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JUDICIAL REFORM.

The meetings of the General Council of the Bar to discuss suggestions for judicial reform show gratifying signs of vitality. It is to be hoped they may have influence to arrest the attention of Ministers sufficiently to make them understand the importance of the subject, and appreciate the certain inconveniences of the *statu quo*. We all know that every movement to that abnormally constituted institution, a popular government, is more or less perilous; but those who seek for the honours of public life should remember that there is a corresponding duty—*noblesse oblige*. It is not to be expected that the Attorney General, with all the major cares of administration on his hands, should attempt to work out the details of the very important reforms demanded by the great increase of legal business in Montreal, but he should name a commission to draw the amendments, and he should find the time necessary to make himself perfectly familiar with the reasons for and against any proposed change. A measure so prepared should be then introduced, and if the commissioners be properly selected, it would probably be dealt with in the House of Assembly as a non-political question. In proposing a commission, an unpaid commission is intended. Paid commissions are almost always turned into jobs. They are directed to the most eager rather than to the fittest persons. The unpaid commissionerships will not be run after with indecent zeal. Three commissioners are enough, and they should all be residents of the same locality. The whole cost of the thing would be the salaries of one or two clerks, and a little printing. Such a commission could easily have its report ready for the 1st of March.

The suggestions already made by the General Council are for the most part in the right direction. They recognize a principle that is very valuable in all wholesome progressive movements, and that is to avoid revolutionary tendencies. The great object in dealing with legal procedure is to seek to simplify rather than to hurry. While it is perfectly true that every legal delay so far defeats the abstract idea of justice, it is against the nature of legal proceedings to be very expeditious. Time must be given to both parties to state their case, and opportunity must be given to the judge to become acquainted with the matter. It is as absurd to suppose that a judge can be ready for each case at a given moment as to expect that each traveller is to find a train ready to start at the instant he desires to move. *Vis inertiæ*, the most formidable force of parliamentary governments, is alone responsible for our difficulties. The number of judges of the higher courts of law here, is considerably in excess of the requirements of the country, the distribution of their work is ridiculous. Here, then, is a point for wholesome change and reform.

The General Council has wisely rejected the idea of altering the one judge system and of doing away with the Court of Review. Any one who can count his fingers and thumbs must be able to assure himself that the abolition of the Court of Review means the blockade of the Court of Appeals. Curious to say, after twice rejecting the proposition to do away with Review, the Council passed a resolution to allow appeal from the confirmatory judgment in Review. This looks as if the practitioner's love of a multiplicity of appeals had a disturbing influence on the deliberations of the Council.

The rejection of so much of Mr. White's motion as proposed to make the quorum in appeal four, and in case of equal division to make it a confirmation of the judgment appealed from, is unfortunate. It is the true juridical idea. The decision in first instance should count for something, and the hostility to the rule advocated by Mr. White is not the outcome of reason. It is the sporting notion which prevails, "to start with equal chances." But the doctrine of chance does not fairly apply.

Again, tramping the Court of Review about to Three Rivers and St. Francis, may suit the convenience of lawyers practising in these places, but it is not for the general advantage. It will only serve to delay the business of the Court, and waste the time of the Judges.

The least commendable of the suggestions was proposed by Mr. Pagnuelo, seconded by

Mr. Denoncourt, and *unanimously resolved.* It was to this effect: "That before judgment and before *délibéré*, if there is occasion for *délibéré*, the judge of the Superior Court and the judges in Review and in Appeal, shall settle amongst themselves on the bench, together with the counsel of the parties, who shall have a right to make suggestions, a statement of the questions of fact and of law which arise in the case, beginning with the questions of fact. The deliberations shall be held as much as possible and the questions decided in that order. This statement of facts shall not be final, but may be revoked or changed during the *délibéré*. Every judgment shall decide in a categoric manner the points of fact and of law, the solution of which is essential to the trial, beginning with the points of fact, and shall consider questions of law only if the decision of the fact does not carry the judgment."

In other words, after the argument there shall be a *délibéré* in open court, to which the lawyers shall be parties; this *délibéré* is not to be final, or to be binding in any way on the court. As a coercive measure it is therefore useless, and except for the purpose of having unseemingly wrangling between the bench and bar, it is difficult to understand what in this resolution recommended itself to the unanimous approbation of the General Council. The chief object of the verbal argument is to enable the Court to ask for explanations from the parties. If the Court, in its turn, is to be interrogated verbally before pronouncing judgment, it will only be reasonable to give the judges time, after they have the record before them, to prepare for the ordeal. It sometimes makes one question the possibility of reform when one sees it arrayed alongside such chimeras. Government is summoned at all hazards to render the administration of justice more expeditious by those who, in the same breath, suggest endless journeyings for the judges, and new complications of procedure not only without precedent but unnecessary and mischievous.

The suggestion to do away with terms, and in some instances with writs, deserves much more favorable consideration. It is impossible to conceive why the attorney should not draw his own writ and get it registered and sealed before service, except that even that much maligned and generally prosaic personage has little concealed corners of romance and veneration, for which, the outer world does not give him credit. He has a superstitious regard for "the Queen's Writ," and it sometimes helps him out in his little flights of turgid eloquence when he has a bad case. To say that the defendant B had neglected "my writ" is evidently a less striking proposition, but it might be made equally effective. And after all, this is only another way of putting the matter, for we no more intend to deprive the summons of the effigy of the Crown, than to displace the death's head and cross bones in black sealing-wax on the coroner's inquest. Where there are resident judges, and trial by jury is not the ordinary process, the term is simply nonsense.

The appeal from interlocutory judgments is one of the things that least wants touching. Mr. Loranger wishes to abolish it altogether: Mr. Pagnuelo seeks to facilitate it. Both extremes are bad. These appeals are not allowed without some cause shown, and nothing can be much more summary than the procedure to obtain leave to appeal; but to refuse all interlocutory remedy would surely work great injustice, and give rise to the suspicion of much more.

To be only a critic, is to follow a narrow trade, let me therefore make one suggestion to the General Council. It is to divide the Court of Appeals into two chambers of three judges each. The judgment of three judges is quite worth that of five, and Mr. Pagnuelo may feel assured that such a change will do more to improve the *délibéré* than his having a finger in the pie—as counsel for an interested party be it understood. With this change the jurisdiction in Review might be limited to interlocutory judgments and procedure, without any separate appeal.

R.

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

QUEBEC, December 7, 1882.

DORION, C.J., RAMSAY, TESSIER, CROSS & BABY, JJ.

ROY, Appellant, and PINEAU, Respondent.

Will—Exercise of power—Great grand-children.

A wife, commune en biens, constituted by will her husband her universal legatee, charging him to return her real estate, either by donation

entre vifs or by will, to such of her children or grand-children as he might select, subject to such charges as he might impose. The husband by his will, without referring to his wife's will, appointed three of his grand-children his universal legatees, and substituted to them some of his grand-children. Held, that this was a valid exercise of the power conferred on him by the wife's will, great grand-children being included in grand-children, and the husband, moreover, having power to impose charges.

Julie Michaud, wife of Jean Corriveau, by her will constituted her husband her universal legatee, charging him to return either by *donation entre vifs* or will her real estate to such of her children or grandchildren as he might select, subject to such charges as he might impose.

Corriveau made a will constituting three of his grandchildren his universal legatees of all the real estate belonging to him that day, and to them he substituted some of his great grandchildren. He made no direct mention of his late wife's will, or that he intended to perform the duty imposed upon him by it; but he enumerated the properties he referred to, and they comprised those belonging to his late wife. He also left his present wife the usufruct of one-half of one of these properties, which half he declared to be his, as being part of his share in the *communauté* existing between him and his late wife. The first *appelés*, now *grevés*, neither accepted nor renounced the succession of Jean Corriveau. They were sued by one Hamel, judgment went by default, and the appellant became *adjudicataire* at sheriff's sale of one of the properties coming from Corriveau and Julie Michaud, his first wife. The action is by the *grevés*, defendants in the suit by Hamel, and by the *appelés*, to oust the appellant of one-half of the real estate adjudged to him.

RAMSAY, J. The first question that arises on this appeal is whether Jean Corriveau has exercised the faculty accorded to him by the 4th clause of his first wife's will?

Neither by deed of donation *entre vifs*, nor by will, did Jean Corriveau declare that he intended to exercise the power granted by his wife's will; but he did, in effect, dispose of all the real estate of which he died possessed to certain of the persons indicated as possible *appelés* by the will of his first wife. It might, perhaps, have been a question whether the general disposition of all the "*biens qui m'appartiendront ce jour*," covers any disposition of his late wife's property, but he gives an enumeration of the immovable property which he calls his, and it includes his wife's share of the community. Besides, there is nothing incorrect in his calling it his; for although the legacy to Jean Corriveau was limited by the substitution of some or all of the children, he was a proprietor and not a *usufruitier*. In *Benoit & Marcile*, a case not unlike the present, the majority of the Court held that the bequest to the husband was a usufruct (1 Rev. de Leg., p. 140), but I don't think this is the construction to be put on the will of the first wife in this case Nor do I think it should affect the question if we were to hold it was the bequest of a *usufruit*, for the error of a *usufruitier* calling himself a proprietor is not surprising, and is easily explained. Besides the enumeration of the property, there is also a bequest by Jean Corriveau to his second wife of the usufruct during her life or *viduité*, of the half of the mill belonging to him, as being part of his share of the *communauté* existing between him and his first wife, and all his moveables, over which he had complete control, indicating so far as acts can, that he had fully in view, while making his own will, the obligations imposed by the will of his first wife. I, therefore, think we should hold that Jean Corriveau exercised the faculty conferred upon him, and I think he exercised it rightly although the will only mentions children and grand-children. He was expressly allowed to stipulate charges, and great grand-children should be included in grand-children, just as grand-children are included in children. See the decision of Papinianus, on which Pothier relies. Subst. 4to Ed 515. See also 3 Henrys, p. 76, as to effect of *substitution générale* by testament.

The next question is as to the effect of the *Décret*. It was in a suit of *Hamel & Pineau et al.*, and it is admitted that the suit was against the same *grevés* as those in the present action. Their subsequent renunciation to the succession of Jean Corriveau, even if it were a renunciation to the succession of their grand-mother, would not discharge them of the judgment in the suit which they had not defended, and from which there is no appeal. The principle of the right to renounce at any time until actual

acceptation, by word or deed, is subordinate to the principle of the *res judicata*, which creates a presumption *juris et de jure*, between the parties. Pothier puts this very clearly in the Cout. d Orléans, cited by appellant, p. 595 4to. Ed.

I don't think the *appelés* have anything to say in the matter. I am therefore to reverse.

SUPERIOR COURT.

MONTREAL, Dec. 23, 1882.

Before TORRANCE, J.

MANTHA v. SEGUIN.

Capias—Secretion.

The defendant refused to deliver wood according to contract, demanding a higher price than had been stipulated in a notarial agreement. Held, that this was not a secreting, and the capias issued against him was quashed, without costs.

PER CURIAM. The question here was the merits of a *capias* taken against the defendant for the sum of $625. The ground was that he was secreting his estate.

The parties were dealers in wood. The defendant lived at Plantagenet in Ontario, and undertook by a notarial agreement, in October, 1880, to deliver to the plaintiff in 1881, 450 cords of wood, with cribs, at the Bord au Plouffe. The consideration was the sum of $450. $100 was cash, and $100 was payable in the winter, and the balance on the delivery of the wood. The wood was not delivered in 1881, owing, it would appear, to the low water in the rivers. Of the winter payment, $75 was paid, leaving unpaid $275. The wood was ready at the Bord au Plouffe on the 24th July, 1882, but Seguin was not ready to deliver without an increase of price as a compensation for not having received the whole of the second instalment of $100 in the winter, namely $25, though there is no proof of his having asked for it, and, on the contrary, he asked for and received $50. Seguin says himself in his deposition, folio five, that he refused to deliver without being recompensed. The fact was that the price of wood had advanced, and Seguin was interested in demanding a higher price, but it was contrary to his agreement. Mantha then tendered the balance of the price, $275, which was refused, and a seizure took place accompanied by a *capias*, on the ground of secretion.

I do not consider that secretion has been proved. On the contrary, my conclusion is that it has been disproved. At the same time, I have no doubt that Seguin alarmed Mantha by his acts as well as his words. I hold that the probabilities are that Seguin was in easy circumstances, possessed of land and moveables at his domicile. The trouble was brought on by his greed in endeavoring to make a better bargain with Mantha. After the attachment and *capias* friends endeavored to make peace, and I commend them for it, but they failed though nearly successful. Mantha offered a sum of money for a settlement, and the offer was at first entertained, though finally abandoned by mutual consent. It is to be regretted that the wiser counsels did not prevail. My conclusion is that the petition should be granted, but in view of the circumstances of the case, and the blameworthy conduct of Seguin, it is ordered that each party pay his own costs on the petition now disposed of.

Petition granted.

Madore for plaintiff.
Augé for defendant.

COUR SUPÉRIEURE.

MONTRÉAL, 14 mars 1881.

Coram RAINVILLE, J.

LOUIS DUPUY es-qualité v. MICHEL BOURDEAU, et ALEXIS CHÉRI BOURDEAU, opposant *afin de charge*, et OCTAVE PINSONNAULT, opposant *afin de conserver*, contestant.

Bail—Opposition afin de charge.

PER CURIAM. Le demandeur ayant fait saisir un immeuble sur le défendeur, l'opposant a produit une opposition *afin de charge*, demandant que la vente n'ait lieu qu'à la charge de son bail. Il allègue un bail authentique pour l'espace de huit ans, et l'enregistrement de ce bail en date du 29 novembre 1878. Cette opposition est contestée par Pinsonnault, qui allègue :

Que par un acte de vente dûment fait et passé le 23 mai 1868, devant Mtre Labelle, notaire public et témoin, au dit lieu de St. Michel Archange, le dit opposant et contestant, vendit au défendeur, Michel Bourdeau, fils, la terre désignée au dit acte produit comme partie des présentes et qui est la même que celle saisie en la présente cause, à la poursuite du demandeur Dupuy, es-qualité, et à laquelle s'applique la dite opposition *afin de charge ;*

Que cette vente fut ainsi faite pour entr'autres considérations, le prix de 18,000 livres, ancien cours, que le défendeur promit et s'obligea de payer au dit contestant, aux termes, avec les intérêts et de la manière mentionnés au dit acte;

Que le dit acte de vente a été dûment enregistré en entier au Bureau d'Enregistrement du comté de Napierville, dans les limites duquel la dite terre était et se trouve située, le dixième jour de décembre 1869;

Que le dit jugement du 22 novembre 1879, *en exécution* duquel est émané le dit bref d'exécution ainsi *noté* comme *opposition afin de conserver* est pour des arrérages dûs sur le prix de vente, savoir: pour la somme de $500, montant collectif des onzième, douzième et treizième instalments échus respectivement en mars 1877, 1878 et 1879, avec intérêts au taux de huit pour cent par an, à compter du 1er avril 1879, et les frais y relatifs, tel que mentionné au dit Bref et au dit Jugement produits en cette cause;

Que la dite terre se trouvait affectée et hypothéquée par privilége de *bailleur de fonds* pour la sûreté et le paiement du dit prix de vente, en capital, intérêts et frais accrus et à accroître, sur le dit jugement et de préférence à tous autres créanciers, et nommément de préférence au dit opposant Alexis Chéri Bourdeau, et à l'encontre de ce dernier et de tous les prétendus droits réclamés par sa dite *opposition afin de charge*, en vertu du prétendu bail, servant de base à cette dernière opposition;

Que d'ailleurs tous les allégués de la dite opposition *afin de charge* et chacun d'iceux sont faux, insuffisants et mal fondés en *droit et en fait;*

Que le prétendu bail ne pourrait être, dans tous les cas, qu'un acte simulé concerté entre le dit opposant, Alexis Chéri Bourdeau, et le défendeur, son frère, (dont l'insolvabilité était alors notoire et l'est encore) au préjudice et en fraude des créanciers nombreux de celui-ci, et dans le but de faire des embarras au dit contestant et de lui faire tort."

Toute la question est de savoir si un bail constitue une charge sur la propriété louée.

Sous l'ancien droit le bail n'engendrait que des obligations entre le bailleur et le preneur, et le successeur à titre particulier du baill ur, l'acheteur par exemple, avait le droit d'expulser le preneur ou locataire. Ce droit a été changé sous le C.N. et par l'art.1743, l'acquéreur ne peut plus expulser le fermier ou locataire lorsque le bail a une date certaine. Troplong a vu là la création d'un droit réel; mais son opinion est combattue par la généralité pour ne pas dire l'universalité des auteurs, qui ne voient dans cette disposition de l'art. 1743 que l'application d'une convention tacite entre le vendeur et l'acquéreur d'un bien affermé d'entretenir le bail existant.

Notre Code, art. 1663, reproduit exactement les dispositions du code français.

On créait donc un droit occulte secret, et l'acquéreur d'immeuble pouvait se trouver en face d'un locataire qui aurait droit d'occuper cet immeuble pendant plusieurs années. C'aurait été un grave inconvénient et dans bien des cas une grande injustice.

On en a tellement senti les inconvénients en France, que la loi du 23 mars 1855, a ordonné la transcription des baux de plus de 18 ans; car comme dit si bien Flandin, que le droit du preneur soit ou ne soit pas un droit réel, il n'en est pas moins certain que le bail à longues années, s'il n'est pas, comme l'usufruit, un démembrement de la propriété, altère sensiblement la valeur vénale de l'immeuble, qu'il constitue ainsi, une charge que les tiers sont intéressés à connaître.

1 Flandin, Transcript. No. 496.

C'est ce qu'ont fait nos codificateurs en exigeant l'enrégistrement des baux excédant un an. Le bail d'immeubles pour un terme excédant un an, dit l'art. 2128, "ne peut être invoqué à l'encontre d'un tiers acquéreur s'il n'a été enregistré."

Les commissaires ayant suggéré cette disposition nouvelle disaient dans leur rapport: "Ayant suggéré d'amender la loi en force, telle "qu'exposée en l'art. 56 du titre: *Du louage* "(qui est maintenant l'art. 1663 de notre Code) "et de déclarer qu'à l'avenir la vente par le "locateur de l'immeuble ne mettra plus fin au "bail, l'adoption de cette disposition ferait du "bail *une charge* sur l'immeuble, qu'on doit sou- "mettre comme toute autre charge, à la publi- "cité."

L'opposition est donc maintenue, et voici le jugement de la Cour:

"Attendu que l'opposant afin de charge, Alexis Chéri Bourdeau, s'oppose à la vente de l'immeuble saisi en cette cause, à moins qu'il ne

soit vendu à la charge de son bail, savoir, un bail passé à Napierville devant Mtre A. Barrette, notaire, le 29 novembre 1878, par lequel le défendeur loua à l'opposant pour huit années à compter de la date du dit acte, l'immeuble saisi en cette cause, lequel bail a été enregistré le 30 novembre 1878, au bureau d'enregistrement du comté de Napierville.

Attendu que le nommé Octave Pinsonneault, s'instituant opposant afin de conserver, conteste la dite opposition afin de charge en autant que le dit bail ne forme pas une charge sur le dit immeuble, et allègue qu'il est créancier du défendeur en vertu de l'acte de vente d'immeuble par le dit Pinsonnault au défendeur, passé le 23 de mai 1868, à St. Michel Archange, devant Mtre. Labelle, notaire et témoin, et en vertu du jugement obtenu par lui contre le dit défendeur, le 22 de novembre 1879, dans une cause mue devant la Cour Supérieure du district d'Iberville, sous le numéro 1881, pour la somme de $500.00, étant les trois versements en capital de mille francs, ancien cours chaque, échus respectivement en mars 1877, 1878 et 1879, en vertu du dit acte de vente; "

Attendu que le dit opposant afin de charge répond au dit contestant qu'il est sans droit de contester la dite opposition, en autant qu'il n'est pas partie en cause;

Considérant que d'après l'article 1663, l'acquéreur d'un immeuble loué ne peut expulser le locataire à moins de stipulation spéciale à cet effet dans le bail;

Considérant que d'après l'article 2128, le bail excédant un an peut être opposé aux tiers s'il a été enregistré;

Considérant que l'effet de ces dispositions est de faire du bail *une charge* sur l'immeuble loué, ainsi que s'exprimaient les codificateurs dans leur rapport sur ces articles, et qu'en conséquence la contestation du contestant et les conclusions prises par lui sont mal fondées;

Mais attendu que sur permission de la Cour le dit contestant a amendé les conclusions par lui prises originairement et a pris des conclusions subsidiaires demandant que dans le cas ou la dite opposition afin de charge serait admise, la vente n'ait pas lieu soumise à telle charge, à moins que bonne et suffisante caution ne lui soit fournie que l'immeuble sera vendu à un prix suffisant pour lui assurer le montant de ce qui lui est dû, et attendu que la Cour a réservé d'adjuger sur les frais du dit amendement en même temps qu'au mérite;

Considérant que le dit contestant allègue et fait voir par sa dite contestation qu'il est créancier pour la somme de $1,500.00, savoir: $500.00 en vertu du dit jugement, et $1,000.00 pour les versements de 1880, 1881, 1882, 1883 et 1884 en vertu du dit acte de vente outre les intérêts au taux de huit par cent sur le montant de chacun des dits termes de paiement, à compter de leur échéance respective par privilège de vendeur avec hypothèque antérieure à la créance du dit opposant afin de charge, plus $102.15 pour frais sur le dit jugement;

Considérant que l'imposition de la dite charge aurait l'effet de léser les intérêts du dit contestant, déboute le contestant de ses conclusions principales, mais maintient ses conclusions subsidiaires ou additionnelles, ne maintient l'opposition afin de charge et n'ordonne la vente de l'immeuble saisi soumise à telle charge qu'à la condition que le dit opposant afin de charge fournira au dit contestant bonne et suffisante caution sous un délai de quinze jours, que l'immeuble sera vendu à un prix suffisant pour lui assurer le paiement de ce qui lui est dû savoir: la somme de $1,500.00 en capital et $102.15 de frais, moins les intérêts sur les paiements à échoir, et à défaut par le dit opposant afin de charge de fournir le dit cautionnement sous le dit délai de quinze jours et ce délai passé, sa dite opposition sera renvoyée purement et simplement; et adjugeant sur les frais, vu l'amendement permis et la réserve faite quant aux frais, a Cour condamne le dit opposant afin de conserver et contestant, à payer les frais de contestation depuis la production de sa contestation inclusivement dans tous les cas, distraits à M. J. E. Robidoux, avocat de l'opposant afin de charge, les frais de la dite opposition afin de charge devant être pris sur le produit de la vente après paiement du dit contestant dans le cas où le dit opposant afin de charge fournirait le dit cautionnement, et le dit opposant afin de charge devant supporter les frais de production d'opposition dans le cas où il ne fournirait pas le dit cautionnement.

J. E. Robidoux, pour l'opposant.

Piché & Bureau, pour le contestant.

PROLIX JUDGMENTS.

We quoted last week the words of Chief Justice Sharswood with reference to opinions unnecessarily spun out. We now find the same point noticed in another quarter of the world, the English *Law Times* having the following remarks on the subject:

"Public attention cannot be too often or too pointedly drawn to the serious consequences which may, and often do, result from the too diffuse judgments of learned judges. How frequently does one hear, when the words of some learned judge are cited, that it was "only a dictum," or was not "necessary for the judgment," and therefore is not to be regarded as binding or to be taken into consideration in deciding the question at issue. A very remarkable instance of this has lately occurred. In the case of *Bradley* v. *Baylis*, 8 Q. B. Div. at p. 236, Lord Justice Brett is reported to have said: "But supposing during the qualifying year one of those lodgers leaves, and the owner thereupon (as he assuredly must) resumes the control over that unlet part; according to my view of the statutes, immediately by that act of his those people left in the house, who have been householders, become lodgers again." The question for decision in that case was whether or not the appellant "separately occupied a part of the dwelling house" within the meaning of the Parliamentary and Municipal Registration Act, 1878, and the Representation of the People Act, 1867, so as to entitle him to a vote. The case did not raise the point referred to by Lord Justice Brett in his judgment. During the recent revisions of the lists of voters considerable stress has been laid upon the judgment of Lord Justice Brett, and many objections have been made to the claims of occupiers on the ground that during the qualifying year, in consequence of some one room becoming vacant, the landlord has exercised such a control over the house as is referred to by the Lord Justice in his judgment. In one instance the objectors, not satisfied with the decision of the revising barrister, appealed to the court above (*Ancketell* v. *Baylis*, Dec. 1), with the result that the objection was overruled, and the court held that the part of the judgment of Lord Justice Brett which was relied upon was not binding upon them, as it was not necessary for the decision of the question before the Court of Appeal. Similar instances might be indefinitely multiplied, all arising from what we venture to think is a great mistake, namely, too great diffuseness on the part of learned judges in delivering their judgments. Whatever appears in a reported judgment of a learned judge is certain to be adopted and acted upon sooner or later; and it is a result which can only be deprecated and deplored when action is taken upon *dicta* to which sufficient consideration and attention may not have been given, or which, in cases where more than one judge is sitting, would not have been indorsed by the majority of the court had they constituted an opinion on the essence of the case. So long, however, as judgments are delivered which deal with assumptions and facts outside those before the court for decision, so long will general complaint be made, and that not without great and sufficient reason."

Of course, it must be borne in mind that there are cases where the opinion is necessarily extended to some length, *e. g.*, where a review of previous decisions is called for, and is of great value in explaining the judgment. The criticism of the *Law Times* is directed chiefly against the expression of opinions on points outside of the record.

NECESSARIES.

In *Conant* v. *Burnham*, Supreme Court of Massachusetts, November, 1882, it was held that the services of an attorney in prosecuting the husband upon a charge of assault and battery preferred by the wife, are not necessaries for which she can charge him; for it is the duty of magistrates to prosecute such charges upon complaint made to them, and it is presumed they will do that duty. The court said: "There may be occasions when such services are absolutely essential for the relief of a wife's physical or mental distress. Suing out a writ of *habeas corpus* to deliver herself from unjust or illegal imprisonment, or to regain possession of her child, might under peculiar circumstances furnish illustrations of a strong necessity. Another illustration may be found in the circumstances of the present case. The husband had committed an assault and battery upon his wife, and had instituted against her a criminal prosecution, which, from her final acquittal,

may now be assumed to have been perhaps without just foundation. What was she to do? Is it to be held that the woman, ignorant of legal rules and methods of proceeding, without money or friends, not only deprived of the protection and aid of her husband, but encountering his active hostility, was competent to defend herself properly on her trial before a jury? This would be equivalent to saying that the law considers the assistance of attorneys of no value. This would not be consistent with the provision of the Declaration of Rights and of the statutes giving to every person accused of crime the right to be heard in his defence by counsel. Decl. of Rights, art. 12; Pub. St., ch. 200, § 4. In an indictment for murder, counsel are assigned to the prisoner by the court, under the provisions of Pub. St., ch. 150, § 19, and are expected to serve without pay, if the prisoner cannot furnish compensation; and no such prisoner has gone undefended on this ground. There is no provision of statute for assigning counsel to one indicted for a less offence. But if such assistance was of value to the defendant's wife and was necessary to her, no artificial rule of law should be interposed to prevent her from obtaining it, in the same manner as the law allows her to obtain whatever else may be absolutely necessary under such circumstances as may exist at the time. There is no hardship upon the husband in this case from the application of this rule; for by his own act he created the necessity which she was under, and he made no provision for supplying it. The defendant's counsel concedes that the plaintiff's services were as a matter of fact necessary. Recent English decisions fully establish the doctrine for that country, that legal services may fall within the class of necessaries. *Ottaway* v. *Hamilton*, 3 C. P. Div. 401; *Wilson* v. *Ford*, L. R., 3 Ex. 63; *Stocken* v. *Pattrick*, 29 L. T. (N. S.), 507. This court has heretofore held that a husband is not liable for legal services rendered to his wife in successfully defending her against a libel for divorce filed by him. *Coffin* v. *Dunham*, 8 Cush. 404. There are reasons peculiarly applicable in this Commonwealth to services in such proceedings, which do not apply to cases like the present. Under the laws and customs of this State we do not think that legal assistance was necessary for this woman in prosecuting her husband for an assault and battery upon her. The complaint in such case may be made orally to the magistrate, who will himself reduce it to writing, issue a warrant, if it appears that an offence has been committed, and investigate the case. Pub. St., ch. 212, §§ 15, 29." To the same effect is *Grindell* v. *Godman*, 5 Ad. & Ell. 755. "To hold otherwise would be like compelling St. Lawrence's executors to pay for the gridiron on which he was roasted. I presume the true principle of this decision is that the indictment would be such a luxury to the wife's feelings as to take it out of the list of necessaries."—*Humorous Phases of the Law.*

THE LATE BARON MARTIN.

Sir Samuel Martin, one of the Barons of Exchequer, died January 9, aged 82. The Right Hon. Sir Samuel Martin, son of the late Sir Samuel Martin, of Calmore, Londonderry, born in 1801, was educated at Trinity College, Dublin, entered at Gray's Inn in 1821, and afterwards at the Middle Temple; practising first as special pleader. After having been called to the Bar by the latter Society in 1830, he went to the Northern Circuit, and gained a reputation in Liverpool and other towns by the ability he exhibited in the conduct of cases. He married a daughter of Sir Frederick Pollock, the Lord Chief Baron, in 1843, was made Q.C., and at the general election in August, 1847, was elected in the Liberal interest at one of the representatives of Pontefract, which he represented till 1850, when he was appointed a Baron of the Exchequer, and shortly afterwards knighted. He resigned his judgeship at the close of the year 1873, and was sworn in one of the Privy Council. He rejoined the Bench of the Middle Temple in 1878.

GENERAL NOTES.

WANDA S., was born in Prussia, January 24, 1857, and remained in that country till August 25, 1879, when she married an Austrian citizen, and removed with him to Austria, and thereby became a citizen of that country. On October 19, 1880, she executed, at Prague, a bill of exchange. To a suit afterward brought on the same she pleaded minority. By the laws of Prussia majority is attained at twenty-one, by those of Austria at twenty-four. The Supreme Court at Prague decided that when a woman had become of full age and thereby *sui juris* in a foreign country, this was a personal right which was not taken away by her marriage to an Austrian citizen, whereby she herself became a subject of Austria, and that she must be deemed to remain competent to act in her own right. The Imperial Supreme Court affirmed this judgment, for the reasons therein stated. — *Vienna Juristische Blætter.*