THE

LEGAL NEWS.

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CURRENT TOPICS.

In Canada the privilege accorded to members of the legislatures, of being supplied with letter paper and envelopes, was gradually extended to include costly trunks filled with valuable articles. Norway furnishes a more amusing illustration of elastic interpretation of members' privileges. In addition to their daily allowance, members are entitled to free nursing and medical attendance, "if ill during the session." This privilege has been extended by the members themselves to courses of gymnastics, massage, baths, wine for the sick ("medical comforts"), drawing and stopping teeth, etc.

The facts of what has been termed a strike of the Spanish bar, are given as follows in a communication from a distinguished member of the Madrid Bar to the *London Law Journal*:—"Spain was formerly divided, for juridical purposes, into fifteen great circuits, in each of which there was a Court of Appeal for the civil and criminal business of the district, disposed of by the judges of first instance. Each of these courts comprised the tribunals of first instance of several provinces. Subsequently a change was made in Spanish criminal jurisdiction. The judges of first instance were charged only with the administration of civil justice; and to the fifteen Courts of Appeal

were added other courts for the trial of criminal cases—one at least being allotted to each province. In the past year the number of these courts has been diminished to thirty-four—being one for the capital of each province in which there was not a Court of Appeal. The present Minister of Justice, however, was set upon effecting economies, and proposed to the Legislature to abolish these thirty-four criminal courts, and to substitute for them the judges of first instance to whom I have referred. The advocates of twenty-three out of the thirty-four capitals which will thus be deprived of their Court of Criminal Jurisdiction laid before the Minister of Justice a projected reform which was as economical as his own—namely, to establish in each province a single court for civil and criminal affairs in lieu of the fifteen existing Courts of Appeal. The Minister of Justice not having received this proposal cordially, the advocates of twelve provincial capitals have struck work, as they declare, in the interests of justice; but, according to the Minister, merely for the protection of their personal practice and privileges. Public opinion is far from regarding this strike with sympathy."

In Dr. J. Dixon Mann's recently published work on Forensic Medicine and Toxicology, the author makes the following observations with reference to the position of medical men in the witness-box:—"It is an honourable law of the medical profession that confidential statements made by a patient to a medical adviser are held to be inviolable secrets. In a Court of law this inviolability is overruled; a medical witness, if asked, is bound to reveal any secrets that have come to his knowledge whilst in attendance on a patient. However repugnant it may be to the feelings of a medical man to violate the confidences of the consulting-room, he has no option. If, when in the witness-box, he refuses to answer a question involving the betrayal of a secret which is really the pro-

perty of his patient—it having been revealed to him in trust and under the conviction of absolute confidence—he renders himself liable to committal for contempt of Court. It is conceivable that a medical man might feel the obligation to secrecy so great as to compel him to decline to answer a question involving betrayal of the confidence of his patient. Such a step, however, should not be taken without a profound conviction of duty. A good citizen obeys the law, although he may have scruples in doing so; therefore, a witness should not set his private judgment against authority without very searching self-inquiry; an obstinate conviction must not be mistaken for a sense of duty. In the majority of cases it will probably be compatible with his sense of duty if the witness enters a protest against answering the question and then bows to the requirements of the law."

NEW PUBLICATION.

The Criminal Code of the Dominion of Canada, as amended in 1893, with Commentaries, Annotations, Precedents of Indictments, etc., by the Hon. Mr. Justice H. E. Taschereau, one of the Judges of the Supreme Court of Canada. Toronto, The Carswell Co., Publishers.

This work, the preparation of which was referred to in our last issue, has now been issued, and the first reflection which it excites is one of admiration and surprise at the great industry and ability of the learned editor in completing, within so short a time, such a comprehensive review of the criminal code, covering 1080 pages, while engaged in the arduous business of our highest Canadian Court of Appeal. The preface points out the principal changes effected by the Criminal Code, which came into operation on the 1st instant,—what has been abolished, what has been changed, and what has been added. This synopsis must prove extremely useful to the practitioner. It would have been desirable that these points should have been noted in an official report accompanying the Statute itself, but in default of this the learned judge's observations will be of great use in practice. The work proceeds to treat of each of the 983 articles of the Code, with

copious citations from the standard text-writers and references to decisions. The mere list of cases cited occupies fifty pages. Those who are acquainted with the two previous editions need not be informed that the work evinces throughout the great learning, ability and diligence of the author, and that it will be indispensable to all who have any share in the administration of the criminal law. The typographical execution of the book is excellent, and reflects credit upon the publishers, the Carswell Co., of Toronto.

SUPERIOR COURT ABSTRACT.

Jugé:—A une action en dommages pour injures verbales et diffamation, le défendeur peut plaider qu'il n'a jamais dit les paroles incriminées, mais qu'il en a dit d'autres, et que ces autres paroles étaient justifiées par les circonstances dans lesquelles elles ont été prononcées. *Langelier* v. *Casgrain*, C. S., Québec, Caron, J., 5 mai 1893.

Vente simulée—Action en annulation par créancier postérieur—Délai—C. C. 1039, 1040.

Jugé:—Une vente simulée et frauduleuse ne fait pas sortir le bien vendu du patrimoine du vendeur, et peut être attaquée par les créanciers du vendeur, même plus d'un an après qu'ils l'ont connue, et par les créanciers postérieurs aussi bien que par ceux antérieurs à cette vente.

Dans l'espèce la vente attaquée est annulée comme frauduleuse et simulée, à la poursuite des demandeurs qui ne sont devenus créanciers du vendeur qu'après la passation de l'acte. Andrews, J., *dissentiente.*—*Gendron et al.* v. *Labranche*, Québec, en révision, Casault, Routhier, Andrews, JJ., 30 mars 1893.

Workmanship—Claim for value of—Destruction of object before acceptance of work.

The plaintiff undertook to paint statues for the defendant at a fixed price for each statue, the defendant furnishing the unpainted statues. A number of the statues, after they had been painted, were destroyed by a fire which occurred in defendant's premises, before the statues had been accepted by him and before he had been put in default to receive them.

Held:—That the plaintiff was not entitled to recover from the defendant the price stipulated for the painting.—*Rozetsky* v. *Beullac*, S.C., Montreal, Doherty, J., November 18, 1892.

ONTARIO DECISION.

Railway company—Carriers—Liability as.

The plaintiff delivered a quantity of apples to the defendants at their warehouse for the purpose of shipment by the defendants' railway, and, on sufficient being delivered to fill a car, applied for a car, and was promised one at a named date. The defendants failed to furnish the car at the date specified, and, a fire occurring, the apples were destroyed.

Held, Rose, J., dissenting, that the responsibility of the defendants was that of carriers and not of warehousemen, and therefore they were liable for the loss sustained by the plaintiff.—*Milloy* v. *Grand-Trunk R. Co.*, Divisional Court, March 4, 1893.

CORONERS' INQUESTS.

The Committee of Management of the Radcliffe Infirmary at Oxford has addressed a petition to the Lord Chancellor complaining of the action of the coroner for the city in ordering the removal of the bodies of patients who have died in the infirmary to the mortuary for the purpose of holding inquests. An opinion given by counsel as to the legality of these removals is appended to the petition, which said that these removals were not justified. By the old law the inquest had to be held *super visum corporis*, and though this has not been done (if it means actually in presence of the body) for more than two hundred years, there is said to be no trace of any alteration of the law that the coroner and jury must view the body where it lies, with the exception of a body moved to a mortuary for the purpose of a *post-mortem* examination. Accordingly, the committee beg the Lord Chancellor to intervene to prevent a course which they believe to be illegal. The coroner, replying to the petition and opinion, says that no injury to the body is suggested and no complaint by the friends of the deceased. He says that the removal of a body from one place to another has been the practice from time immemorial, and the power now in question was discussed in 1891 in a case at Canterbury, and the Lord Chancellor expressed no disapprobation of the practice of removal there. He asks whether the body is to remain at the spot where it falls at death, and, if so, how if it be at the bottom of a river. If this be law, he points out that most of the mortuaries, the creation of modern statutes, would be useless, and it must be illegal to use them for

most of the purposes for which they have been provided throughout the country at the public expense. The secretary to the Lord Chancellor replies to the petitioners that 'his lordship has communicated with the coroner on the subject of your petition, and has informed him that, while his lordship thinks it desirable not to express an extra-judicial opinion on the subject of the coroner's jurisdiction in relation to the removal of a body, he regards it as of the highest importance that in assuming such a power, the coroner should be guided by the consideration whether grave public inconvenience would follow from any other course.' In this particular instance the difference between the committee and the coroner as to the legality of the removal appears to be of long standing, for the coroner, in his reply to the petition, refers to a remark of Mr. Secretary Cross to the committee when they solicited his intervention—that 'the officers of the infirmary should readily conform to all legal requirements of the coroner, and should render to him every assistance in the conduct of his inquest.'—*Law Journal* (*London*).

EXTRAJUDICIAL CONFESSIONS.

The common law has always been hostile to confessions or admissions of guilt not made with absolute free will. In this respect it differs from the doctrine of the civil law and the derived usage of continental jurisprudence, under which the normal method of trial was, and is, to extract from the accused by torture or the ingenious interrogatories which form the staple of French detective literature, and led to the fall of the Star Chamber, such an admission of his guilt as would save the need of extrinsic evidence. Without stopping to trace out the origin of this distinction, we may suggest that it arose *in favorem vitæ* from the severity of the old punishments for felony, and from the right of the accused to select the mode of his trial, and the old theory that his guilt depended on the verdict of the vicinage—*i.e.* local public opinion—coupled with a well-grounded hostility to any method which would enable the Crown to work forfeitures by extracting admissions, and it is curious to observe that the one case in which confession, as distinguished from a plea of guilty, was essential was where the offender claimed benefit of clergy, and the consequent right to abjure the realm, as in a case where the jurisdiction of the common law was declined by a privileged

class. In modern times the circumstances which render the admission or confession of a prisoner receivable in evidence against him have been again and again discussed, and from time to time uncertainty has arisen in the administration of the law. But, by the decision in *Regina* v. *Thompson*, on April 29, these doubts and difficulties appear for the present to have been cleared away. In that case the prisoner was convicted of embezzlement upon evidence which included a confession by him. One Crewdson, at whose instance the warrant for the prisoner's arrest had been issued, had an interview with the prisoner's brother and brother-in-law, at which Crewdson suggested that it would be the right thing for the prisoner to make a clean breast of it, but made neither threat nor promise. This interview was communicated to the prisoner, who subsequently made to Crewdson and a director of the company whose servant he was the admissions put in evidence. Upon these facts the Court of Criminal Appeal held that a confession, to be admissible, must be free and voluntary, and made without any inducement from any person in authority, and that where any doubt exists as to the free and voluntary character of the confession, the burden of proof that it was voluntary rests upon the prosecution. The result of this judgment is to restate clearly the common law rule, and to restrain any tendency to infringe it by throwing on the accused the duty of displacing any presumption in favour of the voluntary character of confessions of the kind in question. Of the correctness of the decision there can be no doubt. It casts upon the party tendering the evidence the burden of satisfying the conditions which alone can render it admissible, and the views of the judges fall in with the enactments regulating admissions made in Court in criminal cases. This is clearly shown by the caution prescribed by 11 & 12 Vict. c. 43, s. 18, to be given by the magistrate before a person accused of an indictable offence is called upon for his answer; 'You have nothing to hope from any promise of favour and nothing to fear from any threat which may have been made to you to induce you to make any admission or confession of guilt.' These words do not apply to statements made before the caution, and are meant to warn the accused that everything said in Court after the caution is admissible in evidence notwithstanding previous threats and promises. The last proviso of the section above cited provides that the admissibility of this statement in no way affects the right to put in evidence any extrajudicial ad-

mission or confession by the accused, the admissibility of which rests on the considerations stated in the judgment in *Regina* v. *Thompson*.—*Law Journal* (*London*).

THE CUSTOM OF THE MUSIC HALL.

In the Westminster County Court, (May 11) the case of *Loftus* v. *Harris* came before his Honour Judge Lumley Smith, Q. C., and a jury. The action was brought by Miss Marie Loftus, a burlesque actress, against Sir Augustus Harris, as managing director of the Palace Theatre of Varieties (Limited), to recover the sum of 43*l.* 6*s.* 8*d.*, which she alleged was due to her under an agreement. Mr. J. P. Grain was counsel for the plaintiff, and Mr. H. Kisch for the defendant. Mr. Grain said that the plaintiff was a popular burlesque and serio-comic actress. She claimed for one week's salary and a *matinée*. She entered into a contract with the defendant to appear in the title-rôle in 'Little Bo-peep,' the pantomime at Drury Lane Theatre, in 1892-93. She was to have 45*l.* a week, and in consideration of that she agreed that when she was in town she would perform only at the Palace Theatre. After the pantomime season she sang at the Palace, taking an early 'turn.' When she came off she was told that she would have to take another 'turn' about two hours later; but she refused to do so, as it was against the custom of the music-hall profession as well as against the terms of the contract. To show how much Sir Augustus Harris valued her services, he had entered into an agreement with her for her to perform in his next (1893-94) pantomime at a weekly salary of 75*l.*—The plaintiff, on oath, bore out counsel's statement. In cross-examination, she said that she did object to being put on to sing to empty seats so early in the evening. The custom of the music-hall profession was 'to do only one turn.'—The proprietors and managers of the Middlesex, Queen's, Canterbury, and other music-halls gave evidence as to the custom being for artistes to 'do' only one turn a night.—Sir Augustus Harris said that he engaged the plaintiff to do more than one turn. There was no question as to turns, but an engagement for whatever was required. Cross-examined: Several artistes performed several times a night.—Mr. Kisch contended that there was no music-hall question in the case, as the Palace had not yet received the music-hall license, although granted. One 'turn' only would mean a matter of perhaps six

or seven minutes, and the plaintiff claimed that she was to have 40*l.* a week for that.—The jury found a verdict for the plaintiff for 40*l.*, and his Honour gave judgment, with costs.

LIABILITY OF A SLEEPING CAR COMPANY FOR LOSS OF BAGGAGE.

[Concluded from p. 212.]

Except in the matter of furnishing meals, there seems to be no essential difference between the accommodations at an inn and those on a sleeping car, except that the latter are necessarily on a smaller scale than at an inn.

In both cases the porter meets the traveller at the door and takes whatever portable articles he may have with him. He waits upon him and the other passengers in the car so long as they remain therein. The traveller is not required to sit in his seat during the day, but may if he so desire, go forward into the other cars on the train, and at stations may go out on the platform.

A passenger in a sleeping-car need not avail himself of these privileges, but the fact that he may do so, and that many persons actually do avail themselves of the same, is well known to every traveller, and to the company, and is a circumstance in the case.

If it is said that it would be unjust to hold the company to the same liability as an innkeeper, because thieves might engage one or more berths in a car, and at the first opportunity leave the car carrying what articles they could steal before leaving, the same is true of an innkeeper. Thieves, in the garb of respectable people, may take rooms at an inn, and afterwards steal what they can and escape, yet no one could contend that the innkeeper would not be responsible for the property so stolen, and this whether it is stolen at night or in the day time, yet in many of the large inns of this country at least, there are numerous doors for ingress and egress, while in a sleeping car there are but two. Where meals are served on a sleeping car, no one would contend that it differed from an inn in its accommodations.

An examination of the later cases will show a disposition on the part of the courts to hold the companies to a strict account, and many of them require vigilance and attention of the employees far beyond those required of mere bailees. (*Tracy* v. *Pullman etc. Co.*, 67 How. Pr., 154; *Carpenter* v *N. Y. etc. Ry. Co.*, 124 N. Y. 53; *Pullman etc. Co.* v. *Pollock*, 69 Tex. 120; *R. R. Co.* v. *Walrath*, 38 O. S. 461; *Louisville etc. R. Co.* v. *Katzen-*

breigen, 16 Lea. 380; *Woodruff* v. *Duhl*, 84 Ind. 474; *Lewi* v. *N. Y. S. C., Co.* 143 Mass. 269; *Ill. etc. R. Co.* v. *Handy*, 63 Miss. 609.

These changes in the decisions in favor of strict vigilance on the part of the employees show that the grounds on which the decisions were originally based are not regarded as satisfactory, and a degree of vigilance is insisted upon which is never required of a mere bailee. This brings us back to the question as to the nature of sleeping car companies. They are not common carriers because it is not their business to transport passengers. They offer them, however, while being carried to their destination, comfortable cars, well kept and ventilated, with all toilet conveniences and good beds on which to rest. Now the furnishing of food for guests and stables for their animals are incident to the business of keeping an inn, yet neither is indispensable to constitute an innkeeper. The real business consists in the innkeeper inviting travellers to his house and providing for their comfort and safety while they stay, be it a day, week or month. The law implies a guarantee on the landlord's part that neither the guest nor his property shall suffer harm while in the landlord's care. Is there not the same implied guarantee on the part of the sleeping car companies? One of the controlling reasons for imposing a liability on the landlord is that guests cannot protect themselves during sleep, and therefore must rely on the honesty and good faith of the innkeeper. Do not all these reasons apply to sleeping cars? We must bear in mind that it is their business to furnish beds to their patrons, and that these patrons are helpless during sleep and must rely on the honesty and good faith of the companies to protect them. This the companies have the means to do, which ordinarily the travellers have not. Suppose a traveller leaves Boston, New York, Philadelphia, Baltimore or Washington, over some of the leading railway lines, for San Francisco, and takes a sleeping-car and his meals on the train, the charges will average probably from five to six dollars per day while the average charges at first class hotels along the route will not exceed four dollars per day. In addition to these charges the porters are paid a considerable part of their wages by the passengers.

In any event the sleeping car charges will considerably exceed those at a first class hotel, on the same route. Now, can any valid reason be given why the traveller while stopping at an

inn along this route should be protected but will be without protection on the sleeping car?

If the reasons given by the Massachusetts Supreme Court in the case cited are sound, that the liability of innkeepers is imposed from considerations of public policy as a means of protecting travellers from the negligence or dishonest practices of the innkeeper and his servants, then the same reasons apply with equal force to sleeping car companies.—*Samuel Maxwell in American Law Review.*

"*MISSING WORD*" COMPETITIONS.

An ingenious attempt to establish a form of "missing word" competition which should not be an illegal game of chance within the meaning of the Lottery Acts was defeated by Mr. Justice STIRLING on Saturday last in the case of *Rayner* v. *Answers*. A paragraph was inserted in the columns of *Answers* to the effect that the origin of the old City charities could not be precisely determined "as they had grown so——," and then came the familiar blank which competitors were required to supply. The missing word was *imperceptibly*, and it was contended on behalf of the newspaper that as this was, if not the only, at least the most appropriate term with which to fill the hiatus in the paragraph, its selection required skill, and therefore the competition was not a lottery. Mr. Justice STIRLING, however, overruled this contention, and directed that portion of the proceeds of the competition which had been paid into Court, to be repaid to the proprietors of *Answers* in order that they might meet the claims of the unsuccessful competitors. There can be no doubt that his lordship's decision was correct. Even if we make the large concession that the growth of the City charities has, in fact, been imperceptible, it is obvious that *silently* or *invisibly* would have brought out the meaning of the paragraph quite as clearly as the word which the promoters of the competition used. As between these, and possibly other, synonyms the determination of the question of priority was a matter of chance, and therefore the competition was a lottery within the well-ascertained meaning of the term. The result of this interesting case will surely be to render the revival of the missing word competition in any form practically impossible. Every point of which the nature of the subject admits has now, we should imagine, been taken and judicially considered. First, in the prosecution of *Pick-Me-Up*,

the purely arbitrary selection of a 'missing word' before the competition was held illegal; then, in the case of *Barclay* v. *Pearson*, the deliberate choice of a word after the competition was judicially condemned and the legal position of the successful and unsuccessful competitors was defined; and now the doctrine laid down in *Barclay* v. *Pearson* has been held by implication to apply to the case of arbitrary selection from a limited number of synonyms. It is a matter for congratulation that the Lottery Acts, in spite of their comparative antiquity, have been found strong enough to put down the very mischievous species of national gambling to which these missing word competitions were giving rise.—*Law Journal* (London).

INTERNATIONAL ARBITRATION.

In the English House of Commons, June 15, Mr. Cremer moved on the order for going into Committee of Supply, a resolution declaring that this House had learnt with satisfaction that both Houses of the United States Congress had authorised the President to conclude a treaty of arbitration with any other country; and expressing the hope of this House that Her Majesty's Government would, at the first convenient opportunity, open up negotiations with the Government of the United States with a view to the conclusion of such a treaty between the two nations, so that any differences or disputes arising between the two Governments which could not be adjusted by diplomacy should be referred to arbitration.

Sir J. Lubbock seconded the resolution.

Mr. Gladstone said that, although a treaty of arbitration was undoubtedly a novelty and an object which in former times it would have been wild to dream of, yet he did not think it was beyond the reach of a reasonable hope that such a treaty might before long, under favourable circumstances, be concluded between this country and the United States. It was the complexity of the foreign relations on this side of the United States which imported the greatest difficulty into this case. Criticising the terms of the resolution, the right hon. gentleman pointed out that it was not strictly accurate to say that the two Houses of Congress had authorised the President to conclude treaties of arbitration. What Congress contemplated was that the initiative should be taken by the President, and as a matter of international courtesy we ought not to adopt words which would prevent that

initiative from being taken. The object in view would, in his judgment, be completely gained if the following words were added: 'That this House, cordially sympathising with the purpose in view, expresses the hope that Her Majesty's Government will lend their ready co operation to the Government of the United States on the basis of the foregoing resolution.' After briefly explaining what had taken place between the two Governments in order to enable the House to understand the present situation, the right hon. gentleman dwelt on the value of these resolutions in favour of arbitration, and expressed a hope that a central and impartial tribunal might eventually be established for the settlement of international disputes.

Mr. Gladstone's resolution was ultimately agreed to.

CONTEMPT OF COURT.

It is interesting to compare the opinions expressed in leading articles in the daily press on the subject of contempt of court as applied to them with the rulings, *dicta*, and decisions of reported cases. A writer in a morning paper recently attacked what he called a 'mischievous prerogative,' and stated that 'the whole of the jurisdiction claimed and exercised by the judges is utterly inconsistent with the freedom of the press and with the public interest in knowledge of the truth.' It is significant that the article containing these and other equally strong expressions was afterwards copied *in extenso* into the columns of the *Times*.

There is no doubt that the rules are strict, but it is equally certain that they are constantly infringed by papers of a certain class with the sole object of creating a paying sensation, and not by any means consistently with 'the public interest in knowledge of the truth.' Even interlocutory proceedings such as applications in chambers are now sometimes reported when they occur in cases of which the names are known to the reading public, notwithstanding that one of the judges has stated that this practice is new and improper, and such reports are of course read by many people who, from being wholly unacquainted with the technicalities of procedure, are likely to mistake their meaning. The liberty of the press is, of course, a safeguard which ought to be preserved at any cost, and one of the highest judicial authorities on the Bench has expressed his conviction that even the action of Her Majesty's judges ought to be open to fair criti-

cism, but all such criticism and comment ought to be impartial and, in its way, judicial, not impulsive or careless, and it is important to recollect that the rules as to 'fair comment' do not extend to matters still pending in the Courts, because, of course, such publications may exercise an unintended and indirect influence on the minds of those who have to decide on the merits of some particular case.

The fact is generally overlooked that an intention to pervert the course of justice is not necessary to make a newspaper comment amount to a contempt of Court: 'Anything which will have that effect may be punished' all the same. What is to be considered is, as Lord Langdale said in *Littler* v. *Thompson*, 2 Beav. 129, whether the matter complained of is calculated to, or likely to, disturb the free course of justice, and when this is to be fairly inferred, denial of intention can only go in mitigation of punishment, and conversely the appearance of such an intention makes it 'a contempt of the highest order.' It is a still further aggravation if it is proved that the publication called in question was instigated or authorised (even though secretly, as in *Daw* v. *Eley*, L. R. 7 Eq. 49) by a party to the suit or his solicitor. 'The principle,' said Lord Romilly, 'is quite established in all these cases, that no person must do anything with a view to pervert the sources of justice, or the proper flow of justice; in fact, they ought not to make any publication or to write anything which would induce the Court, or which might possibly induce *the Court* or the jury, the tribunal that will have to try the matter, to come to any conclusion other than that which is to be derived from the evidence in the cause between the parties, and certainly they ought not to prejudice the minds of *the public* beforehand by mentioning circumstances relating to the case.'

The *Tichborne Case* caused so much excitement throughout the country that comments were freely made upon it from the first appearance of the claimant until his conviction, and proceedings were taken by and against him and his partisans. In *Tichborne* v. *Mostyn*, L. R. 7 Eq. 55, Vice-Chancellor Page-Wood quoted a judgment of Lord Hardwicke pointing out the necessity for preventing misrepresentation of proceedings in Courts of justice, and the 'pernicious consequence' of prejudicing the public mind. In *Skipworth's Case*, L. R. 9 Q. B. 230, Mr. Justice Blackburn emphasised the danger of 'appealing to the public,' and quoted Lord Cottenham's judgment in *Lechmere Charlton's Case*, 2 My. & Cr.

342; and the principle to be followed was well expressed in another of these cases, *Tichborne* v. *Tichborne*, 39 Law J. Rep. Chanc. 328, by Vice-Chancellor Stuart, who said, 'whatever tends to prejudice a cause, whatever matter is published to the world referring to the parties, to the litigation, and to the subject matter of it in such a way as to excite a prejudice against them, or their litigation, is a contempt of Court.' The most recent case on the subject is *O'Shea* v. *O'Shea and Parnell*, in which Mr. Justice Butt inflicted a heavy fine, after giving judgment in the sense of the previous decisions. Applications to commit have lately become more frequent, and, as a rule, they have simply been dismissed with or without costs against the defendant, who always apologises in Court; but the strict rule remains, and is likely to remain despite the efforts of those who say that 'contempt of Court' should be confined to interruption of judicial proceedings and intimidation of witnesses.—*Law Journal* (London).

GENERAL NOTES.

THE JUDGES AND THE LAW.—The law, according to the well-known legal maxim, is a thing *quod quisque scire tenetur*. We may admit that the presumption of knowledge is somewhat strained in the case of laymen; but it is alarming to find an eminent Queen's Counsel, who has held high legal office, casting a doubt on Her Majesty's judges' knowledge of the law. 'The judges,' said Sir Henry James during the discussion on the fourth clause of the Home Rule Bill, 'know the common law—more or less,' he added after a pause, amidst the laughter of an irreverent House of Commons.—*Law Journal.*

HAPPILY ENDED.—A pleasing incident, says the *Westminster Gazette*, occurred some fifteen years ago, in a northern town, where Sir Henry Hawkins was trying a young man for, in a moment of jealousy, assaulting the girl with whom he was "keeping company." The prosecutrix broke down in floods of tears while giving evidence against him. 'I love him still,' she cried, 'and will marry him to-morrow if you will only release him, my lord.' The prisoner was found guilty, and ordered to be imprisoned for one day. The banns had already been published, and on

his release next morning the fortunate young man found that the judge and sheriff had between them provided a wedding-ring, a carriage to convey the couple from the church, and marriage fees, and the wedding took place next day.

THE BARBED-WIRE FENCES BILL.—The language of this bill affords a curious illustration of the purposeless looseness of expression which may sometimes be found in Acts of Parliament. It is too clear for argument that a fence made of barbed wire which is dangerous to persons lawfully using a highway is a nuisance at common law. It may be the subject-matter of an indictment, or of an action by any person sustaining particular damage by reason of it. If authority were necessary for this proposition, the case of *Stewart* v. *Wright*, decided on May 30 by Mr. Justice Mathew and Mr. Justice Wright, is enough. The bill without creating any new liability, enables a local authority to require and enforce the removal of such fences in a summary way. The language in the body of the bill rightly refers to land adjoining a 'highway,' and to persons or animals properly using such 'highway.' The marginal note, however, refers to the removal of barbed wire from 'public thoroughfares,' though a highway need not be a thoroughfare, and barbed wire is surely neither more nor less dangerous in a *cul-de-sac*. The title of the bill further amplifies the expression into 'roads, streets, lanes, and other thoroughfares!' Roads, streets, and lanes are not necessarily thoroughfares, and the bill has no application to roads, streets, or lanes unless they are highways. The only operative word in the bill is 'highway.' That term is clear, simple, and sufficient These eccentric rhetorical variations are not only useless, but embarrassing.—*Law Journal* (London).

THE DEATH SENTENCES OF NINE YEARS.—A return just issued shows that during the years 1884-92, inclusive, 256 persons were sentenced to death for the crime of murder in England and Wales. Of these, 145 were executed in due course; one was pardoned; in ninety-five cases the sentence was commuted to penal servitude for life; eight were removed to Broadmoor, having been certified to be insane; and in seven cases the prisoners were let off with minor terms of penal servitude.