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CURRENT TOPICS AND CASES.

In connection with the subject of legal education, which is coming into greater prominence everywhere at the present time, the *London Law Journal* expresses regret that some actual practice in pleading and speaking is not included in the programme issued by the Council of Legal Education. "In old days," it observes, "the Moot, with its pleading of a mock cause, furnished a forum for the legal novice. The Moot still lingers at Gray's Inn, and when Sir Frederick Pollock was professor of common law to the council, he tried to revive it in connection with his lectures. There is also the Hardwicke and other arenas of debate; but these isolated and unofficial opportunities are not enough. Practice in public speaking, the conduct of a cause in Court, ought to be recognized as an indispensable part of the curriculum for the Bar. Quintilian would have had children begin rhetoric at six or seven years of age. That may be a counsel of perfection, but even the theological student practises sermon preaching and the cottage lecture before he is launched on the work of a parish." There is no doubt that students, otherwise well equipped for the battle of life, have often been unsuccessful, or have been greatly retarded, in their career, owing to the absence of training in public speaking.

The teachings of science as to the necessity of proper space and ventilation, if people would escape the dangers of contagion and disease, make their way slowly in courts of justice. When the Shortis trial began at Beauharnois, the evil effects of confined air were quickly felt by counsel and jury. According to the daily journals, it was ascertained that the extra sashes had never been removed from the windows in the court room since the erection of the building some thirty years before. This was in a rural district. But even in the greatest metropolis of the world the vacation court has been sitting, during the hottest part of the year, in a small and badly ventilated apartment, in which it is impossible for the members of the bar to remain any length of time without suffering. Yet, during the long vacation the other courts are closed, and it might be supposed that the Royal Courts of Justice would afford ample space for the convenient transaction of the business of the vacation court.

The Court of Common Pleas of Baltimore, in a recent case of *Nixon* v. *The Baltimore Humane Impartial Society*, expressed the opinion that "a board of lady managers of a charitable institution should not be required to observe the strict technicalities of procedure to as great an extent as is expected of bodies of a different character; the chief inquiry being whether there has been a substantial compliance with the rules." The *Chicago Legal News* seems to resent this dictum as something akin to an insult, for it says emphatically: "We do not agree with the court. Women managers of charitable institutions should be required to observe the same procedure and rules as men. They should be treated as the equals of men. They are as capable of performing the duties as men. They should stand upon an equality before the law with men." Our contemporary, however, would appear to put an interpretation upon the words cited which they do not bear.

The judge, obviously, did not intend to make a distinction based merely upon sex, but between charitable institutions and "bodies of a different character," for example, municipal councils or business corporations. In this light his remarks are perfectly just, for courts have always been reluctant to interfere with the domestic administration of benevolent institutions, or to subject their acts to the rules of strict technicality where no substantial grievance is complained of.

The revenue of the Court of Appeal and High Court of Justice in England, according to a recent return, is not equal to the expenditure. For the year which ended March 31, the total receipts amounted to £489,649, while the expenses were £637,902. The salaries of the judges, including the salary of the Lord Chancellor, amount to £148,716, and the retiring annuities of judges and pensions to ex-Lord Chancellors, add an additional sum of £31,631. In England, however, the services of the best men are secured for the bench, apart from the consideration whether the institution is self-supporting.

An instructive example of the way in which libels are punished in England is afforded by the recent case of the editor and proprietor of the *Spy*. They pleaded guilty to having maliciously written, printed and published in their journal defamatory libels concerning Mr. John Southam, a Manchester solicitor. The libels complained of were allegations against Southam that he had wilfully appropriated money left his mother for the benefit of his relatives. Since the committal there had been negotiations ending in the expressed willingness of the prosecutor to accept an apology from the defendants, who were further to pay costs, but the judge refused to allow such an arrangement. Mr. Spee, Q.C., addressing the court in mitigation of sentence, said the defendants desired to withdraw the libels as handsomely as they could. They

had acted on affidavits of relatives of the prosecutor, and particularly on the statements of a brother, who was since dead. The judge said the defendants had been guilty of a series of libels, the like of which he had not known. They had interfered in matters which did not concern them, and had made use of scandals communicated to them for the sake of gratifying the morbid curiosity of a large portion of the public, utterly regardless of the rights, the feelings, the character, and almost the life of the person attacked. An apology under such circumstances was absolutely worthless. He sentenced the defendants each to twelve months' imprisonment.

SUPREME COURT OF CANADA.

OTTAWA, 8 October 1895.

BARRINGTON v. THE CITY OF MONTREAL.

Quebec.]

Appeal—Mandamus—Appeal from Court of Review—Jurisdiction.

B. applied for a mandamus to compel the city of Montreal to carry out the provisions of one of its bylaws, which was granted by the Superior Court, whose judgment was reversed by the Court of Review, and the petition for mandamus dismissed. B. then instituted an appeal from the latter judgment to the Supreme Court of Canada, and on motion to quash such appeal,

Held, that the case was not within the provisions of 54-55 Vic. c. 25, s. 4, allowing appeals from the Court of Review in certain cases; and the appeal not coming from the Court of Queen's Bench (the Court of highest resort in the Province) there was no jurisdiction to entertain it. *Danjou* v. *Marquis* (3 Can. S. C. R. 251) and *McDonald* v. *Abbott* (3 Can. S. C. R. 278) followed.

Appeal quashed without costs.

Ethier, Q. C., for the motion.
Weir, contra.

TRADE-MARK—INFRINGEMENT.

In delivering the judgment of the United States Circuit Court, Southern District of New York, in the case of *N. K. Fairbank & Company* v. *Central Lard Company*, granting an injunction, Townsend, District Judge, observed :—

This is a bill in equity for an injunction against the infringement of complainant's trade mark "Cottolene" by the use of the word "Cottoleo."

The complainant began the manufacture of the article and devised and registered the word "Cottolene" as a trade-mark, in 1887. It obtained a large and increasing business. In May, 1892, its sales amounted to a million pounds a month.

Cottolene is a substitute for lard. It is composed of cotton-seed oil and the product of beef fat. Beef fat or suet, under heat and pressure, yields two products, oleo-stearine and oleo-margarine. The former is a solid, and is used in making a substitute for lard. The latter is more nearly a liquid, and is used in making a substitute for butter.

The word "oleo" is used colloquially among merchants to indicate either oleo-margarine or oleo-stearine.

At the time when defendant in 1892, commenced the manufacture of cottoleo, which is identical in composition, character and appearance with cottolene, other articles made of the same ingredients were on sale in the market under various names other than cottolene, such as "Lardine," "Cotton Oil Lard," "Panteleia," "Golden Beef Drippings," "Beef Frying Fat," etc.

These facts were known to the defendant.

The compound in question was well known, and defendant had a right to manufacture and sell it.

Defendant sold under its own trade name, and, except in the use of the word "Cottoleo" stencilled on tierces and tubs, did not simulate the labels or packages used by complainant.

This article, however, is frequently sold in tierces to bakers, and in tubs to grocers who sold it to customers from such tubs by the pound, so that the customer does not necessarily see the package at all.

It seems clear that "Cottolene" is a proper and valid trade-mark. Although it may suggest cotton oil, it is not sufficiently descriptive to render it invalid as a trade-mark under the recent decisions.

The rule that names suggestive of the nature or composition of articles may be valid trade-marks if not too accurately descriptive of their character or quality has been applied to *Burnett* v. *Phalon*, 9 Bos., 192, to the use of the word "Cocoaine;" in *Glen Cove Mfg. Co.*, 22 F. R. 823 to "Maizena;" in *Leonard* v. *White*, 38 F. R., 922, to "Valvoline;" in *Battle & Co.* v. *Finlay*, 45 F. R., 796, to "Bromidia."

A more recent case is *Keasbey* v. *Brooklyn Chemical Works*, decided by the Court of Appeals in New York since the argument of this case. The trade-mark in question in that case is Bromo Caffeine.

This was held to be a valid trade-mark in the Supreme Court, which decision was over-ruled by the General Term and cited by the defendant in support of its contention that "Cottoleo" was a descriptive word.

This article called Bromo Caffeine, made by the plaintiff in that case, was found to containe caffeine, bromide of potassium and other substances.

The opinion in the appellate court says that bromide "Might "refer to bromide of potassium or bromide of sodium, or to any "other bromide, or to bromine," and thus stated its conclusion: "We think this case comes within the doctrine of those cases which have protected the words of the trade-mark, although they suggested more or less the composition, quality or characteristics of the article."

It also seems clear that the word "Cottoleo" is sufficiently similar to "Cottolene" to infringe it. When the printed form as well as the sound is considered, the resemblance is as great as that of Cellonite to Celluloid, *Celluloid Mfg. Co.* v. *Cellonite Mfg. Co.*, 32 F. R. 94; Wamyesta to Wamsutta, *Wamsutta Mills* v. *Allen*, Cox's Manual, 660; Maizharina to Maizena, *Glen Cove Mfg. Co.* v. *Ludeling*, 22 F. R., 823; Saponiti to Sapolio, *Enoch Morgan Sons Co.* v. *Edler*, Cox's Manual, 713. See also *Estes* v. *Leslie*, 29 F. R., 91, in which "Chatterbook" was held to infringe "Chatterbox."

Defendant's counsel does not seem to seriously controvert these propositions. His defence is novel and ingenious. He says that complainant can have no better case here than he would have if his trade-mark had been "Cottoleo" and the defendant had used the same word, and he maintains that "Cottoleo" is so far a descriptive word that it cannot be used as a trade-mark.

He says: "If such an alleged trade-mark would not have prevented the defendant from using the same word, certainly a trade-mark claimed in any other word cannot prevent the defendant from using it."

He says that, as this was a new compound when complainants began to manufacture it, they could not, by their choice of a name adopted as a trade-mark, restrict any parties thereafter manufacturing in their choice of descriptive words.

He says that defendant was justified "in using a word which was euphonious, and which indicated the ingredients of which the product was composed, and that no trade-mark claimed or owned by the complainant can abridge that right."

The questions as stated by defendant then are: First, Is "Cottoleo" so far a descriptive word that it could not be used as a trade mark?

Second: Where a manufacturer originating a new compound has given it a name suggestive of some of the ingredients, but a valid trade-mark, may a later manufacturer adopt a name similar in appearance and sound, provided the same is so far descriptive of the article that it would not be valid as a trade-mark?

Defendant's counsel in support of his contention that "Cottoleo" is a descriptive word, quotes the following among others as having been held descriptive, and therefore invalid as trade-marks.

Cherry Pectoral, *Ayer* v. *Rushton*, 7 Daly, 9; Taffe Tolu, *Colgan* v. *Danheis*, 35 F. R. 150; Rye and Rock, *Van Beil* v. *Prescott* 46 N. Y., Super. Ct., 542; Straight Cut, *Ginter* v. *Kinney Tob. Co.*, 12 F. R., 782; Macassar, *Rowland* v. *Breidenboch*, 1 Coxe on Trade-marks, no. 386; Cresylic Ointment, *Carbolic Soap Co.* v. *Thompson*, 25 F. R. 625; Iron Bitters, *Brown Chemical Co.* v. *Meyer*, 139 U. S. 540, figures ½ on cigarettes composed of two kinds of tobacco; *Kinney* v. *Allen*, 1 Hughes, 106.

But in these cases and the others cited by defendant the words claimed as trade-marks were either originally descriptive, or had become incorporated into the English language so as to be recognized as descriptive of the article, and therefore incapable of exclusive appropriation.

The evidence shows that the word "Cottoleo" is not formed in accordance with any established rules for the formation of a new word. Cott is merely suggestive of cotton oil. It does not

describe it, and oleo may describe or refer to oleo-margarine as well as to oleo-stearine, or to other oils. Oleo is ordinarily used as a suffix and not a prefix, and it is shown to be the rule in coining compound words that the name of the more important article is placed last.

There were various other words in common use describing the product when the defendant coined the word. It does not, therefore, come within the principle of those cases where there is only a single name to designate the new article or where the new name is used merely as descriptive of the article.

Defendant's theory that where a suggestive trade-mark has been adopted, another desiring to obtain the benefit of the trade-mark may coin a word not already in the language, and not made according to the regular rules for coining new words, yet sufficiently indicative of the quality and character of the article to be invalid as a trade-mark and sufficiently like the trade-mark in use to obtain the benefit of an infringement, seems to open the door for ingenious fraud.

Under the circumstances of this case, the conduct of the defendant in rejecting all existing names, and in coining a new name which conveys to the eye and ear so close an imitation of complainant's trade-mark, seems to indicate a design to impose his article upon the public as that of the complainant, or at least to obtain the substantial benefit of complainant's trade-mark.

It is well settled that the inventor of an arbitrary or fanciful name may apply it to an article manufactured by him to distinguish his manufacture from that of others, and that the subsequent use of such word by the public to denote the article does not deprive the originator of such word of his exclusive right to its use. *Selschow* v. *Baker*, 93 N. Y. 59; *Ausable Horse Nail Co.* v. *Essex Horse Nail Co.*, 32 F. R., 94; *Celluloid Mfg. Co.* v. *Read*, 47 F. R. 712.

Neither does the fact that the defendant sold under its own name, and made no attempt other than by the use of the word "Cottoleo" to palm off his goods as those of the complainant, constitute a defence. *Roberts* v. *Sheldon*, 18 O. G, 1277, and cases there quoted. *Sawyer* v. *Horn*, 1 F. R. 24; *Hier* v. *Abrahams*, 82 N. Y., 519; *Battle* v. *Finlay*, 45 F. R., 796.

It seems to be the law that when manufacturers have educated the public to ask for a certain article by its trade-mark name, they have acquired the right to insist that products manufactured

by others shall not be given to the public under that name. It is just that it should be so, for the benefit derived from such name can only be obtained by faithful service in furnishing articles of recognized value. Moreover, if the trade-mark name might be adopted by others, inferior articles might then be produced and sold under it; and thereby the value to manufacturers of the reputation of the name used by them as a trade-mark would be destroyed.

There will be the usual decree for an injunction and an accounting.

RECENT U. S. DECISIONS.

Partnership.—The question whether land standing in the individual name of one member of a partnership concern belongs to him or to the firm is to be governed by the intention of the partners, in respect to which parol evidence is competent in the absence of written evidence.—*Goldthwaite* v. *Janney*, (Ala.) 28 L. R. A. 161.

Carrier.—A constructive, if not an actual, fraud to obtain cheap rates of freight, which relieves the carrier from liability for loss of the goods, is shown where an intelligent man ships in a basket with a rope around it valuable goods, such as silks, satins, laces, curtains, and other things, most of which are kept for sale by his wife, and remains silent when he hears them designated as "household goods," on which the rate is much less than on merchandise.—*Shackt* v. *Illinois Cent. R. Co.*, 94 Tenn. 658.

Trespass.—A person who had entered a railroad yard in violation of rules, was ordered off by a different route from that by which he entered. It was held that a person may be a trespasser when passing over private grounds by a dangerous route which the owner directs him to take in leaving the premises.—*Kansas City, Ft. S. & M. R. Co.* v. *Cook* (Mo.) 28 L. R. A. 181.

Criminal law—Evidence.—The fact that a grand juror gives testimony in favor of the indictment does not render the indictment void. *Commonwealth* v. *Hayden* (Mass.) 28 L. R. A. 318. With this case is found an extensive note on the competency of evidence before a grand jury.

Jurisdiction.—The remission of a portion of a debt by voluntary credits, in order to bring a claim within the jurisdiction of an inferior court, is valid.—*Hunton* v. *Luce* (Ark.) 28 L. R. A. 221.

In this case are collated the numerous and somewhat conflicting authorities respecting the effects of voluntary credits to bring a debt within the jurisdiction of a court.

Insurance.—A policy of insurance issued by an agent to himself as receiver is invalid unless the insurance company consents to the policy.—*Wildberger* v. *Hartford F. Ins. Co.*, (Miss.) 28 L. R. A. 220.

Railway—Street Improvements.—Railroad tracks are not benefited by street improvements, and are therefore not subject to assessment for such improvements.—*Chicago, M. & St. P. R. Co.* v. *Milwaukee* (Wis.) 28 L. R. A. 249.

Limitations—Statute of.—A cause of action for taking coal from beneath the surface by extending a mine from adjoining premises accrues only when the discovery of the trespass was reasonably possible.—*Lewey* v. *H. C. Frick Coke Co.* (Pa.) 28 L. R. A. 283.

Sale—Order by telephone.—A telephone order by a hotel-keeper for meat, which is filled by bringing the meat in a waggon and delivering it at the hotel, is a sale at that place, within the meaning of a requirement of a license, although the place to which the order was sent and from which the meat was brought was outside the district for which a license was required.—*State* v. *Wernwag* (N.C.) 28 L. R. A. 297.

Corporation—Transfer of assets.—A transfer of all the assets and property of a corporation to another company in consideration of stock in the latter as a permanent investment, and not as a mode of winding up, is *ultra vires* and subject to avoidance by any non-assenting stockholder, irrespective of the profitableness of the transaction.—*Byrne* v. *Schuyler Electric Mfg. Co.* (Conn.) 28 L. R. A. 304.

Telephone lines along highways.—A telephone line along a country highway, constructed under statutory authority, is held in *Cater* v. *Northwestern Telephone Ex. Co.* (Minn.) 28 L. R. A. 310, to be a proper use of the street, and not an additional servitude. But this case, as well as *People* v. *Eaton* (Mich.) 24 L. R. A. 721, is opposed to a majority of the decisions found in a note to the latter case, as well as to *Eels* v. *American Teleph. & Teleg. Co.* (N. Y.) 25 L. R. A. 640.

Contract.—A statute requiring manufacturers to pay wages of employees weekly, although applying to individuals as well as corporations, is held in *Re House Bill No.* 1230 (Mass.) 28 L. R.

A. 344, to be within the power of the legislature under the Massachusetts Constitution, which does not expressly provide for freedom or liberty of contract, but extends legislative power to "all manner of wholesome and reasonable orders, laws, statutes, and ordinances."

Evidence.—Parol evidence that a mortgage was without any consideration, but was taken merely to prevent squandering of the property, is admissible notwithstanding the objection that this entirely defeated the instrument.—*Baird* v. *Baird*, 145 N. Y. 659.

Insurance—Arbitration.—An insurance company which insists on the selection of an umpire from a distant city in another State, and arbitrarily refuses to agree on one from the vicinity of the loss, is held to abandon its right to an arbitration which it has demanded.—*Chapman* v. *Rockford Ins. Co.* (Wis.) 28 L. R. A. 405.

Corporation—Personal liability of officers.—The president and general manager of a corporation are personally liable for damages caused to a riparian proprietor by the operation of ore washers in the company's business. (With the case are presented the other authorities on the personal liability of officers of a corporation for its torts or negligence).—*Nunnelly* v. *Southern Iron Co.* (Tenn.) 28 L. R. A. 421.

CONFESSIONS.

In the case of *The State* v. *Harrison*, 20 S. E. Rep. 175 (N. C.), it appeared that the defendant, an ignorant and superstitious woman, was convicted of the murder of her husband. The Court admitted in evidence a confession obtained from her under the following circumstances. A detective disguised himself and, pretending to possess magical powers, so worked on her superstition that she believed him. He told her, "If you will tell me all about it, I can give you something so you can't be caught." Whereupon she confessed that she was the one who had committed the murder. The Court above held this evidence admissible, on the ground that the promise was not one that would be likely to induce the defendant to tell an untruth. If she were really guilty it would be a strong inducement to her to tell the truth; but if she were not, there would be no incentive to tell a lie and say she was guilty. Commenting on this the *Harvard*

Law Review says: "One may fairly argue that the inducement held out might very well have led the woman to lie, in order to obtain the charm or talisman. She might think it of great value to her, even though she was innocent, but granting the Court's position, that the favour promised was one that would induce none but a guilty person to confess, have we here the true test of admissibility? Are confessions obtained by promises of favour to be excluded for the sole reason that they lack credibility? There are numerous dicta to that effect. So Mr. Justice Keating, in *Regina* v. *Reason*, 12 Cox, 228; Mr. Justice Littledale, in *Rex* v. *Court*, 7 C. & P. 486; and Mr. Justice Coleridge, in *Rex* v. *Thomas*, 7 C. & P. 345. But in none of these cases, or others hitherto decided, has it been necessary to go so far as to hold that the sole ground of exclusion. May it not be that the true ground is an aversion on the part of English-speaking peoples to the use in criminal cases of evidence obtained by such questionable means? May it not be from a spirit of fair play to the defendant? That would seem to be the reason why confessions obtained by threats are excluded. At all events, such a feeling has always had great influence on the minds of English and American judges. Whether it is wise to be so careful of the prisoner is another and larger question. Protests against such an excessive solicitude are not wanting to-day, and among them one may, perhaps, count this North Carolina case."

ABSENCE OF MORAL SENSE—THE PLAISTOW MURDER CASE.

There are one or two points of legal and medico-legal interest in this case to which attention may profitably be directed. We observe that in some quarters rather severe strictures have been passed upon the line taken by Mr. Justice Kennedy in refusing to accept the first verdict which the jury returned—viz. 'Guilty, but with a recommendation to mercy on the ground that Robert Coombes did not realize the nature of his act at the time when he committed it.' If this rider meant 'recommended to mercy on the ground of defective intellect,' it would, of course, be difficult to defend the learned judge's ruling. Such verdicts are perfectly legal—are returned every day—and, in the recognition which they involve of the theory of modified responsibility in mental disease, constitute a very gratifying evidence of the pro-

gress which the science of mental pathology is making in judicial favour. On the other hand, if the rider meant, as we suspect it did, what it said—viz. that the prisoner did not realize the nature of his act—Mr. Justice Kennedy was bound to reject it. A person who does not realise—*i.e.* know—the nature of his act is—when intellectual capacity is in question—not responsible for it, and, therefore, not guilty. If their view is the correct one, the two parts of the verdict were repugnant, and it was as inadmissible as the famous verdict where, after a six days' trial, the jury found for one party, and added that they did not think they had understood the evidence.

We notice, however, with some regret, Mr. Justice Kennedy's tendency to cling to the old narrow interpretation of the rules in *Macnaughton's Case*, and to decline from the more liberal construction introduced by Mr. Justice Stephen before his elevation to the Bench, and adopted by judges of such eminence as Sir Henry Hawkins, Lord Coleridge, and Lord Blackburn. To find a judge at this time of day 'charging' on the lines of 'the law laid down by the House of Lords in 1843,' without taking account of the modern glosses and psychological research, is somewhat surprising. It reminds one of the incident of the seven young men of Ephesus. If there is one thing about which no doubt exists it is that some persons are born into the world without any moral sense, who are, nevertheless, not intellectually insane. It may well enough be that such persons should, when they commit crimes, be put down, like the wild beasts that they resemble, without any reference to their state of mind. But this is not the attitude which the law of England assumes towards them. It says, 'You are not responsible if you do not know the nature and moral quality of your act.' But a person cannot be said to 'know the nature and quality of his act' unless he can place and keep before his mind all the elements, physical and moral, which go to make it up and pass a fairly dispassionate and reasonable judgment upon them. Unless the rules in *Macnaughton's Case* are explained to juries in this sense, they become as unjust as they are illogical and inaccurate. The only other observation that we desire to make is that *Coombes' Case* offers a fresh illustration of the mischievous influence wrought upon unstable mental equilibrium by cheap criminal literature. It is useless to expect the parents of boys like this, frequently from

home as they are, and unable to exercise any great supervision over their children, to do much (though they might do something) to drive this plague from their doors. Can the law do nothing towards stamping it out?—*Law Journal (London.)*

GENERAL NOTES.

AN UNUSUAL INCIDENT.—In one of our Courts of Nisi Prius recently was seen the remarkable spectacle of a judge conducting the case of a plaintiff in the absence of her counsel and solicitor. The case was that of a widow suing for the loss of her husband, and, owing to some strange omission, no counsel had been instructed. The judge called the witnesses and examined them so successfully that, although he summed up against the plaintiff, the jury were unable to agree. If to the abolition of pleadings we add the abolition of counsel and solicitors, we shall be in a fair way to realize an ideal jurisprudence.—*London Law Times.*

THE SMALLEST COMPANY ON RECORD.—Under a winding up order made on May 22 against the Anglo-Italian Produce Company (Lim.), which is stated to be the smallest company on record, accounts have been submitted showing the liabilities to be 57*l.*, and assets consisting of an iron safe, said to be the property of the company, and of the estimated value of 2*l.*; the total deficiency, as regards contributories, being 319*l.* The official receiver states that the only business actually done by the company was the purchase and resale of a few tons of rough salt. This produced an apparent profit, but, owing to bad debts incurred through the way in which credit was given, no real profit was made. The only Italian business attempted was the importation of a small parcel of fruit from Messina, which resulted in a loss of 40 . The fruit, which was paid for in advance, was partly damaged in transit and thrown overboard, and the remainder was sold by the carriers to pay the freight.

WIGS AND ROBES.—A correspondent of the *Westminster Gazette* points out that the wig is not worn in India nor in Cape Colony. Indeed, at the Cape only two officials are bewigged—the Speaker of the Legislative Assembly and the Clerk of Parliaments. The wig formed no part of the original Bar costume, and was unknown in the time of the Stuarts. It is simply a relic of the period of the eighteenth century when the wig was

the universal headgear of gentlemen. Its survival at the Bar is simply one of the numerous instances of the survival of what was formerly a portion of the ordinary attire in distinctively official costume. For instance, till about fifty years ago, the bishops of the English and Irish Churches always wore wigs like the bobwigs of barristers, both in their canonical and ordinary attire. The robes of the Speaker of the House of Commons are identical with the robes of the Master of the Rolls simply from the fact that the post of Master of the Rolls was frequently held in conjunction with that of the Speaker of the House of Commons. The phrase 'gentlemen of the long robe,' which is still sometimes heard in Parliamentary proceedings as a description of members of the Bar in the House of Commons, arose from the fact that in former times it was not unusual for a member of the House of Commons to walk across Westminster Hall from the Courts to the House of Commons and enter it attired in wig and gown.

VACATION ELOQUENCE.—The tedium of the Vacation Court on Tuesday was pleasantly relieved by an all too brief incident in which Mr. Oswald, Q.C., M.P., chiefly figured. He had pressed his point on Mr. Justice Mathew with plusquam-Oswaldian persistence till at last the judge repeated several times that he would hear him no longer. 'My lord,' said Mr. Oswald as a parting shot, 'in vacation counsel is very often placed in a very difficult position.' 'And so is the judge sometimes,' said Mr. Justice Mathew, amid general laughter. 'You can't score off Mathew,' somebody observed.—*Pall Mall Gazette.*

TESTIMONY BY THE JUDGE.—The curious case of *Rogers* v. *The State*, Supreme Court of Arkansas (1894), 29 South-Western Rep. 894, is mentioned in the *University Law Review*. On an indictment for murder, the prosecution, desiring to prove that the defendant had filed a motion for discontinuance at a former trial on account of the absence of material witnesses, called the trial judge, presiding at the present trial, as witness against the prisoner, and he testified to those circumstances. Afterwards, being of opinion that the evidence was incompetent, he excluded the testimony which he had given as a witness. The Appellate Court held that, although no partiality or wrong intention was shown, this was an error, especially since, under the constitution of the State forbidding judges to charge on a question of fact, it amounted to an expression of opinion; and the error was fatal to the verdict.

A FEMALE JUDGE.—In the present day, when so much is said about women's rights, it will delight many to know that, although the judicial bench is now monopolized by the sterner sex, we believe at least once in the history of England a woman has acted as judge. This was in the reign of King Henry VIII., and the woman to whom the unique honour fell was the Lady Anne Berkeley, of Yate, in Gloucestershire. She had appealed to the king to punish a party of rioters who had broken into her park, killed the deer, and fired the hayricks, and His Majesty granted to her and others a special commission to try the offenders, armed with which she opened a commission, empanneled the jury, heard the charge, and, on a verdict of 'Guilty' being returned, pronounced sentence.

A GOOD OBJECTION.—The shorthand reporter in the case vouches for the accuracy of the following story, says a Rochester (U.S.) paper: 'At a term of the Circuit Court, held not long since in one of the up-river counties, a horse case was on trial, and a well known horseman was called as a witness. Counsel: Well, sir, you saw this horse?" Witness: "Yes, sir, I——" Counsel: "What did you do?" Witness: "I jest opened his mouth to find out his age, and I sez to him, sez I, 'Old feller, I guess you're purty good yet.'" Opposing counsel: "Stop! Your honour, I object to any conversation carried on between this witness and the horse when the plaintiff was not present." The objection was sustained.

WIT AND WISDOM.—Chief Baron Pollock said: "If every man were to take advantage of every tempting occasion 'to have the law' of his neighbour, life would not be long enough for the litigations which would result, for all flesh and blood would be turned into plaintiffs and defendants."—*Green Bag.*

LIQUOR LAWS AS THEY ARE INTERPRETED IN NEW YORK.—Police Justice Cornell, sitting at the Jefferson Market Police Court, New York, decided recently that it was illegal for any private person to have a guest to dinner on Sundays with wine on the table. Any such person, he further held, was liable to be arrested and punished under a section of the excise law forbidding the giving away or selling of liquor on that day.

MR. JUSTICE JEUNE ON CODES.—"I confess that a code always seems to me like a travelling medicine-case, very neat and portable, but hardly adequate to cope with all the complex ills of humanity," writes Sir Francis Jeune in a recent article.