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CURRENT TOPICS AND CASES.

Reference to the case of *Reg.* v. *Plowman* was made in Vol. 17, p. 353, wherein the Ontario Queen's Bench Divisional Court held that section 275 of the Criminal Code was *ultra vires* of the Dominion Parliament. In another case, *Reg.* v. *Brierly*, 14 O. R. 525, the Chancery Divisional Court came to the opposite conclusion. The former decision has the support of the judgment of the Judicial Committee in *McLeod* v. *Atty. Gen. of New South Wales*, 14 L. N. 402, already noticed.

On the subject of a Court of Criminal Appeal the *London Law Journal* points out that most of those who are demanding the creation of this tribunal do not realize that in the main they are seeking an appeal from the verdict of a jury; nor do they see that, having regard to the mode in which the Court of Appeal now deals with new trial motions, the chances of upsetting a verdict before a judicial tribunal would be extremely small. So far as relates to misdirection and misreception of evidence, it remarks, the judges are as a rule only too willing to reserve cases for the Court for Crown Cases Reserved.

"But there remains the question as to revising sentences. The Home Secretary is able and willing enough to remit sentences, and is not cumbered by any fixed rules of judicial discretion; and the Press can freely discuss any case which is suggested as proper for his quasi-political consideration. But if a Court of review is created, the Press will at once be muzzled, and its possibly valuable criticisms will have to be reserved till the sentence has been reviewed, and the Home Secretary will be called in at a later stage. Moreover, if there is an ideal proportion and proper scale of punishments, Parliament ought to enact it, and take away the present latitude of judicial discretion, and thereby make Courts of review of sentences superfluous."

Sir Frederick Pollock has succeeded Mr. Hemming, Q. C., as editor of the English "Law Reports." Sir Frederick was one of those chiefly concerned in the new series commenced two years ago, styled "The Reports," which adopted the system of keeping the monthly issues standing in type until the end of the year, when they were replaced by bound volumes, containing corrections to date. The sudden desertion of the new scheme by Sir Frederick indicates perhaps that, although ushered before the legal world with swelling promises, it has not had so great a success as was anticipated.

A peculiar claim under an accident policy came before the Manitoba Court of Queen's Bench, Dec. 11, 1894, in *Northwest Commercial Travellers' Ass'n* v. *London Guarantee Co.* One Church, a member of the plaintiffs' association, was frozen to death near Fort McLeod, on the 23rd of November, 1892. His waggon had broken down while he was returning to that place, and Church being too cold and numb to walk, the driver went on to Fort McLeod to obtain assistance. On his return Church was

found frozen to death. The question was whether the insured had met his death as a result of an injury effected through "external, violent, and accidental means" within the meaning of the policy, and not "in consequence of exposure to any obvious or unnecessary danger." It was held that the plaintiffs were entitled to recover.

While recently maintaining a judgment which dismissed the action, the English Court of Appeal in *Moore* v. *The Fulham Vestry*, Dec. 14, 1894, said that the true principle upon which money paid under legal process was not recoverable was that if a man had an opportunity of defending an action and did not choose to defend it he ought not afterwards to be allowed to set up in a second action what he might have set up in the first. It was not necessary that the action should have proceeded to judgment if it had actually commenced. Nor was it necessary in all cases that the process should be in existence at the time when the second action was brought. Of course, if money had been paid under a judgment and the judgment had been set aside, that was a different matter. The dictum of Lopes, L.J., in *Caird* v. *Moss*, 55 Law J. Rep. Chanc. 859; L.R., 33 Chanc. Div. 36, when read with the surrounding context, was not intended to introduce any new qualification into the general rule of law. Moore, after the issue of a summons against him, had paid the Fulham Vestry a certain sum, charged as his share of road expenses. He made this payment in the mistaken belief that his property abutted on the road, but after becoming aware of his error he allowed the summons to be withdrawn without opposition. He afterwards sued for the recovery of the money, because it was paid under a mistake of fact. The action was dismissed in both courts on the principle above stated.

CONDUCT OF LEGAL BUSINESS IN THE DISTRICT OF MONTREAL.

To the Editor of the "LEGAL NEWS":

SIR,—Some months ago, in conversation with one of the Judges in Montreal, in reference to the arrears of cases before our Courts, I made a suggestion which he remarked was well worth considering, and suggested that it be brought before the Council of the Bar for consideration.

Believing that the plan suggested would make an improvement in the conduct of legal business in this district, I take this method of bringing it before the members of the Bar, if you think it worthy of a place in your columns.

The difficulties in the conduct of business in this district appear to me to be mainly three:—

1. In those records in which there may be preliminary pleadings or incidental matters, to be decided upon motion or petition, the chances are that each proceeding will come before a different judge, and consequently the same record has often to be examined several times by different judges, when, if it always came before the same judge, the work and delay would be much less.

2. Our present system, where the same judge sits for ten or twenty days continuously at enquête and merits, or hearing on the merits, until he shall have anywhere from twenty to fifty cases *en délibéré*, must necessarily cause the judge a good deal of confusion, and also must cause him a good deal of extra reading of records beyond what would be necessary if he was enabled to desist from hearing cases after he had got ten or twelve under advisement until they were disposed of.

3. Then, where the judges are called upon to sit in review, as in our district, the difficulty and inconvenience of having proper opportunities for consultation together, must necessarily often delay and confuse the work in this department.

Then, the present system of conducting cases has a tendency to make the attorneys careless in the preparation of their records, and particularly in having them completed when they are submitted, as we all know that the chances of a judgment being rendered before the end of the month are practically *nil*, and if it is a case of any importance, it is seldom arrived at before the end of the following month.

Consequently, we are careless in filing exhibits and depositions, which makes delay in sending the records before the judge.

Now my suggestion as an improvement would be as follows:—

To set apart three judges for the Court of Review, and let them sit continuously as such for at least a year at a time. Give them full power to sit when they deem it expedient; they could then sit say for two or three days in the week, until they had a certain number of cases '*en délibéré*,' and then, as soon as they had them decided, sit again.

Have the other business of our Court divided into divisions, each division being presided over by one judge, and always the same judge. Let there be one division for non-contentious proceedings, or such contentious proceedings as are summary, tutorships, curatelles, interdictions, etc., but let every other case, as soon as an appearance is filed, by some equitable means of distribution, be placed in one or the other of the divisions, there to remain until final judgment. Thus the same judge would always have control of the cases from the commencement, and he would also have control of the cases which were placed in his division. He could therefore control the procedure much better, and would often be in a position to appreciate better the motives which instigate certain incidental proceedings, which are sometimes taken for delay only.

If, for any reason such as sickness, an unusual number of long cases, or any other cause, the division of any judge should become congested, an outside judge could be asked to take his place, and this outside judge could then have the assistance and advice of the judge of the division in relation to former proceedings in the case, which had come before him, and in this way often save time and trouble.

Then, added to this, have the stenographers officials of the court, so that they should always be in attendance with the judges, if required, to read over their notes, or extend such depositions as the judge might wish to critically consider, but not to extend their notes fully, except at the request of the judge, or of the parties in the case, for which services they should receive extra remuneration.

Their salaries, would, I think, be easily paid, by requiring a deposit from each party, of so much per witness examined, which would form a part of the taxed costs, as now, but which, of

course, would average less than the amount usually paid now for depositions.

There are other arguments which might be adduced in favor of this scheme, and there are, of course, details which would require to be thought out further, and adjusted, but I believe it would work satisfactorily, and tend very much to celerity, as well as considerably reducing the costs of litigation.

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PRESENCE BY TELEPHONE.

In the administration of the business of corporations and their boards, the question has arisen, when a meeting is attempted and a quorum is not present, can it be "counted" by calling up the necessary absentee on the telephone? Practically acquiescence will often silence any question as to the effect of so doing. But the legal question remains, and will doubtless be the subject of frequent professional advice and, perhaps, of some litigation. The reason of the rule requiring an actual meeting is that the legal object of constituting a board is to secure an opportunity of free expression of views, and to give each a knowledge of the arguments presented by each of the others. The most important class of cases will probably be that of board and committee meetings. Where discretionary powers are committed by law to a board or body of persons in their collective capacity they can only be properly exercised at a meeting. Usage is very loose in this respect, but where the assumption of such persons to act as a board or committee by circulating a paper for signatures without meeting has been challenged the courts have condemned it as illegal and ineffectual. In many cases the transaction is such that the body can, by a subsequent meeting, ratify the act and thus cure the mischief; but, strictly speaking, this is not a ratification which validates the form of assent secured without meeting, but a fresh act which may take effect, although the previous attempts proved abortive. Wherever validity *ab initio* is essential, the failure to meet will be fatal as against third persons. The Statute of Wills requires that the testator's signature, if not expressly acknowledged, be made in the presence of the witnesses, and that the witnesses sign in presence of

the testator and of one another. This provision has often been the subject of discussion. A recent highly esteemed authority thus describes the incertitude of opinion on the point: "From the first enactment of the Statute of Frauds down to the present day the witnesses to a will have been commonly required by legislation to sign or subscribe their names 'in the presence of' the testator. English and American codes well harmonize in this respect, though they seldom require explicitly that the witnesses shall sign in the presence of one another. The object of such a requirement seems to have been that the testator should have clear assurance that the instrument subscribed was his own identical will and nothing else. But while that idea was kept steadily in view, the Courts soon found themselves confronted by controversies which involved the 'presence of' a testator in the single sense of his visible presence, apart from all other attendant circumstances of cognizance on his part of his witnesses' subscription. Hence, in the laudable desire to uphold the policy of the Legislature, on the one hand, and, on the other, to permit wills which had been honestly executed to stand, the English judiciary presently led off in a series of precedents whose practical effect has been to establish in probate law a curious theory of constructive presence. Traced down from Charles II. to Victoria, the restrictions of this doctrine run very closely; so that seeing, on the testator's part, comes to mean, at length, scarcely more than the opportunity to see the witnesses as they sign. Thus it has been held a good subscription under the statute where the maker of the will sat outside the house in his carriage, or remained in one room while his witnesses subscribed in some remote apartment, with a lobby and a broken glass window intervening; for in such instances the witnesses were within the testator's range of vision, and if he did not really see them, he might at least have done so. But, on the other hand, the will has been treated as insufficiently subscribed where the witnesses, although in an adjoining hall, were hidden from the testator's possible view by a flight of stairs. One will has been refused probate because the testator lay helplessly in bed with the curtains down, while another has been admitted because the testator was strong enough to have pushed the curtains aside and seen the subscription, had he chosen to do so, though in neither case did he probably see the will signed by the witnesses."—James Schouler, Art. entitled "In Presence of a Testator," 26

American Law Review, 857, 858. See also *Riggs* v. *Riggs*, 135 Mass. 238; *Newton* v. *Clark*, 2 Curt. 320; *Cook* v. *Winchester* (Mich. 1890), 46 North-West Rep. 106; *Gallagher* v. *Kilkeary*, 29 Ill. App. 415; *In re Bedell's Will*, 12 N. Y. Supp. 96. We apprehend that as to the telephone, distinction between presence and assent will be generally accepted as sound. If presence is required, the telephone cannot give it. Where only assent is required the telephone can give it, if oral assent is enough. If written is given, the telephone cannot give that (though forms of electric communication not yet in commercial use may), but the telephone may give authority to an agent to sign written consent in those cases where oral authority is enough. Where assent must be under seal, oral authority is not generally enough. The principle that the intending signer of an instrument may authorize another person to hold the pen and make the signature plainly requires presence; and upon the above view could not be relied on to authorize one by telephone to sign the name of the absent speaker to a deed.—*University Law Review, New York.*

REPLY BY THE CROWN IN CRIMINAL CASES.

It was curious that in *Regina* v. *Read* counsel for the defence should seriously contend that the Solicitor-General had no right to reply for the Crown when no evidence was given for the defence. The matter has been again and again discussed, and conflicting opinions have been mooted on the subject, which are collected and summarised in a note to the new series of 'State Trials' (2 St. Tr. (N.S.) 1019), but the resolution of the judges in December, 1884, put an end to all this discussion by its express declaration 'that in those Crown cases in which the Attorney or Solicitor General is personally engaged, a reply where no witnesses are called for the defence is to be allowed as of right to the counsel for the Crown and in no other.' But this resolution remained concealed in some judicial minute-book, and does not appear even in the last edition of the all-containing Archbold. The authentic text of the resolution is, however, given by Mr. Wallis, the editor of the new 'State Trials,' at vol. v. p. 3 of that series, with reference to arguments used in *Regina* v. *Daniel O'Connell*, and may be treated as superseding the authorities cited at p. 123 of Archbold (21st edit.).—*Law Journal*, (London).

STATEMENTS BY PRISONERS WHO ARE DEFENDED BY COUNSEL.

In *Regina* v. *Chalmers* the question has at last been reserved for the Court for Crown Cases Reserved as to the existence or absence of any right in a prisoner defended by counsel to make also a statement on his own account before the jury. It is not uncommon for the prisoner, on counsel's advice, to make an elaborate statement before committal with a view to getting it annexed to the depositions and laid before the judge at the trial; and in so doing the accused is well within his statutory rights under the Indictable Offences Act, 1848. But what he may do at the trial is not settled, and a definite and speedy decision one way or the other is much to be desired. This much can be said at present—viz. that before 6 & 7 Wm. IV. c. 114 the accused had a full right to make his statement at the trial. That Act was an enabling Act, and any construction which will close the mouth of a prisoner defended by counsel will cut down his rights, for counsel cannot speak as to facts, and the answer and defence which he can make must, in substance, be on the law or a criticism of the evidence. We should have thought that the Act meant to enable the accused to get a competent person to argue the law of his case, and left him free as before to give his own version of the facts.—*Ib.*

HUSBAND AND WIFE—NECESSITY OF SEPARATE SERVICE ON HUSBAND.

The following notes prepared by Mr. Justice Pagnuelo, in *Dalbec* v. *Ste. Marie*, R. J. Q., 6 C. S. 13, but which were not received until after the publication of the report, relate to an interesting question of procedure. It will be borne in mind that the learned judge differed from the judgment of the majority of the Court, which reversed the decision of the Court below.

PAGNUELO, J.:—

L'opposition de la défenderesse a été renvoyée avec dépens.

La défenderesse, condamnée à délaisser un immeuble hypothéqué en faveur du demandeur ou à payer le montant réclamé, a fait défaut de délaisser. Ses biens ont été saisis comme débitrice personnelle du demandeur. Elle demande la nullité de la saisie sur le motif que le jugement en déclaration d'hypothèque n'a pas

été signifié à son mari, mais à elle seule, de même que le procès-verbal de saisie n'a pas été signifié à son mari. Elle se plaint en outre que l'annonce de vente n'a pas été publiée trois fois dans l'espace de deux mois au désir de l'article 648 du C. P.

Au premier moyen, le demandeur répond qu'aux termes de l'art. 67 du C. P. la femme non séparée de corps est suffisamment assignée par la signification faite au mari, et par la même raison la signification faite à la femme doit être suffisante pour le mari et la femme; 2o. que la signification du jugement est la suite de l'assignation en cour, et que le mari ayant été assigné régulièrement sur la demande, il suffisait de signifier le jugement à sa femme. Ce dernier motif est celui du jugement. Je répondrai de suite au deuxième moyen du demandeur en disant que si la signification du jugement est une suite de la demande, il n'en est pas moins vrai que le jugement devait être signifié aux parties.

Lorsque deux défendeurs comparaissent par le même procureur, la signification au procureur est suffisante pour tous les défendeurs, mais ici la loi exige une signification aux parties, et pour être valable elle doit être faite à toutes les parties qui y ont droit. Il faut donc examiner la première réponse du demandeur, savoir, si la signification à la femme séparée de biens, ayant un domicile commun avec son mari, est suffisante sans copie séparée pour le mari.

L'art. 59 du C. P. C. porte que l'assignation est donnée séparément et distinctement à tous les défendeurs, sauf les cas auxquels il est ci-après pourvu.

L'art. 67 dit: "La femme séparée de corps doit avoir significa-" tion distincte de celle de son mari. La femme non séparée de " corps est suffisamment assignée par la signification faite au " mari."

" Ce dernier article ne se trouve pas dans le code de procédure français, et la jurisprudence, en France, est que l'assignation par une seule copie suffit lorsque les époux sont communs en biens, et qu'il s'agit de biens dépendant de la communauté; mais s'ils sont séparés de biens ou s'il s'agit de biens particuliers à la femme ou de biens indivis entre les époux, les intérêts étant distincts, chacun des époux doit recevoir une copie séparée.

Carré & Chauveau, I, p. 399.

Sirey, *C. P. annoté*, art. 68, nos 164, 168 à 177.

Notre article 67 réfère à la cause de *Trust & Loan Co.* v. *McKay*, (9 *Déc. des Trib.*, page 465). La cour d'appel, dans cette

cause, paraît avoir décidé que la signification d'une seule copie suffit pour l'ajournement des deux conjoints séparés de biens, mais ayant un domicile commun. Je remarquerai cependant que la question ne se présentait pas parce que les deux époux avaient reçu signification distincte; il y avait doute cependant sur la régularité de la signification à la femme.

En second lieu, l'opinion de la cour paraît basée sur l'autorité de Jousse qui dit seulement que "La femme étant sous la puis- "sance du mari, ne peut être aussi assignée que conjointement "avec lui, et par un seul et meme exploit."—(*Ordonnance de* 1667, t. 2, p. 130).—Cette autorité ne paraît pas décisive car tout le monde reconnaît qu'un seul exploit ou un seul bref suffit. La question n'est pas là, elle est de savoir si chacun des époux a droit à une copie séparée du bref ou de l'exploit.

Les codificateurs citent cependant cet arrêt de la cour d'appel, ainsi que les articles 692 et 693 du C. P. de la Louisiane, qui portent qu'une femme mariée, non séparée de corps, peut être assignée en laissant une copie, soit au mari ou à la femme, à leur domicile, et que la femme séparée de corps doit être assignée comme personne libre.

Notre article 67 me paraît conforme à l'arrêt de la cour d'appel dans la cause de *Trust & Loan Co. & McKay* et au code de procédure de la Louisiane. Il est indubitable pour moi qu'il est contraire à la doctrine et à la jurisprudence française.

En effet, il ne distingue point entre la femme commune en biens et la femme séparée de biens. Il ne s'occupe que de la femme séparée de corps. Lorsqu'elle vit avec son mari, qu'elle soit commune en biens ou non, une seule signification suffit; c'est celle à son mari. Si elle est séparée de corps, chacun des époux a droit à une copie séparée de l'assignation.

Il est vrai que l'article 67 porte que: "la femme non séparée "de corps est suffisamment assignée par la signification faite au "mari," mais il ne dit pas que la signification faite à la femme sera suffisante pour le mari.

Cette distinction cependant ne me paraît pas fondée dans l'esprit de notre législation, parce que la signification au mari peut se faire en laissant la copie à toute personne raisonnable de sa famille ce qui comprend sa femme. (Art. 57, C. P.)

Ceci rapproche notre article 67 du code de la Louisiane qui dit que la femme non séparée de corps peut être assignée en lais-

sant une copie, soit au mari ou à la femme à leur domicile. D'après l'article 57 le mari peut être assigné en laissant une copie à sa femme à son domicile. D'après l'art. 67 la femme peut être assignée en assignant le mari soit au domicile, soit personnellement en dehors du domicile.

Mais il me semble que l'assignation faite à l'un ou à l'autre des époux au domicile est valable pour les deux.

On objecte que la signification faite à la femme au domicile ne peut valoir pour le mari que si le rapport de l'huissier constate que la copie a été laissée pour le mari. Je ne peux voir dans cette objection qu'une formalité sans grief réel et sérieux. Si l'huissier constate qu'il a signifié la copie à la femme pour le mari, la signification serait valable; s'il constate, au contraire, qu'il a signifié à la femme pour elle, la signification serait nulle. Evidemment ce n'est pas là l'esprit de la loi. La validité de l'assignation ne peut dépendre de la phraséologie dont l'huissier s'est servi pour constater l'assignation.

La loi se repose sur la femme et les personnes de la maison pour remettre la copie au mari. Si le rapport de l'huissier dit qu'il a signifié la copie à la femme du défendeur, à son domicile, sans dire pourquoi, l'exigence de la loi serait remplie. Parce qu'il dit qu'il a signifié l'action à la femme en lui laissant l'action à elle-même, on prétend que le mari n'a pas reçu de signification.

La loi demande seulement que la copie soit laissée à la femme ou à toute personne raisonnable de la famille du défendeur.

Pour ces raisons je serais donc d'avis de considérer la signification du jugement, faite à la femme séparée de biens, au domicile conjugal, comme valable au mari et à la femme.

Il y a cependant un arrêt de *Dansereau & Archambault* où la cour supérieure et la cour de révision ont décidé qu'une copie du bref signifiée aux époux défendeurs séparés de biens, à leur domicile commun, n'est pas une assignation suffisante, chacun des époux devant recevoir une copie distincte.

(21 Jurist, p. 302; 1 Legal News, p 327.)

Cette décision est évidemment contraire aux termes de l'article 67 qui porte que: "la signification faite au mari est suffisante "pour le mari et la femme lorsqu'ils ne sont pas séparés de "corps." Le rapport de signification constatait que la copie du bref avait été signifiée aux époux défendeurs à leur domicile. L'assignation fut déclarée insuffisante parce qu'une seule copie avait été laissée.

Ces décisions sont basées sur la jurisprudence française laquelle, ainsi que je crois l'avoir démontré, est tout à fait différente de notre art. 67.

J'ai compris également que la jurisprudence générale de la cour supérieure, depuis cet arrêt, est d'exiger une copie à chacun des époux séparés de biens ayant un domicile commun, mais je ne puis accepter une jurisprudence contraire aux articles formels du code, et qui me paraît basée sur un malentendu.

Je serais donc d'avis de confirmer le jugement en changeant le motif donné par le juge de première instance. Mais je suis seul de cet avis.

Quant aux annonces, je trouve que le délai était suffisant. La vente doit être annoncée dans la Gazette Officielle trois différentes fois dans les deux mois à compter du jour de la première publication. La première annonce a été faite le 8 juillet, et la vente annoncée pour le 8 septembre. Il me semble que les deux mois doivent courir à partir du 8 juillet, jour de la première publication, et que le 8 juillet doit compter dans le délai de deux mois. Autrement la première publication ne compterait pas.

On objecte l'art. 24 C. P. qui porte que: "Ni le jour de la "signification, ni celui de l'échéance, ne sont comptés dans les "délais fixés pour les assignations, et que la même règle s'appli- "que à tout autre délai de procédure." Je réponds qu'il ne s'agit pas ici d'un délai d'assignation, ni d'un délai accordé pour faire quelque chose. Le code ordonne que les trois publications soient faites dans l'espace de deux mois. C'est deux mois de calendrier qu'il faut prendre, et les délais de deux mois comptent, comme dit l'art. 648, à partir du jour de la première publication. On rencontre les exigences du code en publiant trois fois dans l'espace de deux mois. Le jour de la première publication doit nécessairement compter, et le jour de la vente, qui devait être le 8, se trouve en dehors des deux mois expirant le 7 au soir.

Sur les deux moyens, je suis d'avis de confirmer le jugement en modifiant cependant le premier motif.

ARTISTS' CONTRACTS.

The case of *Lumley* v. *Wagner*, 1 De G. M. & G. 604, excited much comment at the time of its decision, and in the line of English cases to which it has given rise there is evidence of a desire not to go in any way beyond it, *Montague* v. *Flocton*, L.R.

16 Eq. 189, where an actor, defendant, was in effect restrained from doing anything at all but act for the plaintiff, being overruled at the first opportunity in *The Whitwood Chemical Co.* v. *Hardman*, 60 Law J. Rep. Chanc. 428; L.R (1891) 2 Chanc. 416. Such injunctions as that in *Lumley* v. *Wagner* have been granted in New York on more than one occasion, where the same desire to limit the effect of the rule has not been apparent. One is interested, therefore, to find Mr. Justice O. W. Holmes denying the rule entirely in the recent case of *Rice* v. *D'Arville* (Mass. Suffolk Equity Session, September 29, 1894). 'It is agreed on all hands,' he says, 'that a Court of equity will not attempt to compel a singer to perform a contract to sing. . . If this is so, as is admitted, it appears to me, with all respect to judges who may have taken a different view, that there is no sufficient justification for saying to an artist that although I will not put him in prison if he refuses to keep his contract, I will prevent him from earning his living otherwise, as a more indirect means of compelling him to do the same thing. I do not quite see why, if an equitable remedy is to be given for the purpose of making an artist keep his contract, the usual remedy should not be given, and the whole of it; why, if I say, "If you do not sing for the plaintiff, you shall not sing elsewhere," I should not say, "If you do not sing for the plaintiff, you shall go to prison." I think the later English judges are quite alive to the force of these considerations, and simply bow to the authority of *Lumley* v. *Wagner*, which, of course, does not bind me."

Mr. Justice Holmes dwells a moment on the reason for refusal to say, 'You must sing,' and seems inclined to put it on the score of difficulty in seeing whether 'the artist in good faith and really has given the other party the benefit of the talents for which he was engaged.' In addition to this, may there not be a feeling against restraint of the personal liberty of the citizen? Doing personal service because one is ordered to under the pains and penalties which a Court of equity can inflict, seems dangerously like temporary slavery. And might not a Court well say, 'This is too much to give, whether or no we can do it, even to one who asks for the letter of his bond'?—*Harvard Law Review.*

GENERAL NOTES.

THE RECENT CREATION OF SILKS IN ENGLAND.— *Vanity Fair* is severe in its remarks on the Lord Chancellor's recent appointments. It says:—"It has remained for the Lord Chancellor of

England to most degrade the highest degree that is left. Oxford and Cambridge still ask for a certain quality of scholarship in candidates for their degrees; but it would really seem that the present Radical Lord Chancellor cares nothing for the legal qualities of those upon whom he would bestow the style and rank of Her Majesty's Counsel. The degree of Q.C. has always until lately been a degree coveted by even eminent barristers. There is no examination for it; but it is supposed to be sparingly granted on the recommendation of a discreet Lord Chancellor. His discretion and the fact that the recipient must be of a certain standing at the Bar are the only safeguards of the worth of men called within the Bar; and that worth should be most jealously guarded by the Lord Chancellor. What, then, are we to say of Lord Herschell's latest batch of Queen's Counsel? The selection is, as I gather, the cause of much scoffing at the Bar. Even the rather staid *St. James's Gazette* has been making fun of it. 'Well, they *are* members of the Bar, I suppose,' it makes a learned counsel say when he reads the list of the lucky seven. And, indeed, of the seven only two are considered to be in any way really qualified for what ought to be the high degree of one of Her Majesty's Counsel. The two are Mr. Besley, who is an Old Bailey practitioner of some credit, and Mr. Vernon Smith, who is a rising counsel. Of the others, Mr. James Jardine is a Bombay advocate, of whom nobody seems to know much in this country; Mr. Robert Wallace was, I believe, a friend of the late Lord Coleridge; and Mr. William Mulholland is brother of a member of Parliament. But as to their reputation at the Bar, these three, with Mr. Reader Harris (whoever he may be), are really practically unknown. They may be, and no doubt are, most deserving members of society, but I say nothing against them when I say that they are not worthy of their promotion. A Queen's Counsel should be an eminent barrister of good practice. He should, indeed, have earned himself distinction at the Bar. These gentlemen have done nothing of the kind. And yet there is worse behind them. Of the whole batch the most curious selection seems to be that of Mr. Reginald Smith. He was called to the Bar some ten or eleven years ago; and perhaps the fact that he was once in chambers with the present Lord Chief Justice may have helped towards his promotion. But he is a barrister of no pretensions, quite unknown to the world as an advocate, and virtually unknown to most of his own brethren. Worst of all

disqualifications, he is actually said to be now leaving the Bar to join in a publishing business. Yet this exceedingly lucky young man gets silk on a standing which has been considered premature even in the cases of most eminent counsel! The whole thing is really almost comic in its pitiful ridiculousness."

LEGAL PUBLICATIONS OF 1894.—Among the noteworthy things of 1894 in the world of law was the great increase in the number of legal publications. The total number of books published during the year was 6,485, of which 149 dealt with law. The number of legal works looks very small beside the total number, but compared with the previous year it denotes a great addition to the literature of the law. In 1893, not more than fifty legal books were published. Twenty-seven were new books and twenty-three were new editions. Of the 149 works published last year 126 were new books, the number of new editions being exactly the same as in 1893. This striking increase is chiefly attributable to the Finance Act and the Local Government Act, each of which produced a large number of explanatory works.—*Law Journal.*

AN EASEMENT FOR BEAUTY.—The *University Law Review* thinks that such an easement needs to be created. It says: "The blasting away of the face of the Palisades on the Hudson is arousing just opposition, and the New Jersey Legislature is to be appealed to again to stop it. It is suggested that the State must buy the shore to stop it. The trouble is that the Palisades are not visible from New Jersey. The beauty is all enjoyed on the New York bank, and by tourists and travellers on the Hudson. So of the Highlands, which are already being gnawed over by insatiable commercial demands. It is the outside world chiefly that enjoys them. All these natural beauties ought to be protected and preserved by law. Is it, however, necessary to buy them? The beauty of nature we affirm to be a public use. The navigable river is a highway, and its enjoyment a common right, not only for logs and ice, but also for human beings with eyes and souls. What damage would it be to the Palisades and the Highlands to take the easement of beauty by prohibiting the marring of it? Whatever damage is caused should be paid on principles of eminent domain. Thus private right and public enjoyment would be reconciled, at the least possible expense to the States concerned."