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SCENES IN COURT, FROM THE YEAR BOOKS.

"How one would have liked to see one of those ancient Courts under the Plantagenets!" was the remark of Wills, J., at a meeting of the Selden Society,—on an eyre, say at Winchester or Hereford,—the King's Justices, the stout old sheriff with his posse, the bailiffs, the knights, the jurors, the sergeants of the law "ware and wise" in their hoods, the appellees and prisoners, and all the motley crowd of suitors and spectators. Where be they all now? They live forgotten in the dusty folios of the Year Books—those Year Books rich with the spoils of time to the student of our legal history, to the ordinary reader an arid waste of legal technicalities. Yet here and there, diversifying the dreariness, we come upon some little oasis of human interest, a lively wrangle between counsel, a glimpse of national manners, an outbreak of testiness on the part of the judge, it may be a "good round mouth-filling oath," such as Queen Elizabeth in her best vein could swear, according to Mr. Froude. A Scotch young lady, lamenting her brother's addiction to the bad habit of swearing, added apologetically, "but nae doubt swearing is a great set aff to conversation;" and no doubt swearing from the bench is very effective at times. So at least the King's Justices thought, for they swear in the Year Books with the force and freedom of Commodore Trunion. "Do so in G—'s name," "By G— they are not," "Go to the devil" (*allez aut grant diable*)—this to a bishop—are among the flowers of judicial rhetoric. When Hull, J., flew into a passion at the sight of a bond in restraint of trade, and swore "*per Dieu si le plaintiff fuit icy, il irra al prison*," (2

Hen. V. fo. 5, pl. 26), he was only keeping up the tradition of the Bench. Counsel swear by St. Nicholas, which has an appropriateness of its own (21 & 22 Ed. 1 Br. Chr. 31, iv. 480).

"A good and virtuous nature may recoil
In an imperial charge,"

says Shakespeare in "Macbeth." The justices felt that they represented the King's person and were naturally inclined to be a little absolute in swearing and laying down the law. Cases did not then embarrass them. "Never mind your instances," says Meetingham, J. to counsel who was citing some previous decision. (20 & 21 Ed. 1. Br. Chr. 31, iv. 80.) Here is a little scene, suggestive of the Court in Bardell v. Pickwick :—

Berriwick, J., (to the Sheriff).—"How is it you have attached these people without warrant? For every suit is commenced by finding pledges, and you have attached though he did not find pledges."

The Sheriff—"Sir, it was by your own orders."

(Mem. by reporter)—"If it had not been, the Sheriff would have been grievously amerced. Therefore take heed." (21 & 22 Ed. 1. Br. Chr. 31, iv.)

On another occasion a jury was shuffling, on a question of legitimacy.

Rouberry, J., (to the Assize)—"You shall tell us in another way how he was next heir, or you shall remain shut up without eating or drinking until to-morrow morning." (21 & 22 Ed. 1. Br. Chr. 31, iv. 272.) This quickly brought the right answer.

Counsel do not escape unscathed.

Hertford, J., (to counsel)—"You do bad service to your client. You only take care to get to an averment. You have pleaded badly." This must have been trying for poor Mr. Phunky. The following is more racy. In a writ of *Monstravit de Compoto*, &c., Hampone (counsel) begins in this seemingly inoffensive manner: "Whereas he supposes by his writ that he has nothing whereby he may be summoned or attached to render this account, we tell you that he has assets in T:" etc.

Hengham, J.—"Stop your noise (lessez vostre noyse) and deliver yourself from this account, and afterwards go to the Chancery and purchase a writ of deceit, and consider this henceforth as a general rule." (30 & 31 Ed. 1. Br. Chr. 31, V. 6.) Let us hope this last statement was lucid to the practitioner of the day.

The words at the beginning certainly seem rude, but perhaps they are only what a counsel of that day calls "curial words" (paroles de la Court). "Every word," he says, "spoken in Court is not to be taken literally. They are only curial words." (20 & 21 Ed. 1, Br. Chr. 31, iii)—a remarkable anticipation of a certain celebrated occasion when the Pickwickian sense of the word "humbug" was explained.

However, counsel were able to take care of themselves then as now.

"Sir," (this was the mode of addressing the Court), "Sir," says Toudeby, "we do not think that this deed ought to bind us, inasmuch as it was executed out of England" (at Ghent).

Howard, J.—"Answer to the deed."

Toudeby (counsel)—"We are not bound to do so for the reason aforesaid."

Hengham, J.—"You must answer to the deed, and if you deny it then is it for the Court to see if it can try," etc.

Toudeby—"*Not so did we learn pleading.*" (30 & 31 Ed. 1, Br. Chr. 30, II. 72). This probably in an audible aside.

The independence of the Bar is emulated by the reporters. One Robert was charged with harboring an outlaw. The outlaw procured a charter of pardon from the King, and Robert contended that this purged his offence. Berriwick, J., was like Dr. Johnson; his pistol having missed fire he knocks down his opponent with the butt end of it. "Robert, pay your fine to the King, for you cannot deny you harbored him, and that was a great trespass against the King," etc.

"Note, the Justice did this rather for the King's profit than in accordance with the law, for they gave this decision *in terrorem.*" (30 & 31 Ed. 1 Br. Chr. 30, I. 506). Brave reporter! This is better than surreptitiously keeping a drawer like Campbell for Ellenborough's bad law. Later on a reporter—was it the same?—mentions a ruling with approbation as "correct."

The proper construction of the Statute of Westminster came in question.

Hengham, J.—"Do not gloss the statute. We understand it better than you, for we made it, and it is often seen that one statute extinguishes another." Often! we should think so. Counsel of course collapsed. Still, the learned judge failed to appreciate the distinction of intention and intendment. The dictum contrasts unfavorably with the modesty of the late Lord

Justice James in referring to a previous decision of his own, "which," he would say, "is an authority, though I joined in it."

Technicality in these early cases is rampant. The rule is, "Find a flaw, however microscopic, in the writ, and pray for judgment." In a "Petit Cape," Agnys was written instead of Agnes. Asserby (for Agnes) thought thereby to upset the whole process, and he said, "Sir, he sued the Petit Cape against Agnys, whereas he ought to have sued it against Agnes. Judgment of the bad writ."

Metingham, J.—"It is not the fault of the party, but it is the fault of our clerk, and that fault will be amended by us, and so we tell you that the process is sufficiently good, and you are not courteous in speaking in that fashion."

We find Hengham, J., obliged, on another occasion, to observe, "That is a sophistry, and this place is designed for truth." (30 & 31 Ed. 1, Br. Chr. 31, v. 20.) No applause is recorded, however, as following this excellent sentiment. Brumpton, J., has even to admonish counsel, "See that there is no deceit in your pleadings." (30 and 31 Ed. 1, Br. Chr. 30, v. 362.) Craftiness in pleading was the order of the day, like the subtleties of the schoolmen. Indeed, Durand, a thirteenth century writer, recommends advocates to adopt what he calls "a vulpine simplicity." "You have admitted this, God help you," says the Court on one occasion. On another, counsel had made a slip in vouching the wrong person.

Robert (on the other side)—"We pray judgment of this bad vouch er."

Warwick (who had made the slip)—"Leave to imparl *for God's sake, sir.*"

(Mem. by reporter)—"He obtained it with difficulty." (21 & 22 Ed. 1, Br. Chr. 31, iv. 492).

This excited state of counsel was not altogether professional keenn ess. Amercement was the common consequence of an unsuccessful suit. People are always being amerced for false, that is, unfounded claims, sometimes sent to prison. Witness the following sad tale of an attorney. It was a case of a claim to land, and alleged default in attending on a given day. B.'s attorney held to the default. The Justice asked on what day the default was made. The attorney answered that it was on the first day, and it was found that it was on the second day, and afterwards (one or two or three days afterwards) the attorney came and said

that it was on the second day, and he held to the default as before.

Metingham, J.—"My fine friend (bel amy), the other day when the worthy man was ready to make his law you said that the default was made on the first day, and afterwards you came and said that the default was made on the second day, and thus you vary in your words and deeds; this Court doth adjudge that you take nothing by your writ, but be in mercy for your false plaint." (21 & 22 Ed. 1, Br. Chr. 31, iv. 460).

A Prior had hung a thief (who had confessed), and got himself into hot water about it.

Spigournel, J.—"Call the Prior."

The Prior came.

Spigournel, J.—"Do you claim infangthef and utfangthef."

Hunt, (counsel)—"Sir, he claims to have infangthef."

Spigournel, J.—"Was the felony committed within the limits of your franchise?"

Hunt—"No, sir."

Spigournel, J.—"Where then?"

Hunt—"Sir, we do not know."

Spigournel, J.—"Now, Sir Prior, do you mean to hold a plea in your Court of a felony committed out of the limits of your franchise, when you claim only infangthef?"

(Counsel for the Prior turned and doubled, but to no purpose.)

Spigournel, J., (to the Prior)—"You have well heard how it is recorded that you went to judgment on him who acknowledged himself a felon without presentment by the Coroner who can bear record, whereas your court is not a court of record, and this you cannot deny: attend judgment on Monday." (30 & 31 Ed. 1, Br. Chr. 30, i. 500).

What befell the unlucky Prior does not appear. The Crown was getting very strict, and rightly, about these franchises.

Default of appearance was a common incident then as now, perhaps commoner, owing to the difficulties of travelling, as the following illustrates. It was a case of a Writ of Right between Roger de Pengerskeke, demandant, and John de Leicester and Joan his wife, tenants. On the day of the return of the writ to cause the four knights to come and choose the assize, John did not turn up and the default was recorded. On the next day John came to the bar and answered for his wife as attorney, and for

himself in his own person, and said that the default ought not to hurt him because he was hindered by the rising of the waters.

The Demandant's Attorney—"Where were you hindered?"

The Tenant—"At Cesham."

Mallore, J.—"At what hour of the day?"

The Tenant—"At noon."

The Demandant's Attorney—"And we pray judgment if from that time he could be here at the hour of pleading, since it is fifteen leagues away from here. Besides he began his journey too late."

The Tenant—"I travelled night and day."

Mallore, J.—"What did you do when you came to the water and could not pass? Did you raise the hue and cry and the menée, for otherwise the country would have no knowledge of your hindrance?"

The Tenant—"No, Sir. I was not so much acquainted with the law, but I cried and hullooed" (jeo criay e brayay).

The Demandant's Attorney—"Judgment outright of his default, and we pray seizin of the land."

Mallore, J.—"Will you accept the averment that he was hindered as he says?"

The Demandant's Attorney—"If you adjudge so, Sir, but since he has admitted that he did not raise the menée, judgment of his admission."

Hengham, J.—"Keep your days until to-morrow." And on the morrow they were adjourned to the Quinzein of Trinity, which to some seemed strange. (30 & 31 Ed. I, Br. Chr. 30, v. 122.) Not to us, familiar with the law's delay. But space is limited, and we must drop the curtain.—*Edward Manson in the "Law Quarterly Review."*

IDENTIFICATION OF PRISONERS.

In the course of a paper on 'Anthropology,' read at the meeting of the British Association, Sir W. H. Flower said:—

The importance of being able to determine the identity of an individual under whatever circumstances of disguise has long been apparent to all who have had anything to do with the administration of the criminal law. Photography was eagerly seized upon as a remedy for the difficulties hitherto met with. Much help has been derived from this source, but also much em-

barrassment. Changes in the mode of wearing the hair and beard differences of costume, the effects of a long lapse of time, may make such alterations that recognition becomes a matter at least of uncertainty. The enormous expenditure of time and trouble that must be consumed in making the comparison between any suspected person and the various portraits of the stock which accumulates in prison bureaus may be judged of from the fact that in Paris alone upwards of 100,000 such portraits of persons interesting to the police have been taken in a period of ten years. The primary desideratum in a system of identification is a ready means of classifying the data upon which it is based. To accomplish this is the aim of the Bertillon system. Exact measurements are taken between certain well known and fixed points of the bony framework of the body, which are known not to change under different conditions of life. All particulars are recorded upon a card, and by dividing each measurement into three classes, long, medium and short, and by classifying the various combinations thus obtained, the mass of cards, kept arranged in drawers, is divided into groups, each containing a comparatively small number, and therefore quite easily dealt with. Photographs and other means of recognition, as distinctive marks and form of features, are brought into play, and identification becomes a matter of certainty. If the combination of measurements upon a new card does not coincide with any in the classified collection in the bureau, it is known with absolute certainty that the individual being dealt with has never been measured before. In France, a large proportion of old offenders, knowing that concealment is hopeless, admit their identity at once, and save a world of trouble and expense to the police by ceasing to endeavour to conceal themselves under false names. Various representations upon this subject have been addressed to our Home Office. A committee was appointed, on October 21, 1893, by Mr. Asquith, consisting of Mr. C. E. Troup, of the Home Office; Major Arthur Griffiths, inspector of prisons; and Mr. Melville Leslie Macnaghten, chief constable in the Metropolitan Police Force, with Mr. H. B. Simpson, of the Home Office, as secretary, to inquire and report. No pains were spared to obtain a thorough knowledge of the advantages of the Bertillon system as practised in France, and the result was the recommendation of that system, with certain modifications, for adoption in this country, with the addition of the remarkably

simple, ingenious, and certain method of personal identification first used in India by Sir William Herschel, but fully elaborated in this country by Mr. Francis Galton—that called the 'finger-mark system.' In the House of Commons, on June 26, the Home Secretary announced that the recommendations of the committee had been adopted. Simple and insignificant as in the eyes of all the world are the little ridges and furrows which mark the skin of the under-surface of our fingers, existing in every man, woman and child, they have been practically unnoticed, until Mr. Galton has shown, by a detailed and persevering study of their peculiarities, that they are full of significance, and amply repay the pains and time spent upon their study. It is not to be supposed that all the knowledge that may be obtained from a minute examination of them is yet by any means exhausted, but they have already given valuable data for the study of such subjects as variation unaffected by natural or any other known form of selection, and the difficult problems of heredity, in addition to their being one of the most valuable means hitherto discovered of fixing personal identity. The *Tichborne Case* hung upon an issue which might have been settled in two minutes if Roger Tichborne, before starting on his voyage, had but taken the trouble to imprint his thumb upon a piece of blackened paper. It was not until the hundred and second day of the first trial that attention was called to the fact that Sir Roger Tichborne had been tattooed on the left arm with a cross, anchor, and a heart, and that the Claimant exhibited no such marks. The case broke down at once. The second trial for perjury occupied the Court 188 days. The issues were, however, more complex than in the first trial, as it was not only necessary to prove that the Claimant was not Tichborne, but also to show that he was someone else. The confidence that is now reposed in the methods of anthropometry or close observance of physical characters, and in the persistence of such characters through life, would have greatly simplified the whole case; and all who have nothing about their lives they think it expedient to conceal should get an accurate and unimpeachable register of all those characteristics which will make loss of identity at any future period a sheer impossibility.

CHANCERY DIVISION.

LONDON, July 25, 1894.

In re HYSLOP. HYSLOP *v.* CHAMBERLAIN. (29 L. J.)

Executor—Debt— Appointment of debtor as executor—Incomplete gift.

This was an adjourned summons, raising the question whether the defendant, the Rev. H. H. Chamberlain, was accountable to the estate of the testator for a debt of £100.

The testator, by his will, dated October 10, 1889, appointed his brother-in-law (the defendant Chamberlain) and his sister (the plaintiff) his executors. He gave to his brother-in-law £500 in consideration of his undertaking to be 'my executor and carrying out my instructions and wishes to the best of his ability.' The testator died in May, 1891.

The defendant Chamberlain owed the testator £100. A letter of instructions, written by the testator (addressed to the defendant Chamberlain), was found, after his death, with his will, in a box, which letter contained the following sentence: 'The hundred pounds I lent you does not form part of the money I left you; it is cancelled.'

This document was not communicated to the defendant Chamberlain during the lifetime of the testator.

North, J., considered that the letter of instructions was a testamentary document, not duly executed; and that it was not admissible in evidence. He, therefore, held that the defendant Chamberlain was accountable to the estate for the £100.

OVERHANGING TREES.

The right of an owner of land to cut away the boughs of his neighbour's tree which overhang his land has been the law for centuries, as appears from such venerable authorities as 'Brooke's Abridgement Nuisance,' p. 28, and 'Viner's Abridgement, Trees E,' and the Court of Appeal, in the recent case of *Lemmon* v. *Webb*, 63 Law J. Rep. Chanc. 570, showed little appreciation of the argument that his right could be taken away by the acquisition of an easement by the tree-owner compelling the landowner after the lapse of years to submit to the gradually increasing invasion on the very imperfect analogy of the acquisition of an easement in respect of an overhanging structure of bricks and mortar. What is true of overhanging boughs is, as the case

decides, equally applicable to intruding roots. The law so established is, we may add, in direct accordance with the view taken in 'Gale on Easements,' 3rd edit. pp. 419, 420. More arguable was the other point in the case—viz. whether the landowner could, while he confined his operations to his own land, himself abate the nuisance without first giving notice to his neighbour. The general law is that where a person suffers from a nuisance, as, for instance, a collection of filth, upon another person's land, he can enter on the other person's land and abate the nuisance without notice if the person in possession of the land himself created the nuisance, or in case of emergency, but that otherwise he must first give notice to the person in possession and request him to abate it (*Jones* v. *Williams*, 12 Law J. Rep. Exch. 249; 11 M. & W. 176); and similarly in the case of trees, if it were necessary to go on the land of the owner of the tree, a previous notice and request would be requisite, but so long as the landowner confines his operations to his own land the case of *Lemmon* v. *Webb* is a distinct authority, in accordance with Lord Ellenborough's ruling in *Pickering* v. *Rudd*, 4 Camp. 219; 1 Stark. N. P. 56, that the landowner can lawfully abate the nuisance without any previous notice or request. The law on the subject cannot be more clearly or more concisely stated than in the following passage from the judgment of Lord Justice Lindley: "The owner of a tree has no right to prevent a person lawfully in possession of land into or over which its roots or branches have grown from cutting away so much of them as projects into or over his land, and the owner of the tree is not entitled to notice unless his land is entered in order to effect such cutting. However old the roots or branches may be, they may be cut without notice subject to the same condition. The right of the owner or occupier of land to free it from such obstructions is not restricted by the necessity of giving notice so long as he confines himself and his operations to his own land, including the space vertically above and below the surface."—*Law Journal.*

ACTIONS AGAINST JUDGES.

Will an action lie against a judge of a Court of Record for anything done in his judicial capacity? The Court of Appeal have just answered this question in the negative in a case—*Anderson* v. *Gorrie*—where a judge of the Supreme Court of Trinidad and

Tobago was both alleged and proved to have acted maliciously. We entertain no doubt that the decision was legally correct. Indeed, the point was practically covered by previous authority —*Fray* v. *Blackburn*, 3 B. &. S. But we are very far from being equally certain that the rule of public policy underlying it is a sound one. It is said that no action ought to lie against a judge because (1) the Constitution has already safeguarded the rights of litigants by the power of removal with which it has invested the Crown, and (2) if such actions were competent members of the judicial Bench would be perpetually called upon to defend themselves against the spleen of disappointed litigants. Both grounds are substantial; but neither is, in our opinion, conclusive. The power of removal is an effective weapon against a judge who persistently and indiscriminately abuses his office. It is not effective in cases of isolated tyranny or oppression. Suppose a judge—say in a distant colony—conceives a personal dislike to a suitor, and gratifies it in a case which the latter has before him, how could the victim of his injustice obtain redress by applying to the Colonial Secretary? There would immediately be a stream of petitions to the Colonial Office from litigants and public bodies who had never any reason to be dissatisfied with the unjust judge in favor of his retention, and the Colonial Secretary would be bound to take cognizance of, and, in the absence of clear proof, give effect to, these representations. Again, if it were deemed expedient to concede to litigants a limited right of action against judges, no inconvenience need arise from the concession. It would be perfectly easy to make the statement of claim in such cases run the gauntlet of such a preliminary inquiry as pauper appeals now undergo in the House of Lords, or to require the delivery of particulars as to the sufficiency of which an appeal committee could judge. We are not satisfied that the decision in *Anderson* v. *Gorrie* does not justify a very grave consideration of the question whether the time has not come when the rule of law on which it rests should be revised.—*Ib.*

MADNESS AND CRIME.

The controversy between lawyers and doctors as to the criminal responsibility of the insane is so inveterate, and has hitherto been both so jejune and so largely academic, that its reappearance at the present dull season may not seem to call for any com-

ment. But the definite proposal made at the recent meeting of the British Medical Association, that the House of Lords should be invited without delay to ask the judges to answer "certain questions with regard to the defence of insanity in criminal cases,' imparts to the latest revival of this interminable feud not a little extrinsic interest and importance. Five distinct tests or criteria have at different periods in the history of English law been employed for the purpose of determining the criminal responsibility of the insane. First we have what has been compendiously described as "the boy of fourteen" theory. For this we are indebted to Sir Matthew Hale. "Such a person," said that great jurist, "as laboring under melancholy distempers hath yet ordinarily as great understanding as a child of fourteen years, may be guilty of treason or felony." In the beginning of the eighteenth century this primitive standard was superseded. One would gladly think that its abandonment was due to the eventual perception by the judges of the day that no two states of mind could be more unlike or less capable of comparison than the healthy immaturity of a boy of fourteen and the diseased maturity of a lunatic. But, unfortunately, this comforting hypothesis is untenable. For the boy of fourteen theory gave place to a still more unscientific test. On the trial of Edward Arnold, at Kingston, in 1723, for wounding Lord Onslow, Mr. Justice Tracey, in charging the jury, said that "a prisoner, in order to be acquitted on the ground of insanity, must be a man that is totally deprived of his understanding and memory, and doth not know what he is doing, no (*sic*) more than an infant, a brute, or a wild beast." No such lunatic ever existed, and the only excuse that can be offered for Mr. Justice Tracey's famous dictum is that he merely gave an exaggerated and inaccurate description of the violent and acute mania to which the asylum system of his day steadily reduced all other types of insanity. The "wild beast" theory, however, marks the lowest depth to which the law of England as to the criminal responsibility of the insane descended. Its subsequent ascent has been curiously fitful and irregular. On the trial of Hadfield in 1800 for shooting at George III. in Drury Lane Theatre, Lord Chief Justice Kenyon told the jury that the prisoner's responsibility depended on the question "whether at the very time when he committed the act his mind was sane." But this advance was not long maintained. For in 1812, on the trial of Bellingham for the murder of Mr. Perceval in the lobby

of the House of Commons, Sir James Mansfield prescribed another test of punishable insanity—namely, whether the accused possessed sufficient capacity to distinguish between right and wrong in the abstract. In the course of time this theory of responsibility also was felt to be inadequate. Scientific observers of the phenomena of mental disease established the existence of a type of lunatic whose general notions of right and wrong were perfectly clear and correct, and who nevertheless committed acts forbidden alike by morality and by law, under a fixed belief that his conduct was not only pardonable but meritorious. It might well be that such persons deserved punishment. But it was certain that the existing law offered little guidance as to the principles on which their punishment should be based. This deficiency the present legal test of lunacy purports to supply. It is embodied in answers given by the judges to questions propounded to them by the House of Lords after the acquittal of Daniel Macnaughton, in 1843, on the charge of having murdered Mr. Drummond, the private secretary of Sir Robert Peel; and it makes the guilt or innocence of a person accused of a crime, and defended on the ground of insanity, depend on whether he did or did not "know the nature and quality" of his act at the time of committing it. Against this standard of responsibility the British Medical Association is now in full tilt, and not without reason. The "rules in *Macnaughton's Case*" represent accurately enough the state of medical knowledge in 1843, and are still comparatively harmless when judiciously manipulated. But they ignore the fact that mental disease may, and does, impair its victims' wills, as well as their other faculties; and, after the criticisms that have been passed upon them by judges so eminent as the late Lord Coleridge, the late Sir James Stephen, and Sir Henry Hawkins, it is high time they were revised. We regard, however, with considerable apprehension the proposal that the revision should take the form of questions put to the judges by the House of Lords. We should have thought that this species of catechism had already been sufficiently discredited by the experiment of 1843; and we know of no other authority for the proposition that the House of Lords has a right to question the judges except in the exercise of its legislative or judicial functions. What is wanted is that some barrister should be found of sufficient daring to challenge the authority of the Macnaughton "rules" in defending a prisoner on whose behalf a plea of insan-

ity is put forward. There is every reason to believe that the mental soil of the Bench is already not unprepared for such a suggestion. And, in any event, the point would be brought before the Court for Crown Cases Reserved—a tribunal undoubtedly competent to decide it.—*Saturday Review.*

GENERAL NOTES.

TRAVELLERS' RIGHTS.—Disputes so often arise between railway travellers of conflicting tastes and different social status that it would seem desirable to have some means of enforcing certain elementary comities of the road—such, for instance, as the right of a traveller who leaves his carriage at a wayside station for refreshments to preserve his seat from incoming travellers, some rule as to preferential treatment on a long-distance journey when a train is overcrowded, and as to the ventilation of a carriage *en route.* This last point, however, appears to be on the way to settlement. A general dealer was summoned at Peterborough for disorderly conduct in a train from King's Cross to Peterborough. He and his wife occupied one end of a third-class carriage and a clergyman and his wife the other end. Contrary to what might have been expected, the dealer opened his window and the clergyman preferred to keep his closed. The dealer wanted both open, and, on the clergyman objecting, used language unsuited for ears ecclesiastical, and the dispute ended in the Police Court, where it was shown to the justices that a bye-law of the Great Northern Railway Company gives the control of each window to the person seated nearest to it—we presume to the person who would be most affected by the dust and air if it were open. The rule, so far as it goes, is good; but is not a complete code for the settlement of difficulties between travellers of incompatible temperament, or for preserving a respirable atmosphere in a railway carriage.—*Law Journal.*

AUSTRALIAN JUDGES AND THE ENGLISH BENCH.—It is remarkable that, while the Imperial Government shows itself so alive to the advantage of transferring an able colonial bishop to a similar position in England, it neglects all the convenience and utility that would be secured by similarly taking an eminent colonial judge and placing him on the English Bench. The advantages of such a course are apparent. In the first place, there is no reason why this should not be done. Whatever may be the imperfections of our political life, the controlling influence of

public opinion has maintained a high degree of care in the selection of judges of the superior courts. We have in these colonies no reason to be other than satisfied with the way in which our judges are appointed, and with the way in which they perform their duties and uphold the honour and dignity of their position. These conditions would only be improved were there an open possibility that any judge might some day be selected to fill a place on the English Bench. Then as to the positive advantages that would ensue from this course, we must remember that although we possess law-making institutions and powers, and use them freely, the law which is administered in our courts is substantially English law. Indeed, although within the wide scope of the empire judges in various places administer English law, civil law, Dutch law, French law of the old feudal days, Hindu law, Mahomedan law, and the laws of many other codes and creeds, the ultimate principles and procedures by which all these various laws are applied and interpreted are the principles and procedures of the law of England. England furnishes a court of ultimate appeal, by resort to which cases coming from every part and every court and every system of jurisprudence in the empire may be heard and finally decided. It could not but redound to the harmony and uniformity of law administration throughout the empire if judges of mark and eminence were occasionally taken from the colonial courts and appointed to the English Bench, with a view of their ultimately being promoted to the final Court of Appeal. If in objecting to this the low ground were taken that the British Bar yields in abundance candidates and expectants for all the prizes available, the answer is that this consideration, which must be equally operative within the church, does not prevent the selection of successful colonial prelates to become English bishops. There is every reason to believe that a similar practice would yield results of at least equal value if applied to our judges, and it is not apparent why it is not sometimes adopted.—*Sydney Morning Herald.*

Dr. de Laskie Miller on Expert Testimony.—At a recent meeting of the Practitioners' Club in Chicago, Dr. de Laskie Miller, a retired physician of great eminence, and an emeritus professor in Bush Medical College, at the close of a debate on the subject of expert testimony, used the following language: "In the trial of a case it will be conceded that the intent should be to

present the evidence in such form that it can be comprehended by the juror. It will not do to say that a scientific and technical subject cannot be apprehended by the intellect of the average juror. This would be a confession that the introduction of expert testimony is a farce. It seems to me that not only the facts but also the logical conclusions of evidence can be reduced to simple terms and be presented in such form that a juror of ordinary intelligence can comprehend them and their bearings upon the points in issue. It will lessen a verbiage if the dogmatic form is assumed. Then it may be allowable to assert that no rights of the parties in a case at law need be restricted in order to accomplish the end desired. The parties may call their expert witnesses as heretofore, and as they have a right to do. The court should have authority, and exercise a proper discretion, in limiting the number of experts which may be called. Now we come to the most important innovation, which gives the promise of relief to the embarrassment of the conscientious juror and greater confidence in the justice of the verdict. The court should be empowered to summon a witness (one or more) chosen on account of integrity and good standing as members of society, and possessing superior knowledge and practical experience in the specialty involved in the case. Such a witness or witnesses will take the stand free from every suspicion of partisanship. The counsel, with the judge, shall formulate hypothetical questions, shall include every medical fact and principle involved in the issue. The question or questions thus formulated shall be read to the witness by the court, and oral questions leading to further elucidation shall be proper, but may be restricted in the discretion of the court. A witness of the character indicated will be able to reduce his testimony to the simplest terms to unravel perplexing complications. It seems hardly necessary to add that the court will not summon experts in every case when experts are called by the prosecution and defence, but in cases of unusual importance, or when the evidence introduced by the parties is contradictory or complicated, the courts shall have the authority to do so."

Sir James Lukin Robinson, Bart., of Toronto, whose death occurred recently in the seventy-seventh year of his age, was the eldest son of Sir John Beverley Robinson, for many years Chief Justice of Upper Canada, and President of the Court of Appeal. He was born in 1818, and was called to the Bar at the Middle Temple in 1843.