THE

LEGAL NEWS.

VOL. XX. JANUARY 15, 1897. No. 2.

CURRENT TOPICS AND CASES.

The year begins with some changes on the English bench. Lord Justice Kay, after an illness of several months, has been compelled to retire from the Court of Appeal. Lord Justice Kay was appointed to the bench in 1881, as a judge of the Chancery Division, and some years ago was promoted to the Court of Appeal. His successor, Mr. Justice Chitty, has also been promoted from a lower court, he having been appointed to the bench in the same year as Lord Justice Kay. He is sixty-eight years of age, and his judicial service having exceeded fifteen years he is now entitled to retire with a pension; but instead of retiring he proceeds to the distinguished position of a Lord Justice of Appeal. Lord Justice Chitty is descended from a line of legal ancestors, both his father and grandfather being prominent lawyers. Mr. Byrne, Q.C., is to fill the vacancy created by Mr. Justice Chitty's promotion.

It is not generally known that by a curious survival from a more ancient order of things, juries in felony cases in England have to be locked up when the case is not concluded at the time the court rises. The judge has no

discretion. It is surprising that a rule apparently so unnecessary, and in some cases entailing considerable hardship, should have been tolerated so long, and it is equally surprising that when it is at last proposed to modify it by giving the judge a discretion, one of the superior judges writes to the newspapers disapproving of the suggestion. To add to the absurdity, the accused may go out on bail while the jury are kept under lock and key. The distinction between felony and misdemeanour has been wholly abolished in Canada, (article 535, Criminal Code) and in this particular we have anticipated a reform which will probably be adopted before long in England. The distinction, it is stated, has had some strange consequences. In the Tichborne case, for example, the idea of trying the accused for forgery had to be abandoned because it would have been impossible to keep a jury locked up so long. The extract from the Imperial Commissioners' report given by Mr. Justice Taschereau under Article 535 seems to favor the change.

In *Salomon* v. *Salomon*, the House of Lords, (16 Nov.) reversing the decision of the Court of Appeal, (L. R. 1895, 2 Chanc. 323; 64 Law J. Rep. Chanc. 689), laid down the important principle that where a trader, who is solvent, converts his business into a limited liability company, and all the statutory requirements for the constitution of the company are fulfilled, the court is not entitled to speculate on the motives which induced the trader to turn his business into a company, or to impose conditions as necessary to the validity of the company which are not found in the statutes. The mere fact that the trader is virtually sole owner of the concern, the other shareholders having only a nominal interest, does not authorize the court to rescind the agreement for the sale and purchase of the business. The late Sir Geo. Jessel long ago asked whether any good reason could be assigned why one person should not trade with limited liability. Why

should not a man say, "I wish to start a steam laundry business with £10,000, and I give notice to all the world that I will not be liable beyond that sum." Why should the common law prohibit such a contract? Is a man obliged to risk his whole fortune in any trade he embarks in? The objection seems to be the facilities for fraud which might be provided, but to meet this objection some distinguishing mark might be devised for traders of this class, similar to that proposed by the late Lord Bramwell when he suggested the word "limited" after company titles—a happy thought which was adopted.

The solicitors' managing clerks have an association in London, and on a recent occasion the members had the honour of entertaining at dinner four of Her Majesty's superior judges—Sir Francis Jeune and Justices Kekewich, Romer and Lawrance—as well as several prominent Queen's Counsel. A good many compliments were exchanged between the guests and their hosts, and Mr. Justice Kekewich remarked, in replying to the toast of "Her Majesty's Judges," that he looked back upon the time he spent in a solicitor's office as one of the most pleasant and instructive in his life.

"Duties on Successions" is the title of a useful little handbook compiled by Mr. W. B. Lambe, collector of provincial revenue, Montreal (Wm. Foster Brown & Co., publishers). It contains tables of the duties payable to the treasury department on transmission of property after death, whether by will or intestacy, with the text of the statutes, in English and French, and forms of declarations. The public generally will appreciate this handbook.

Someone has calculated that in order to read the law reports which appear in the United States, a lawyer would have to spend seven or eight hours a day, and keep at it every day of the year. How valuable, then, an

index to this great volume of printed matter! The General Digest, American and English, (Lawyers' Co-operative Publishing Co., Rochester, N. Y.,) now published quarterly, undertakes to do this, and includes also all current case law, English and Canadian. The first part, up to October, 1896, contains five hundred double-column pages.

HOUSE OF LORDS.

LONDON, 11 December, 1896.

CLUTTONS (Appellants) *v.* ATTENBOROUGH & SONS (Respondents) 31 L. J.)

Bill of exchange—Cheques payable to 'fictitious or non-existing persons'—Forged indorsement—Fraud—Negligence—Duty to holder.

By a system of fraud extending over eight years the appellants' clerk obtained cheques drawn by the appellants to the order of a non-existing person for work never executed and for goods never supplied. These cheques he stole, and indorsed in the name of a non-existing payee, and paid them to the respondents, pawnbrokers, who gave value for them, partly in money, partly in goods, at intervals during the whole period of eight years. All the cheques were honoured by the appellants' bankers. The appellants sought to recover the proceeds of these cheques from the respondents as money paid under a mistake of fact. Held, that the appellants were not entitled to recover.

Their Lordships (LORD HALSBURY, L.C., LORD MACNAGHTEN, LORD SHAND, and LORD DAVEY) affirmed the decision of the Court of Appeal (64 Law J. Rep. Q. B. 627; L. R. (1895) 2 Q. B. 707), and dismissed the appeal with costs.

CORPORATIONS.—EXPULSION OF MEMBERS.—Relator, a member of a club incorporated for social purposes, being dissatisfied with the rejection of a candidate for membership, sent a circular to the other members, setting forth the rejection and urging the calling of a special meeting. Relator was notified to appear before the board of directors and give an explanation of his conduct. He appeared, was heard, and was expelled. *Held*, that a mandamus would issue to review the proceedings of the board of directors. *People* v. *Up-Town Assoc.*, 41 N. Y. Supp. 154.

THE CASE OF CZYNSKI. *

Criminal proceedings against a man by the name of Ceslav Lubicz-Czynski, on the charge of having had recourse to hypnotic suggestions in order to win the affections of a woman of high social position, and obtain her consent to live with him in illicit intercourse, and subsequently to marry him after he had subjected her to his will, imposed upon her by his power of hypnotization, were recently instituted in one of the higher courts of the city of Munich, Bavaria, and conviction secured on that charge. Hypnotism has figured in courts of justice here and abroad in a number of cases, but only as far as I am aware as a defensive plea, in justification of criminal acts, committed, as claimed, under the influence of the will of some other person, who, by suggestion, made the criminal actor a willingless instrument of criminal design, and compelled the commission of a criminal act, for which the accused could not be held responsible and which he was powerless to resist. But in this case the principal, the hypnotizer, was tried for using his art for illegitimate and criminal purposes, convicted upon the charge, and sentenced to imprisonment, after a protracted trial, upon the evidence and the rendering of opinions of eminent scientists. For the first time, I believe, has hypnotism been thus recognized in legal proceedings as a factor in the human will, as a psychological power for evil, scientifically defined, and with which the administration of justice will have to deal whenever accusation or defence shall resort to the plea of hypnotic influence or suggestion.

The case as tried before a court and jury in Munich, beginning on the 17th of December, 1894, and lasting for three days, is of sufficient interest to medico-legal science for extensive notice. It appears from the record of the proceedings that Ceslav Lubicz-Czynski, a native of Turzenka, District of Warsaw, Russia, Poland, 36 years of age, had lived in Cracow until the year 1890, as private teacher of the French language, where he also figured as an expert in effecting cures by the means of magnetism and hypnotism, a method, as he announced in circulars and advertisements, of his own discovery. He was married, but about that time he left his wife and lived together with a woman by the name of Justine-Marger, with whom he

* Paper read before the Medico-Legal Congress, September 6th, 1895, by Moritz Ellinger, secretary of the Medico-Legal Congress, and printed in the Medico-Legal Journal, New York.

had a child. In 1892 the pair went to Posen, and in that city, as well as in smaller towns of Prussian Poland, he delivered lectures on hypnotism, occultism and cognate subjects. He did not succeed very well, but kept on, gave public exhibitions of his hypnotic power, and claimed to be able to cure every disease however hopeless it may appear. He also gave exhibitions pretendedly for the benefit of charitable objects, but as he invariably pocketed the money himself, he was expelled from Prussia in 1893. In April of that year he transferred his field of operations to Saxony, and its capital, the city of Dresden, where he also announced in the public press the wonderful powers which he possessed and which enabled him to effect wonderful cures.

One of these announcements came under the eye of Hedwig von Zedlitz, a member of one of the oldest families of the German nobility, a spinster, 38 years of age, of unblemished private character and strict religious habits and disposition. She suffered from pains in her head and stomach, and she applied to Czynski for relief. He treated her by placing his hands upon the part of her body, which she pointed out as the seat of pain, and also prescribed medicine for her. The relations of Czynski and his patient grew more intimate with every visit which he made to her rooms, or her visit to his rooms, until their engagement, which, however, was kept secret, because Czynski declared that political considerations demanded it. He told his affianced lady love that he was the last offshoot of a princely family of Lithuania, and for that reason the public announcement of his betrothal and marriage might cause some unpleasantness; a lady of the best Dresden connections with whom he enacted the role of Joseph against Potiphar, might plan revenge, etc. He also claimed to be the last scion of a ducal family, the Prince of Swiatopelk. The engagement with Baroness von Zedlitz induced him also to discharge the woman he lived with, the mother of his child, on the plea that his first wife was coming back, and that he would take steps to secure a divorce, for which purpose he abandoned the Catholic faith and joined the Protestant Church.

At the end of January, 1894, Baroness Zedlitz made a journey to Switzerland and Czynski took up his residence at St. Gallen, from which place the cards announcing the engagement of the parties were sent out. The marriage was to take place in secret, in Munich, for which place the Baroness set out on February 6.

In the meanwhile C. went to Vienna and secured the services of an old acquaintance of his, a certain Stanislaus Wartalsky, promising him a good position on one of the domains of his future wife, assuring him that his wife was in full agreement with what he was doing, and what he wanted his friend to do; namely, to personate a Protestant clergyman and to perform a spurious marriage ceremony. Wartalsky made his appearance as promised, and was received at the railway depot by C. On the day following, Wartalsky was introduced at the Hotel "Europaeischor Hof" to Baroness von Zedlitz as Dr. Wertheman, pastor of the Protestant Church, and on the 8th of February the marriage was duly performed in one of the rooms of the hotel. The pretended Dr. Wertheman wore the robe of a Protestant clergyman. At the table before which the bridal couple kneeled stood a crucifix, with two candlesticks and a ritual, which the clergyman had brought with him from Vienna. Wartalsky, alias Dr. Wertheman, read off an address from a paper, put to the couple the prescribed questions, which they answered with a loud "aye," after which he put the wedding ring on their fingers and pronounced his blessing. There were present as witnesses the Court Jeweller, Paul Merck, a Mrs. Elizabeth Rudolf, companion of the Baroness, and a chambermaid. Wartalsky left a marriage certificate, for which he used the form as prescribed in the diocese of Salzburg, which both of them signed. The words "Catholic religion" were stricken out, and the words "Augsburg confession" substituted. A wedding breakfast followed, during which Wartalsky toasted the duke and duchess, and Czynski showed his wife a telegram which, he said, came from the Austrian Chancellor Kalnoky, conveying congratulations.

When the father and brother of Baroness Zedlitz, the latter of whom held a position in the heraldry office at Berlin, heard of these proceedings, they applied to the police authorities, and a week after the pretended marriage Czynski was placed under arrest.

After a number of protracted examinations, the following indictment was preferred, to the principal points of which Czynski pleaded "not guilty:"

1. To have put Baroness von Zedlitz, by means of hypnotism and suggestion, in a condition of loss of will power, and in which she, without the power of asserting her own will, became subject

to his will, and that he abused her in that condition for illegitimate sexual intercourse.

2. That he induced Wartalsky, by the promise of financial gain, to perform a function which can only be performed by a person properly authorized.

3. That he passed over to the brother of the Baroness von Zedlitz a document which was a fraudulent marriage certificate, for the purpose of securing thereby the financial advantages which the connection with Baroness von Zedlitz, who is a person of considerable wealth, would give him.

The testimony of the witnesses given during the trial is of great interest in a medico-legal sense, but I must confine myself to the principal points, especially to the testimony of the accused and his intended victim, and to some extracts of the opinions of the experts.

The manner of his becoming acquainted with Baroness von Zedlitz, and of his qualifications for the performance of professional cures by training and education, he describes in substance as follows:—

"I was teacher at the gymnasium of Cracow, and in former years a student at the university of that city. I took a great interest in the subject of hypnotism, studied it thoroughly and wrote several books on it. In 1892 I went to Paris, attended the clinical course at the Charité, and obtained a certificate as a student of medicine. Of course, I am not a graduated physician. On account of my books on hypnotism I received from the Roman Academy the diploma of M.D. *honoris causa*. Before the Medical Society of Constantinople I delivered lectures on hypnotism. I am the author of twenty-two books." He also claims to be a member of the Paris Société des études ésoteriques.

In his treatment of Baroness von Zedlitz he had applied the method learned in Paris for the cure of headaches, but denies that he ever put her into a hypnotic condition. He never had put his hand upon the stomach of the patient, and she had never taken, during his treatment, a recumbent position, but always sat in her chair. To the question of Dr. Schrenck whether he ever made any passes with his hands in the region of the stomach, he answered: "Simply massage." The sessions lasted from a quarter of a minute to a minute. Actual bodily treatment was only had during these sessions, in the months of August and September, at which his housekeeper was present,

who held the hands of the patient. To the question of Expert Dr. Hirt, what Czynski meant by method of transference, a method which has been abandoned long since and which consisted in the application of magnets, for which, however, no medium was required, he showed a work of Prof. Luys of Paris, on that treatment, published in 1892, which proved that the method was still in vogue. He understood by transference the transference of disease from the body of the patient to the body of the hypnotized subject. To the charge of the President of the Court that he made the Baroness submit to his amatory offerings by annihilating through hypnotic influences her power of resistance, he replied: "A person as morally pure and as severely religious as the Baroness cannot possibly be deprived of her will power. In order to succeed in such a case the person would have to be subjected to a great many hypnotic operations, and a sickly person is not in a condition to concentrate her thoughts as sharply; this is an impossibility."

The examination of Baroness von Zedlitz takes place in the absence of the accused at her request. She is of tall build, features pleasant, but not handsome, and an expression of fatigue in her face. Her age she gives as 39. Protestant confession and the proprietress of the domain Inga. She had seen the doctor's advertisements in the Dresden papers, and she went there to consult him for her headache, and also to see a somnambule, which she was curious to see. When she came there the first time he was out, and a lady who happened to be there told her he was just then with the somnambule. This lady she recognized later as the medium. On the succeeding day she found Czynski at the somnambule's; she had to put her hand into hers while the latter was in hypnotic trance, and the somnambule then diagnosed her disease. The consultation proceeded in the following manner: "Czynski took one of my hands and the somnambule the other. She then told me various things which surprised me. She also told Czynski he should give me something to cure my pains; he knows what. The conversation was carried on in French. After that he woke the somnambule up, who rather disliked to be aroused. She then left the room. I asked him then if he considered it necessary for me to come back, and he thought it would be very desirable. Then I went there either the day following or a day thereafter. The somnambule was not there. Her name was Mrs. Hofman, née

Kœnig. He did not know my name then. On that day he told me different things from an examination of the palm of my hand and from a book, for instance, to what star I belonged. He then gave me a number of prescriptions, as I was on the point of travelling. The medicine was partly for external, partly for internal use. I believe he applied electricity to me then and placed his hand upon my head. I did not visit him further before my journey to Thuringen. I returned from my journey about the 2nd of September, and I had written to him during my absence abroad that his remedies had not benefited me any. After my return he visited me several times at my hotel, accompanied by his medium, where he treated me, which consisted of putting his hand upon my stomach and then upon my head, after I had opened my dress, so that his hand rested upon my shirt. He then passed his hands to and fro and spoke to me. I leaned back and closed my eyes. He told me to open my eyes and be cheerful, gay, laugh and eat well. The medium had been put to sleep already, and was seated next to me, holding my hand and touching my knee."

In answer to the question of Professor Preyer as to the time which those proceedings lasted, the witness answered: "About half an hour. I was always so sleepy. Czynski maintained that I was half asleep already. I laughed and insisted that it was not so. I never got asleep fully; it was only a doze. I remembered everything that occurred that day. After the treatment the medium took my hand and danced with me around the room. I asked her what she meant, and she said she was directed by him to do so. After the entire close of the proceedings the medium woke up and I also became fully aroused. I felt a pressure at the back of my head at various intervals, and visited Czynski again, and he resorted to the same treatment. He wanted to put me into a full sleep, but did not succeed. At one time I sent my maid to him to inform him that I could not come because I had the *migraine*. 'Oh, she will come!' he replied, and in reality I felt thereafter a little better, and at five o'clock in the afternoon, the time of the appointment, I went there. It was about this time that I gave him my name." After a great many details of the visits of the witness she related her further connections with him: "It was about the month of October that Czynski made a declaration of love to me during the treatment. I was frightened, surprised, and felt a profound

pity. He made the confession while I was in a condition of half sleep. He added that he was poor. Wieczinski, who I believed to be his wife, and of whom he spoke as his 'lady,' he told me was studying medicine. His wife, he told me further, was unfaithful to him, and he was very unhappy. I alone could save his soul and make him happy. He will apply for a divorce, turn Protestant and marry me. I cried, felt great sympathy for him, and believed that I would have to do a good work. But I cannot say that I felt any love for him. He overwhelmed me with letters, became distressingly persistent and continually dwelled upon his love for me during his treatment. His love found, however, no genuine response. But as something sad had occurred I asked myself whether I loved him, and whether I should help him to a better life. Then I said to myself, 'Yes, I have surrendered myself to him.' I do not know how that was possible. It was done so suddenly. All of this is so terrible, but I could not help it. Therefore I resolved to marry him, because I felt pity for him, and sought to discover a good kernel in him, and wanted to save his soul. I had never before had the idea of marrying him, and until his declaration of love I only evinced interest in his performances."

To other questions by the Court the witness said in substance: "He never ceased his impetuosity. I did not want to entertain his offers of meeting him, but I could not resist, and was compelled to meet him. We often discussed religious matters, and he then said I could save his soul. This gave me a sort of satisfaction, and I finally consented to accept his proposition. I no longer had any control over myself. I felt that I was entirely subject to his influence. The intimate intercourse with Czynski was not had during a condition of somnolence, only I was influenced to such a degree that I could not resist him. Though I was aware of the wrong I was doing, I was powerless to resist. Now that I have found out how Czynski has lied to me, I have a perfect aversion to him."

This extract from the testimony of the principal witnesses is probably sufficient to afford a clear view of the groundwork upon which the legal proceedings rested, but the opinions of eminent experts who rendered opinions are of paramount interest. Dr. Fuchs of Bonn said he could not enter upon special questions, but desired to give his opinion of hypnotism in general, as he was probably summoned for that purpose. His view in regard to

hypnotism was a total denial of its power. He does not consider it an instrument by which the human will could be controlled in a permanent or irresistible way. Nobody would succeed to induce one who simulates disease to relinquish simulation. Of course, witnessing the exhibitions of practicians, the impression is made that their orders are implicitly obeyed. If a subject is told "You are not a human being, you are a dog," he runs on all fours, and barks, etc. All this is admitted. Experiments like these he had witnessed in Paris years ago, in great numbers, especially at the clinics of Professors Luys and Charcot. His conviction was that all the subjects practiced on were stupid people. They are under no other compulsion than the desire to make themselves interesting, or from some inducement to do the practician a favor. Of the great scientists, such as Charcot, for instance, no one would maintain that either of them could be placed into a hypnotic condition. Hypnosis will not succeed with any person who has the feeling of serious responsibility. He has the conviction that all the instances of hypnotism which he had seen were only a farce.

Expert Professor Dr. Grashey of Munich, in the introduction of his opinion, gave a definition of hypnotic influence and suggestion. "Suggestion," he says, "means to suggest to somebody a certain thought, to pursuade him that a certain idea transferred is his own. Suggestions play a great role in the intellectual life of man, and especially in education. Children have no independent judgment and rapidly adopt the thoughts suggested to them by their parents, teachers and friends. But suggestive effect is due not merely to words, but also to example. A person can be suggested to go to sleep. Such a sleep, induced by suggestion, is called hypnosis, and the inducement of hypnosis is called hypnotism. The person who hypnotizes another is called hypnotizer. Hypnosis, or sleep induced by suggestion, has the peculiarity that the subject remains in mental rapport with the hypnotizer, who can suggest or transfer thoughts to the hypnotized person, and then the latter can offer less resistance than in a wakeful state.

"Hypnosis has also the peculiarity that it can be produced easier and easier as the operation is repeated. It is well known that through the means of impressed thoughts, persuasion and by given examples, the will of persons can be acted upon—can be influenced. Such an influence, however, does not mean an

interference with the freedom of will, because in a normal condition the whole stock of experience is on hand to be used in opposition and counter-reason against the proposition made. I am not one of those who, on account of the mechanical regularity with which the will expression of the man in normal health proceeds, are disposed to throw a doubt upon the existence of free will, and thereby question the application of the principle in criminal law which presupposes a free will, the free self-determination of man. According to my conception the grown man can be held devoid of his free will irresponsible then only when the action is exclusively or predominantly the product of abnormal or diseased factors, abnormal or diseased illusions, abnormal or diseased feelings, disposition and will impulses.

It must be ascertained, therefore, whether thoughts which are inspired during a light hypnotic condition affect or change as little the will power as the thoughts do which are suggested in a wake condition without preceding hypnosis.

In a light hypnosis the normal man does not dispose to an equal degree of his accumulation of experiences and of his ability of remonstrating as he does in a condition of full wakefulness. He receives the inspired thoughts more readily, he is more suggestible, he accepts many thoughts which he would have rejected in a wake condition, because he cannot dispose of remonstrative reasoning. I maintain, therefore, that the normal man disposes with less freedom of his will during a condition of light hypnosis. If, however, as it is generally assured, the suggestibility increases with every new production of hypnosis, the will power, as against the will of the hypnotizer, decreases by degrees, and the interference with the freedom of the subject's will increases as well as the restriction of the power of will. The subject frequently hypnotized remains also more suggestible in the intervening time, and it thus follows that thoughts may be suggested during his wake condition which he would have never accepted before the hypnotic operations had begun. The control of the subject's will may be undertaken, therefore, in a wake condition, and can be heightened by suggestions during the period of wakefulness; and thus we see a hypnotizer attain finally such power over his subject that a single word, a single look, may put him to sleep. At such a degree of suggestibility there can no longer be a question of a normal rise and leave of thoughts, of a normal procedure of the process of reasoning. The potentiality of putting

a man so promptly and so rapidly to sleep is not reconcilable with the assumption of free will power, and rather presupposes a condition of unfreedom of will.

Not only in regard to the time of going to sleep, of the beginning of hypnosis, is the person hypnotized dependent upon the hypnotizer, but also in regard to thoughts and feelings. A thought which is slightly opposed during the first condition of hypnosis in a less degree than in the normal condition will meet with less opposition as the hypnotizing progress is continued; sentiments and dispositions which were but slightly indicated during the first operation will grow, become stronger and more intense as the process is repeated.

Again, a hypnotizer who has gained a certain power over an individual by a repetition of hypnotic procedures can suggest successfully a thought or a sentiment which in the commencement would hardly have been received, and thus the hypnotized individual falls into a condition of subserviency in ideas and sentiments at the cost of his own freedom of will.

What, then, is a condition of "loss of will" in the sense of the law?

"Loss of will" is as much as total absence of will power; because consciousless means absence of consciousness, irrational means absence of reason.

As a child under the age of twelve years in the sense of the law is considered to be without the power of free will, and therefore legally irresponsible, therefore every child under the age of twelve years has in the sense of the law will; therefore, when we speak of a condition "without will power" we do not mean a condition which excludes all assertion of will and every expression of will, but merely a condition in which on the whole, or in a special relation, the determination of the will is excluded.

GENERAL NOTES.

An Aged Solicitor.—Mr. Francis Raynes, who died at Bawtry, near Doncaster, on the 21st November, after a brief illness, was probably the oldest solicitor in England. He was in his ninety-seventh year, having been born in April, 1800. At Doncaster Market, at which, despite his great age, he was a regular attendant, he caught a cold. Congestion of the lungs speedily set in, and seven days later he died. He started in

practice seventy-four years ago, having been admitted a solicitor in 1822. He retired from practice several years ago, but a few of his former clients continued to employ him in matters which did not impose too severe a strain upon his strength. His family was a singularly long-lived one. His brother, who for many years practised as a doctor in the Isle of Man, died not long ago at Bawtry at the age of ninety-three. Mr. Raynes was, even when far advanced in years, an enthusiastic follower of Lord Galway's hounds. When he was no longer able to join in the chase he habitually attended the meet in a phaeton. He was present at the opening meet at the beginning of last month.

PRIVILEGES OF THE POLICE.—The cases of the Michælmas sittings afford consolation to the much abused police. We select two rulings for their comfort: (1) The joint committee of a county council is not justified, even by the advice of the Home Office, in insisting on the exercise of its power to have a pensioned constable medically examined in the county, with the ulterior object of bringing him within reach of an official receiver in bankruptcy—*Regina* v. *Lord Leigh*. (2) A constable is acting in the execution of his duty who pursues a coroner to his lawn-tennis club to inform him of the discovery of a dead body within his district, and stops him in his amusement to give him the information. But *semble* that before interfering with a coroner in the execution of his pleasures, the constable should first seek him at his official residence, and failing to find him there, should seek his clerk or officer.—*Cook* v. *Gaches* (Queen's Bench Division on November 2)—*Law Journal*.

PRIVILEGE OF WITNESSES IN ENGLAND.—We forbear at present to comment on the case of *Kitson* v. *Playfair* further than to express our agreement with the observations of Sir Henry Hawkins in regard to the lack of any authority in Courts of law for the code of professional rules as to confidentiality which medical men have constructed for themselves. The issue could hardly have been raised in the case of a barrister, who—unlike a medical man (*Duchess of Kingston's Case*, 20 St. T. 572, 573) and *semble* a priest of the Church (*Butler* v. *Moore*, M'Nalty Evid. 253, 254)—is usually not only not compellable, but not permitted to disclose confidential communications. The position of priests is still doubtful, as we have indicated, but only in regard to the question of compulsion. Chief Justice Best, in *Broad* v. *Pitt*, 3

C. & P. 518, and Baron Alderson, in *Regina* v. *Griffin*, 6 Cox C. C. 219, favoured their exemption. But no judge has ever said that if a priest offered to disclose communications made to him by a prisoner he would decline to receive them in evidence.—*Ib.*

SECRET COMMISSIONS.—It is primarily to the Lord Chief Justice of England and to Sir Edward Fry that the credit of setting an effective agitation on the subject in motion belongs. There have from time immemorial been cases in which the receivers of secret commissions have been compelled to disgorge them, and nothing could be better, in point of moral indignation, than the scathing comments with which successive English judges accompanied these decrees for restitution. But such denunciations were too often restricted to the particular facts with which the Courts had to deal, and were never carried into the region of general action. Lord Russell's declaration in the *Oetzmann Case* that he would do his best in future to make the recovery of secret commissions impossible constituted a new and most salutary judicial departure; and Sir Edward Fry, who, though unfortunately he can no longer wield the thunderbolts of the Bench, still speaks with the authority of one of the most distinguished of English lawyers and judges, has strongly and successfully reinforced the Lord Chief Justice's action, both by demonstrating against a host of correspondents the urgent need for an awakening of the national conscience on the subject, and by indicating a variety of practical methods to prevent the healthy public sentiment which has been aroused aimlessly evaporating. It is unnecessary to dwell further upon the points in the controversy of which Sir Edward Fry has borne the brunt. The only argument urged against him which deserves even a passing notice was that of a correspondent who cited the cases of a banker who gets a return commission on the purchase of stock, and a solicitor receiving a commission for effecting a fire insurance for a client. The obvious answer to these alleged analogies is that it is the secrecy which makes the difference between commissions that are and those that are not illicit. The point of present importance now, however, is not the existence of the disease in the body mercantile, but the means by which it is to be cured, and it is here that Sir Edward Fry's suggestions are peculiarly valuable.—*British Review.*

APPOINTMENT.—The Minister of Justice of the Dominion of Canada has appointed Mr. Charles Russell, of the firm of Messrs. Day, Russell & Co., to be solicitor in the United Kingdom for the Government of the Dominion of Canada.