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LEGAL NEWS.

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CURRENT TOPICS AND CASES.

The paucity of the cases taken before the House of Lords in England bears testimony to the general excellence of the decisions rendered by the Court of Appeal, and also to the care and moderation which counsel use in recommending an appeal. In 1894 no more than fifty-eight appeals were entered. The small number of the appeals has led to a suggestion for the abolition of the appellate jurisdiction of the House. It has to be remembered, however, that each one of these cases involves careful consideration, and usually an important principle has to be defined or elucidated. It is doubtful whether the cases are not numerous enough to occupy fully the attention of the law lords. The *Law Journal* points out that the House is "essentially a judicial assembly, in which questions of law can be considered deliberately in the light of principle. The Court of Appeal, which consists of two sections, is bound by its own very numerous decisions, and cases are viewed primarily from the standpoint of authority. It may be said that the work which the House of Lords does in settling points of principle might be better done by the Legislature itself; but we all know how difficult it is to get the House of Commons

to deal with legal matters. It would be easy to give a long list of important decisions by which the House of Lords has affected and supported the commercial life and customs of the country. It is sufficient for our purpose to refer—merely as examples—to the recent 'one-man company' case, and to *Simmons* v. *The London Joint-Stock Bank.*"

Governor Atkinson, of Georgia, in a message to the Legislature, has recommended a return to the old system of public executions. He writes:—"After a trial of some years, I am, after careful consideration, led to the conclusion that the law passed several years since, which abolished public hangings in this State, of which I approved at the time, was a mistake. I am still of the opinion that the impulse which leads people to eagerly seek to see one of their fellow-beings hanged upon the gallows is not a noble one. But we must deal with people as they are, and not as they should be. I believe that ten private hangings are not so effective in deterring evil doers and in commanding fear and respect for the law as one in public. To return to the old law, which left it to the discretion of the circuit judge to provide for either private or public hangings, would, I think, be a proper course. This can safely be left to the discretion of our judges. In my opinion, public hanging will aid in the suppression of crime and have some effect in discouraging mob law." The experience of Gov. Atkinson is not corroborated by that of England or Canada. No one has contended, so far as we are aware, that the privacy of executions in these countries has failed to inspire a proper respect for the law, or has tended to increase the number of capital offences. The reform which seems to be really needed, in several of the American States, is the enforcement of a little more privacy after the prisoner has been sentenced, and the placing of a wholesale restraint upon the sympathetic gifts and messages of silly people outside the jail.

Considerable attention has been given in England to the simplification of pleading and procedure. But it would appear that in actual practice there is still something wanting, for at the commencement of a recent trial, for negligence and breach of contract, the Lord Chief Justice called attention to the unsatisfactory system of pleading which was now so much in vogue. "Pleadings were drawn, in which the senseless sinuosities of the statement of claim gave rise to redundant denials in the defence, and the result was that there were several pages of printed matter where a few paragraphs would have sufficed. Such pleadings appeared to be drawn after the worst examples of the Court of Chancery."

A whole volume would hardly suffice to contain the eccentric efforts at legislation made by ambitious legislators. Some of them are ludicrous and nothing more, and they expire in the laughter they excite. Of this class is a law suggested by a law-maker in Michigan, who proposed that bills of fare in public dining-rooms must be printed in the English language only. This gentleman deserved some sympathy, for it is stated that being in a Chicago hotel lately, where the bill of fare was in French, he ordered five items, aggregating 80 cents, and discovered that he had asked for potatoes prepared in five different styles, and nothing else. Even in England there has been a curious proposition in a bill styled the "Verminous Persons Bill," the object of which is stated to be to enable persons infested with vermin to be cleansed and disinfected without going to a workhouse or casual ward; and for that purpose to have the use gratis of the apparatus, if any, possessed by any local authority for cleansing them and their clothing from vermin. It is not stated what examination the authority is to make before granting the use of its apparatus for catching the vermin. But the fatal defect is that it is proposed to make the cleansing optional. It is to be feared that in such case the authorities will not be troubled with many calls for the application of the law.

SUPREME COURT OF CANADA.

OTTAWA, 25 March, 1897.

New Brunswick]

JONES v. MCKEAN.

Trustee—Account of trust funds—Abandonment by cestui que trust —Evidence.

The holder of two insurance policies, one in the Providence Washington Insurance Company, and the other in the Delaware Mutual, on which actions were pending, assigned the same to M. as security for advances, and authorized him to proceed with the said actions and collect the monies paid by the insurance companies therein. By a subsequent assignment, J. became entitled to the balance of said insurance money after M.'s claim was paid. The actions resulted in the policy of the Providence Washington being paid in full to the solicitor of M., and, for a defect in the other policy, the plaintiff in the action thereon was nonsuited.

In 1886 M. wrote to J., informing him that a suit in equity had been instituted against the Delaware Mutual Insurance Company and its agent, for reformation of the policy and payment of the sum insured, and requesting him to give security for costs in said suit, pursuant to a judge's order therefor. J. replied that as he had not been consulted in the matter, and considered the success of the suit problematical, he would not give security, and forbade M. employing the trust funds in its prosecution. M. wrote again, saying, "As I understand it, as far as you are concerned you are satisfied to abide by the judgment in the suit at law, and decline any responsibility and abandon any interest in the equity proceedings," to which J. made no reply. The solicitor of M. provided the security and proceeded with the suit, which was eventually compromised by the Company paying somewhat less than half the amount of the policy.

Before the above letters were written J. had brought suit against M. for an account of the funds received under the assignment, and in 1887, more than a year after they were written, a decree was made in said suit referring it to a referee to take an account of trust funds received by M., or which might have been received with reasonable diligence, and of all claims and charges thereon prior to the assignment to J., and the acceptance thereof.

On the taking of said account M. claimed that all claim on the Delaware policy had been abandoned by the above correspondence, and objected to any evidence relating thereto. The referee took the evidence and charged M. with the amount received, but on exceptions by M. to his report, the same was disallowed.

Held, reversing the judgment of the Supreme Court of New Brunswick, that the sum paid by the Delaware Company was properly allowed by the referee; that the alleged abandonment took place before the making of the decree which it would have affected, and should have been so urged; that M. not having taken steps to have it dealt with by the decree could not raise it on the taking of the account; and that, if open to him, the abandonment was not established, as the proceedings against the Delaware Company were carried on after it, exactly as before, and the money paid by the Company must be held to have been received by the solicitor as solicitor of M., and not of the original holder.

Held, further, that the referee, in charging M. with interest on money received from the date of receipt of each sum to a fixed date before the suit began, and allowing him the like interest on each disbursement from date of payment to the same fixed date, had not proceeded upon a wrong principle.

Earle, Q.C., and *McKean*, for appellant.

Palmer, Q.C., for respondent.

QUEEN'S BENCH DIVISION.

LONDON, 18 January, 1897.

VALLANCEY v. FLETCHER (32 L.J.).

Ecclesiastical law—Brawling—Person in Holy Orders—23 & 24 *Vict.*, *c.* 32, *s.* 2.

Case stated by justices.

Two informations were preferred by the respondent against the appellant, the Rev. John Vallencey, perpetual curate of Rosliston, for that he on June 13, 1896, was guilty of indecent behaviour in the churchyard of the parish church, contrary to section 2 of 23 & 24 Vict., c. 32, which provides that "any per-

son who shall be guilty of riotous, violent, or indecent behaviour .....in any churchyard," shall be liable to a penalty.

The justices found that the appellant had been guilty of violent and indecent conduct, and convicted him, but stated a case raising the question whether section 2 of the Act applied to persons in holy orders.

The Court (Wright, J., and Bruce, J.) held that the words of the section were perfectly general, and that there was no reason for cutting them down so as to exclude persons in holy orders. They therefore dismissed the appeal.

Judgment for respondent.

QUEEN'S BENCH DIVISION.

LONDON, 15 March, 1897.

CLARKE v. THE LONDON AND COUNTY BANKING CO. (32 L.J.).

Banker—Crossed cheque—Receipt of payment for customer—Liability of banker—Bills of Exchange Act, 1882 (45 & 46 *Vict.*, *c.* 61), *s.* 82.

Appeal from Dartford County Court.

The action was brought by the plaintiff against the defendants to recover the proceeds of a crossed cheque payable to the order of the plaintiff. The plaintiff's name was indorsed upon the cheque without his authority, and the cheque was paid by one Fisher, a customer of the defendants, into his account for collection. The amount of the cheque was collected by the defendants and placed to the credit of Fisher's account, which was at the time overdrawn. The County Court judge gave judgment for the defendants.

The plaintiff appealed.

The Court (Cave, J., and Lawrance, J.) held that the defendants were relieved from liability by section 82 of the Bills of Exchange Act, 1882, which protects a banker who in good faith and without negligence receives payment for a customer of a crossed cheque to which the customer has no title, and that the fact that Fisher's account happened to be overdrawn, and that the effect of the transaction was to clear off the overdraft, was immaterial.

Appeal dismissed.

STATEMENTS IN PRESENCE OF THE ACCUSED.

The ruling of Mr. Justice Hawkins at the Old Bailey, in *Regina* v. *Greatrex-Smith*, serves to call attention to an important point in the law of evidence. The defendant, a doctor, was charged with using instruments to procure miscarriage. The person upon whom they were said to have been used was dead. Shortly before her death, and knowing that she was dying, an inspector sent for the defendant and in his presence took down in writing the statement of the dying woman as to the cause of her death and the alleged use of instruments, which was signed by her. It was not taken as a dying deposition, no written notice had been given to the defendant to attend, and the statement was not made on oath nor in the presence of a magistrate, nor did the defendant admit the truth of any of the statements affecting him. The statement was at the trial tendered as evidence of a conversation held in the presence of the defendant, but was rejected because there was no evidence that the defendant assented to or admitted its truth, or as leading up to evidence of the conduct of the defendant. This ruling recalls the proper legal position of such statements. They are inadmissible except as explaining admissions or confessions, and the learned judge justly criticised the procedure adopted as permitting police officers to manufacture prejudice by extracting statements from dying persons.—*Law Journal.*

THE BRAWLING ACTS.

The judgment in *Vallancy* v. *Fletcher* on January 18 ought to have a salutary influence on such of the clergy as spend time in making unseemly trouble in assertion of their rights over the soil of churchyards, or protest against burials under Osborne Morgan's Act. Mr. Justice Wright and Mr. Justice Bruce held that for such acts clergymen are not amenable only to ecclesiastical jurisdiction, but can be proceeded against under section 2 of 23 & 24 Vict., c. 32, for riotous, violent or indecent behaviour in the churchyard. The particular case arose through the sexton —under directions and in the presence of the perpetual curate— insisting on levelling the grave of a parishioner and using violence and bad language to the relations who attended to protest. The Court decided nothing as to the right of the perpetual

curate to level the mound, while the justices rejected a claim of *bona fide* right on his part. The result was the successful prosecution of the perpetual curate by a churchwarden for the mode in which he asserted his claims.—*Ib.*

CHIEF JUSTICES OF THE U. S. SUPREME COURT.

The office of Chief Justice of the Supreme Court of the United States was established by the Constitution concurrently with the office of president, but while the presidency has been open to all native-born citizens above the age of 35, the office of chief justice of the Supreme Court, bestowed usually upon men of mature, if not advanced, years, has been held in fact by seven persons only since the foundation of the government. There has been more than three times as many presidents, says the New York *Sun*.

John Jay, of New York, was the first chief justice of the Supreme Court. He was appointed by Washington in 1789, Judge Jay was at that time only 44 years of age. When he attained the age of 50 he resigned and retired to private life. He died thirty-four years later—in 1829. The second of the Supreme Court justices was John Ellsworth, of Connecticut. He was 54 years of age when appointed, and served until 1801, when he resigned, resignation from public office being somewhat more frequent at that time than now. His successor was John Marshall, of Virginia, who was 46 years of age when he assumed the post by appointment of President John Adams. He held it uninterruptedly for thirty-four years, until his death in 1835.

Andrew Jackson appointed his successor, Roger B. Taney, of Maryland, who held the office until his death, in 1864. Judge Taney was 59 years of age when appointed and 87 at the time of his death. No chief justice of the Supreme Court, perhaps, had more intricate questions to determine or to vote upon in that tribunal than Judge Taney, and his tenure and that of Chief Justice Marshall stretch over nearly one-half of the history of the United States as a nation. Chief Justice Taney's successor was Salmon P. Chase, of Ohio, who had previously been secretary of the treasury, and was 56 years of age when appointed. He served for nine years, dying in 1873. Mr. Chase was himself a candidate for the presidency, and had hoped to defeat Mr. Lincoln for renomination and to succeed him, and later, in 1868, it is

known that Mr. Chase was a candidate for the democratic nomination for the presidency, though he had been one of the founders of the Republican party. Chief Justice Chase was succeeded in 1873 by President Grant's appointment of another Ohio man, Morrison R. Waite, who was 57 years of age when appointed, and served until 1888, when he was succeeded by the present chief justice, Melville W. Fuller, appointed by President Cleveland. Mr. Fuller is a native of Maine. He was, when appointed, 55 years of age, and was 64 on February 11, 1897. He is the seventh of the chief justices of the Supreme Court, and has served thus far a briefer term than any of his predecessors since Chief Justice Ellsworth.

COKE AND BACON—THE CONSERVATIVE LAWYER AND THE LAW REFORMER.[1]

Sir Edward Coke used to say:—"If I am asked a question of common law, I should be ashamed if I could not immediately answer it; but if I am asked a question of statute law, I should be ashamed to answer it without referring to the statute books."

If any one ever knew all about the common law, Coke was undoubtedly the man. With a constitution that was proof against illness and fatigue, with a memory that never relaxed its grasp, he gave to the study of the common law all his available time and energy, from his youth until he died in extreme old age. His learning, vast but not varied, began and ended with the common law, for which he entertained feelings of reverence amounting to fanaticism. He said that there were rules of the law for which no reason could be given; a circumstance that in his eyes clothed them with a mysterious sanction, and conferred on them an additional value. A mere dry legist, he cared more for the six carpenters than he did for the seven sages of Greece. Possessing not the slightest tincture of general literature, scorning all foreign systems of law, as well as the philosophy of law in general, which he considered to be matters wholly irrelevant and speculative, he was perfectly at home with executory devises, contingent remainders, shifting and springing uses, and all the other technical creations of the law of tenures, which made up a great part of the common law. One could easily

[1] From an address delivered by Hon. U. M. Rose, of Arkansas, before the Virginia Bar Association, at its last meeting at Old Point Comfort.

fancy that he lisped of these things in his cradle, and that they peopled his dreams in later life. They were to him as household words; and he knew all of their playful ways and cunning habits. Few men could say as much, for that kind of learning was extremely technical and difficult; and Coke's pre-eminence in this respect was universally conceded. Chance and circumstance had had much to do with the development of the law of tenures, but selfishness and perversity had operated to render it so artificial and intricate that many of its complications tasked or eluded the most highly trained intellects; a fact of which Coke at one time furnished a most striking illustration.

It is well known that Coke was consumed with ambition and with avarice. Twice he increased his estate by rich marriages; and the emoluments derived from his practice were so great that, by the time he got to be chief justice of the Court of King's Bench, he was one of the largest land owners and one of the wealthiest men in England. Hoping after his downfall that, through the influence of the King's favorite, he might be restored to power and position, he forced his daughter to marry Sir John Villiers, the brother of the Duke of Buckingham, preparatory to which union he drew up a settlement by which he settled a large estate on the ill-sorted couple. Of course such documents were closely scrutinized; and the all-powerful and intriguing family of Buckingham must on this important occasion have had the aid of as good lawyers and conveyancers as could be found; but when, years after the death of Coke, the terms of the settlement were spelled out with the labor that is required to decipher an Assyrian tablet, it was discovered, to the surprise and admiration of lawyers deeply versed in the technical learning of feudal tenures, that the title to the estate, after performing various unexpected and extraordinary feats, had at last vested in fee simple in the right heirs of Sir Edward Coke; where it still remains.[1]

It is needless to say that Coke was not a reformer. His object was to perpetuate, and not to change. Indeed, reform was not the order of the day. It is difficult for us now to picture his immediate surroundings. All the English-speaking people in the world in his time did not equal the present population of the State of New York; and London, a town of the Middle Ages,

[1] For an explanation of the method by which this was done, see 2 Wash. Real Prop. 294.

dim, dingy, unlighted, uncared for, with its picturesque contrasts between royal pageantry and squalid poverty, contained at that time probably not more than 300,000 inhabitants, crowded down close to the river under the shadow of the Tower. The irregular and badly paved streets, the rows of ancient houses in every stage of decay, whose monotony was broken here and there by a church or a residence of more pretensions, presented a prospect that was not suggestive of impending change. Things were much as they were in the days of the Plantagenets; and they would probably so continue. As a lawyer, the owner of many broad acres, and with such surroundings, it was not surprising that Coke should favor the established order of things.

If we look back to the Elizabethan period, we shall find that the connection then existing with antiquity was close and intimate. Whoever was educated at all could read Homer and Plato in the original, and could speak Latin, the common medium of communication between persons of cultivation all over the world. A slavish adulation of antiquity was the most prominent feature of the civilization of the age. There was a prevailing bigotry on the subject that could only be compared with the ancestor worship of the Chinese. Pierre la Ramee, a contemporary of Coke, a scholar, a virtuous and an honorable man, was persecuted all his life, and was finally assassinated, because he ventured to dispute some of the theorems of Aristotle. Giordano Bruno, the friend of Sir Philip Sidney, who visited England when Bacon was a student at Gray's Inn, and whom Bacon must have known, followed in the footsteps of la Ramee, and suffered a like fate. He has left on record his opinion of the course of teaching then in use in the English universities. "Rhetoric, or rather the art of declamation," he said, "is their whole study; and all the philosophy of the universities consists of a purely technical knowledge of the Organon of Aristotle; and for every violation of its rules a fine of five shillings is imposed."[1]

Outside of theological writings, where there was an occasional mention of the millennium, and outside of the writings of Bacon, there was never any expression of hope as to the future of our race; not even in the writings of Shakespeare, in which almost everything else can be found. The work of the world seemed to have been done, and Time to be leaning on his scythe. Scholastics still continued languidly their war of words. Nowhere

[1] Giordano Bruno par Christian Bertholmess, Paris, 1846, p. 102.

did the spell of antiquity lie heavier upon the minds of men than in England. We have the most abundant evidence of the fact that the spoken language of the time differed only very slightly from that which we speak to day; but the written language was commonly so affectably archaic that if Coke or Bacon or Selden had given a written order for a dozen of eggs from a neighboring grocer's, he would have done so in language such as was used two hundred years before.

Coke was a tall, fine-looking, handsome man—a man of imposing aspect, strong in body, strong in mind. His form and features have been so happily preserved for us by the art of the painter, his character has been so clearly portrayed by contemporaries, that we seem to see him, as he appeared as attorney-general on his way to Westminster to browbeat Raleigh, or to bully some other hapless prisoner, who was denied the benefit of counsel, and who, single-handed, could ill withstand the torrent of vituperation and abuse which was poured out on him by the prosecution; or again as he appeared on his frequent way to the Tower to examine prisoners subjected to torture. On such occasions he walked very erect, with an air of extreme self-reliance bordering on arrogance. A vigorous, pompous man that never deflated; masterful and abounding in resources; he was dogmatic, proud, revengeful, aggressive, rude, dictatorial, peremptory, cruel, obstinate, unforgiving and tyrannical; a man far better suited to excite fear than love. A terrible reminder of him is extant in several volumes of examinations of prisoners taken "before torture, during torture, between torture, and after torture," amid what cries and howlings we know not, all in his well-known handwriting.

Coke was unquestionably a man of distinguished ability, and of great learning in his particular specialty; but as he thus passed along the streets of London and Westminster, he often met two men so immensely superior to himself in point of intellect as to render comparison absurd; two men each of whom has formed an epoch in the history of human thought; Shakespeare, of whose life we know almost nothing, and Bacon, of whose life we know too much. One of these he hated, the other he despised.

It is quite impossible that Coke should not have known Shakespeare by sight; though it is extremely improbable that he ever spoke to one whom he regarded as an idler and a repro-

bate, and whose manuscripts he would gladly have tossed in the fire. His custom, when he became chief justice of the Court of King's Bench, was to charge the grand juries that all players should be punished as vagrants; that is, that they should be placed in the stocks, and whipped from tithing to tithing. Yet this man, who had probably never seen a play, was not a Puritan: he was only by nature hard, stern, unimaginative and austere, a man of the type of the unbending Pharisee. For this and for many other reasons Coke has received but little mercy at the hands of lay historians and biographers. As he never spared others, so they have not spared him. Macaulay, in speaking of Coke's marriage with his second wife, Lady Hatton, rejoices to know that "she did her best to make that bad man as miserable as he deserved to be."[1] His great enemy, Bacon, appreciated the value of her services. When he came to die, he left her a legacy in his will.

With lawyers Coke has fared far better than with laymen. He was not altogether a bad man, as Macaulay would have us believe; and if we had to make a critical estimate of his character, we should be compelled to vote on him by sections. He was

> "———like the toad, which, ugly and venomous,
> Wears yet a precious jewel in its head."

One of the things that is most highly prized by lawyers is an able, learned, unbiased, fearless and independent judiciary; having the qualities that Coke undoubtedly possessed, as conceded by his enemies, and even by Bacon himself.

One of his odious characteristics was his extreme pedantry; for he was the greatest pedant of a pedantic age. When, after having been chosen speaker of the House of Commons, he was presented at the bar before Queen Elizabeth for her approbation, he began his address in this delicate and pleasing vein:—

"As in the heavens a star is but *opacum corpus* until it hath received light from the sun, so stand I *corpus opacum*, a mute body, until your highness' bright shining hath looked upon and allowed me."

Much more followed of the same sort. Why it was that the earth did not immediately open and swallow him up is a mystery that has never been satisfactorily explained.

[1] Essay on Bacon.

But we lawyers remember another scene in which Coke appeared to more advantage—a moment when he nobly cast to the winds the honors and emoluments of office, and all the benefits to be derived from royal favor, at a time when royal favor and royal resentment were well-nigh omnipotent. When James I., called in those days the "Solomon of the North," having resolved to finish the work of subjecting the English people to slavery, so nearly accomplished by the Tudors, and having the twelve judges on their knees before him, asked them whether in the future they would not refuse to decide anything adverse to the royal prerogative, upon which eleven of them answered in a chorus "Yes;" in that critical juncture Sir Edward Coke, forgetting to chop Latin, and talking as good Anglo-Saxon as ever yet man spoke, answered with sublime simplicity, and in words that are immortal: "When the case happens I shall do that which shall be fit for a judge to do." We remember too, how, when obsequious deference to kingly power was almost universally prevalent, after years of striving against adverse circumstances, he at last got through the Parliament that "Petition of Rights" which finally stayed the exactions of the Stuarts, and placed English liberty upon an imperishable foundation. Remembering these things, remembering also that Coke's is still the greatest name in the history of our jurisprudence, that he has been quoted a hundred times where any other judge or law writer has been quoted once, recalling also the fine expiatory discipline of Lady Hatton,—we are disposed to forgive him all his sins.

Coke, who had resolved to know nothing but the law, and the common law at that, and Bacon, who had taken all knowledge for his province, seemed to have been born to be enemies. Coke often scoffed at the wide and miscellaneous learning of Bacon, who in his turn was exasperated by the narrowness and bigotry of Coke. It was not difficult to make an enemy of Coke; but Bacon was an agreeable person, learned, witty, wise, an entertaining and instructive companion, a forcible and persuasive speaker, by temperament bland, affable, charitable, liberal and conciliatory. Excepting Coke it would seem that he never hated anybody; but the gratuitous insults and contumely publicly and repeatedly bestowed on him by Coke finally stirred up in him a sentiment of hatred that was foreign to his tolerant nature, a feeling of hostility that afterwards never slept. They were

rivals in everything, even in love—if a headlong steeplechase for the hand of a rich widow can be called by that name; and neither of them ever asked for quarter, or made the slightest concession. History hardly presents another example of individual hostility so deeply seated, so unremitting, so long continued. No feud of the Capulets and the Montagues or of the Guelphs and the Ghibelines ever developed more ill-will. It seems a pity that these two extraordinary men should have been contemporaries; for without the other either might have had all the wealth and honors to which they both aspired with all the zeal which ambition and avarice could breed. As it was, their antagonism embittered and blasted the life of each. It was largely through the influence of Bacon that Coke was stripped of the ermine, and consigned to the Tower, where he had been times without number to see the rack and the thumb-screw applied to the helpless victims of the law. The gloomy structure must have had a strangely familiar look to him when the huge iron doors closed upon him. But his day of triumph came when he helped to drag Bacon from the woolsack, and to stamp on his brow the indelible mark of infamy.

It has been said that every man is, consciously or unconsciously, a follower of either Aristotle or of Plato; but Bacon was not a disciple of either. With that fine comprehensive glance which enabled him to dispose of a whole system in a few words, he said that Plato subordinated the universe to thought, while Aristotle subordinated it to words. With Bacon the universe stood not solely for either intellect or for logic; but every phenomenon required a separate and an unbiased study for itself. Only by the evidence of the senses, painfully and laboriously employed in every possible direction, could the secrets of the sphinx be discovered. Bacon was the first and the greatest of the moderns. Without assistance he closed the record of the past, and raised the curtain upon the modern world. The phrase "the interpretation of nature" was invented by him to denote a process seemingly the most obvious of all; but which was the last thing thought of. Of all the ancients he most closely resembled Socrates, who had indeed told men that their generalizations were based on no accurate knowledge. But Socrates confined the field of his inquiries to questions of intellect and of morals; by which unfortunate limitation he delayed the progress of civilization for more than two thousand years.

[Concluded in next issue.]

GENERAL NOTES.

NERVOUS SHOCK.—The interesting question of the liability for a negligent act producing a mere nervous shock or mental injury —the subject of decision by the Privy Council in *The Victorian Railways Commissioners* v. *Coultas*, L. R. 13 App. Cas. 222; 8 Eng. Rul. Cases, 405—has been decided in the New York Court of Appeals (to be reported in 151 New York Reports), and it was there held, in harmony with the English case, and reversing the decisions below, that there is no liability where a negligent act produces mere fright in a woman, although it results in a miscarriage. The Court held that the damages were immediate and proximate, but based its decision mainly on the ground that there is no right of recovery for injuries produced merely by fright, no matter how serious, or however directly the result of the mental shock. There is a little authority to the contrary in the States and in Canada, and the authorities are arranged in the American notes in 8 Eng. Rul. Cases, 414.

VENERABLE PRECEDENTS.—The Selden Society will issue in the course of next week volume x. of its publications, "Select Cases in Chancery, A.D. 1364-1471," edited by Mr. W. Paley Baildon, F.S.A., with an introduction on the growth, early history, and procedure of the Court of Chancery. This volume represents the publication for the year 1896. Volume xi for 1897 is expected to follow very shortly, and will be a second volume of "Select Pleas in the Court of Admiralty," edited by Mr. R. G. Marsden.

A SHARP CRITICISM.—The *London Law Journal* says:—"It is with great regret that we have again to comment on a recurrence of those disputes between judge and counsel of which the Court in which Mr. Justice Hawkins presides has of late been too often the scene. On the present occasion there seems no doubt that he was solely to blame. Not only was his manner unnecessarily provocative, but he had no justification for the accusation of misconduct which he made against the eminent counsel who were appearing before him. In no quarter does a judge receive more support than from the legal profession, yet we entertain no doubt as to how the Bar and solicitors alike will regard this unpleasant case. It is to be hoped that Sir Henry Hawkins will follow the example of other judges, and will not again be led into conduct which is alike injurious to the administration of justice and derogatory to the dignity of the Bench and Bar."