotiations S. asked R. whether he had ever put the property into the hands of an agent to sell for less money than he was then asking, saying that he fancied, as the fact was, that it must be the same as had been offered to him for less. R. falsely answered "No." *Held*, that this was such a material misrepresentation as to prevent the court enforcing the contract in an action brought by R. Ch. D., February 13, 1883. *Roots* v. *Snelling*. Opinion by Pollock, B. (48 L. T. Rep. N. S. 216.)

A DOUBTFUL COMPLIMENT.

The London *Law Times* makes rather a bull, and at the same time betrays the decline of the "noble profession of the law" when, in speaking of the complimentary dinner to Mr. J. P. Benjamin on his retirement, it says: "As the "bar becomes poorer—and as a body it is "becoming poorer—the impression grows that "complimentary dinners to successful men on "retiring and on promotion should not be "given by the bar; but that if events of this "kind are to be celebrated, this should be done "by those who have made their fortunes and "value the congratulations of their friends."

The bull consists in assuming that the banquet given by the successful man would be a "complimentary" banquet to him; and moreover it is painful to think that the members of

the "noble profession" stand so much in need of a dinner.

The *Chicago Legal News* unconsciously falls into the same pit when it says: "We think "there is much in the suggestion of our Eng- "lish contemporary, and that the lawyer who "has had a successful professional life, and "amassed a fortune, and is about to retire from "the bar, may with great propriety give a "dinner to his professional friends and receive "their congratulations. Let the dinner come "from the man who has made his wealth at "the profession and not from the poor mem- "bers of the bar." This is sufficiently surprising from our esteemed Western contemporary, but what shall we say of the *Albany Law Journal*, which cries: "We are of the same "opinion. This sort of affairs (?) should not be conducted on the principle of a Jersey "treat, where every man pays for himself, but "the recipient should foot the bills." The query which suggests itself to us is where the compliment to Mr. Benjamin would come in if Mr. Benjamin "footed the bill?" Also by whom should the first move towards the entertainment be made? By the recipient of the compliment who is expected to foot the bill, or by the bar, expecting to be fed gratuitously and confer a compliment simultaneously?

GENERAL NOTES.

Sir Albert J. Smith died June 30, aged 59. He was born in Westmoreland County, N.B., in 1824; admitted to the Bar in February, 1847. In 1852 he entered public life as representative of Westmoreland in the New Brunswick Assembly, which position he continued to hold until Confederation, when he was returned for the House of Commons. He entered the Mackenzie Ministry as Minister of Marine and Fisheries, and held this office until the defeat of the Mackenzie Government in 1878. In 1877 he represented Canada before the Fisheries Commission, which met at Halifax under the Treaty of Washington. He lost his seat in the general elections of 1882.

An assessor in the county of Welland has been committed to gaol for six months and fined $200 for assessing his own property at a sum much below its value. The case was one of much interest at Port Colborne, where it arose, from the fact that Samuel Hopkins, the accused, is a man of considerable wealth, and consequently of some social position in the community. The offence was committed in 1881, and it has been eighteen months before the courts. One of the pleas on behalf of the prisoner was that other assessors in the county were guilty of similar irregularities. It is to be hoped that this is an exaggeration. At all events it did not excuse the offence, nor did it lessen the penalty, the judge being of the opinion that the case might be made a warning to other officers.

The defendants were prosecuted for larceny. They had received permission to pick up bricks that were left of a steam saw-mill, belonging to the firm of Eisler & Sons, which had been destroyed by high water. Under the sand and rubbish they found parts of the saw, of the value 15 fl. and appropriated the same to themselves. The court below found them not guilty, and the public prosecutor appealed. The Court of Cassation rejected the appeal for the following reasons: It has been found as a matter of fact that the articles mentioned had remained buried under the rubbish for one and a half years after the mill was destroyed, without the knowledge of the firm. The question then is not of articles misplaced, of which the owner knows that they are within a certain locality, to which he has access, but does not know exactly where; nor of articles forgotten, which were left at a strange place, without the owner's losing the fact from his mind that they were so left; we must rather apply to this case the idea of articles lost, which applies wherever the place, in which the articles are, is not, or is no longer, known to the last owner, or has become inaccessible to him in a permanent manner. From this condition of things it follows indeed, that the possibility to exercise an actual control over the articles has been removed, and therefore possession by the firm does not exist, but again from that fact it cannot be concluded that the firm has given up its property in the articles. There is no more question then of larceny, than of lawful occupancy; the offence is not concealment of articles found.—*Vienna Juristische Blaetter.*

Mr. Bright, in a recently published letter, says: "A man may have a legal wife in the colonies, and another legal wife in England. He may bring his Canadian legal wife to England, where, when she touches our shores, she is not a legal wife, and where her children born here are not legitimate. If you can justify this I will not argue with you." Upon this the London *Law Journal* remarks: "The statement may or may not be justified, on the ground that we are not bound to alter our laws to suit the taste of those who visit us, but it may safely be traversed. If a Canadian, married to a deceased wife's sister in Canada, were to come to England, his wife would not cease to be his legal wife, and his children born here would be legitimate. In fact, the legality of a man's marriage does not depend on the place where he happens to be, or the legitimacy of his children on the place where they are born. It depends on his domicile at the time of his marriage. A man is not married and unmarried as he crosses a frontier." "When a politician puts his views on legal grounds, he should be sure his grounds are legal." And yet the House of Lords held, in *Brook* v. *Brook*, where an Englishman met and married his deceased wife's sister in Denmark, that the marriage although not forbidden in Denmark was invalid in England. And so, although Mr. Bright's statement was too broad, yet it would have been correct if he imagined a Londoner marrying his deceased wife's sister in Canada. That makes a case about as bad for the consistency of British laws.—*Albany Law Journal.*