The Canada Law Journal.

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OUR ENQUETE SYSTEM.

Those of our readers who were present at the rendering of judgments in Montreal on the 29th of October, heard a great deal about the mode in which *enquêtes* are too often conducted, and the style in which depositions are reduced to writing. In fact hardly a term goes by without complaints from the Bench respecting the needless multitude of badly written depositions, which the judges are compelled to wade through in search of the facts bearing upon the issue.

These complaints naturally lead us to revert for a few moments to certain correspondence which appeared in this Journal about two years ago. In October, 1865, a forcible writer, and a lawyer of high standing, signing himself "Q." (Vol. 1., p. 48), commented in the severest terms upon our Enquête system, recommending that all causes of importance, where facts have to be appreciated, be tried before a jury. This was followed in the January number of 1866, (Vol. 1. p. 78), by a communication signed "Q. C.," from the pen of one of our most eminent Queen's Counsel, in which the entire abolition of the Enquête system was urgently advocated.—"If each case," wrote 'Q. C.,' "were tried "before a judge in the same way that a case "would be tried before a judge and jury,—*not* "*here*, (for we have, unfortunately, engrafted "on our trial by jury, a bastard system of "*enquête*), but as in England, the United "States, Upper Canada, and in fact every "part of the civilized globe, where the system "of trial by jury is practised, *the judge him-*"*self taking full notes of all the essential* "*points of the evidence*, — I venture to "assert that justice would be more promptly, more correctly, and in every respect "better administered, than it either is or "could ever be hoped to be under a system so "peculiarly Lower Canadian as ours is."—'Q. C.' concluded his remarks by inviting the criticism of the profession upon his suggestions, but to this day no one has had a word to say in defence of or apology for the existing system. It is a fair presumption, therefore, that the system is really indefensible, and that a usage, worthy only of the dark ages, is adhered to from a blind regard to the practice of our predecessors.

Lawyers are naturally conservative, and very properly so. Great changes should not be lightly made, nor without the most careful inquiry and consideration. But adherence to the old track should not be continued too long, and the time has now arrived when the demand for an inquiry into our enquête system must be made, and be made with urgency. Legislation on the subject might fitly be preceded by a commission for obtaining evidence of the working of the present system, and ascertaining the views of the bench and leading members of the bar, though we doubt whether the evil is not too palpable to be disputed.

THE COURT OF APPEALS.

In the report of *Lacombe* v. *Dambourgès*, printed in the present number, the reasons assigned by the Hon. Mr. Justice AYLWIN for his resignation, are included as a matter of historical interest. It is only right to complete the record by the insertion of the official statement promulgated by the other members of the Appeal Bench on the day following Judge AYLWIN'S announcement. The statement was first made verbally by Mr. Justice DRUMMOND, and was we believe, reduced to writing under the supervision of the Court, a copy being sent to each of the daily newspapers. It is as follows:—

Mr. Justice DRUMMOND: "The causes of the delays which are complained of ought to be attributed to the Executive, who neglect, we know not for what reason, to provide an efficient remedy for the actual state of things, which I have had occasion to notice myself. The term commences at Montreal on the first of the month, and finishes on the ninth. It is necessary that the judges hasten to Quebec to open the Court, which lasts to the 21st.—Now it happens that whilst the roll in Montreal is ordinarily heavy, it is nearly always light at Quebec. My colleagues know also,

as well as I do, that they never pass the term at Quebec without the roll being called four or five times. It is certain that the duration of the term at Quebec, to say the least, is sufficient relatively to expedite the work, while at Montreal it is the contrary, and if the term at Montreal began after the close of that at Quebec, the Court would be able to proceed day by day as the roll appeared; all would go for the best and we should not see eighty-five causes inscribed on the roll. The way to remedy the grievances complained of, is to change the periods at which the terms are held, a change that can only be made by the Executive or the Legislature. People should not, therefore, blame the judges because it is not done. As to the causes *en délibéré*, what has been said is without foundation.—There are only upon the roll two old *délibérés*. One is the cause of Dufaux *vs.* Herse, which is an affair of great importance upon which the Judges could not agree. The other old *délibéré* is the Corporation of William Henry *vs.* Geuvremont; if the Court has not rendered judgment sooner in this cause, it is because the parties asked it to be deferred.—Mr. Lafrenaye here present will admit this.

Chief Justice DUVAL: The list of *délibérés* contains only 15 causes, of which 13 have been pleaded in the last term. The mere inspection of this list is sufficient to show how ill-founded are the complaints against the Bench. The cause of the delays is, to my idea, not within the control of the Executive or the Court, but it ought to be imputed in a great measure to the Bar itself, certain advocates causing a considerable loss of time by out of the way arguments to sustain elementary points, which their adversaries care little to contest or contradict. At the same time they consider themselves unjustly treated by the Court if they are obliged to confine themselves within reasonable limits. It has been said that the Court did not open before eleven o'clock; this is incorrect. The Court always opens at 10 o'clock except on some days when judgments are rendered, the judges being then detained in chambers a longer time in their deliberations. At all times the opening of the Court is late on the day on which the judgments are delivered. It was so in the time of Judge Sewell and is so to-day; my honourable colleague, Mr. Justice Aylwin, will admit this without doubt."

NOVA SCOTIA JUDGES.

The following paragraph appears in the daily papers:

"The Judges of Nova Scotia have refused to accept their quarter's salaries at the rates formerly paid in that Province—from £700 to £800 per annum,—claiming the right to be paid, since the 1st of July, at the same rate as the Canadian Judges, being nearly double their former salary. Judges of New Brunswick are supposed to be taking the same course. The case is under the consideration of the Government."

The above, if true, exhibits the Bench of Nova Scotia in a very unfavorable light.—Surely the members of that Bench are aware that the salaries of Canadian Judges are far from being uniform, varying in fact even in the Superior Courts, from £700 to £1250.

PRIVY COUNCIL.

GUY *v.* GUY:—The appeal in this case has been dismissed by the Privy Council, with costs, £241. 8. 8.

ELLICE *v.* THE QUEEN.—The appeal to the Privy Council, on the part of the Crown, has been declared abandoned, no proceedings being had.

MACDONALD & LAMBE.—The appeal in this case was dismissed by the Privy Council, 12th July, 1867, with costs £295. 1. 8.

THE HOWLAND WILL CASE.

The case of the will of Sylvia Howland of New Bedford, Massachusetts, is exciting much interest from the novel character of the evidence introduced. Miss Howland, who died in 1865, left about $2,000,000 by will, mainly to people who were her attendants during her last illness, but who were not her relatives. Her niece, Miss Hetty Robinson (now Mrs. Green), contested her aunt's will, which gave her only $70,000 annuity. It seems that Miss Howland made a will leaving her entire property to Miss Robinson, and that she subsequently made another unfavorable to her niece. However there was found attached to the first

of these two wills a paper sewed to the first page, stating that she (the testatrix) wished that to be considered her true will, whatever subsequent one she might in the feebleness of age be influenced to make. On this document, which has three signatures, the niece relies. The genuineness of these signatures is denied, the allegation being that they were traced from the signatures of the original will. The three signatures on the attached paper are found on examination to coincide with mathematical exactness, not only line for line, letter for letter, but each having exactly the same slant towards the base of the sheet. It was proved that a remarkable similarity existed between all Miss Howland's signatures.—The most curious testimony in the case is that of the recently appointed Superintendent of the Coast Survey, the celebrated mathematical professor at Harvard, who applied to the matter the law of probabilities. Having ascertained the relative frequency of coincidence by comparing many of Miss Howland's signatures, he computed that in her case the phenomena of three absolutely identical signatures "could occur only once in 2,666,000,000,000,000 times." In conclusion, Professor Pierce stated, "Under a solemn sense of the the responsibility involved in the assertion, I declare that the coincidence which has here occurred, must have had its origin in an intention to produce it."

A correspondent has sent to the *Pall-Mall Gazette* the following story in illustration of this question of identity of signature:

"Some years ago a gentleman was sued by one of his friends before the Civil Court in Rome on a promissory note. The defendant pleaded that the signature was a forgery. The judge desired one of the attendants to summon Toto, a well known scribe, who earned his livelihood by writing letters for peasants and making out petitions for alms asked by some of his neighbors from the judge and other wealthy persons. Toto was desired to turn expert and help the judge to ascertain the truth of the defendant's plea. The plaintiff had brought with him an unquestionable signature of the defendant's attached to a letter, and the case was adjourned until Toto could make his report next morning. Without any hesitation he said: 'If the court will lay the promissory note upon the letter it will be found that the two signatures cover point for point the same space, and as it is impossible for any man who writes freely to make two signatures so perfectly identical, I am sure that the promissory note was not signed by the defendant, but that his signature was traced from his letter.' The judge at once decided in favor of the defendant."

COURT OF QUEEN'S BENCH.—APPEAL SIDE.—RESERVED CASES.—*Regula Generalis.* June 1st, 1867. It is ordered that the clerk of this Court, immediately upon the receipt of the papers transmitted, in a case reserved for the opinion of this Court, shall set down such case for hearing on the first juridical day of the then next ensuing term.

WRITS OF ERROR.—*Regula Generalis.*—June 1st. It is ordered that the plaintiff in error in all criminal cases shall file an assignment of errors on the first juridical day after the day of the return of the said writ.—That the joinder in error shall be filed on the first juridical day following the filing of the assignment of errors. That the clerk of this Court on receiving the joinder in error, shall forthwith set down the cause to be heard on the errors assigned.

APPOINTMENTS.

JOSEPH ELLIOTT, Esq., to be Assistant Treasurer of the Province of Quebec. (Gazetted 26th October, 1867).

JEAN BAPTISTE MEILLEUR, Esq., M. D., to be Deputy Registrar of the Province of Quebec. (Gazetted 26th of October, 1867).

GEORGE BOUCHER de BOUCHERVILLE, Esq., Advocate, to be Clerk, Master in Chancery and Accountant of the Legislative Council of the Province of Quebec. (Gazetted Nov. 2, 1867.)

PIERRE LEGARÉ, Esq., Advocate and Queen's Counsel, to be Assistant Clerk, Master in Chancery, French translator, and Assistant Accountant of the Legislative Council of the Province of Quebec. (Gazetted Nov. 2, 1867.)

SIMÉON LESAGE, Esq., Advocate, of Montreal, to be Assistant Commissioner of Public Works and of Colonisation. (Gazetted Nov. 2, 1867.)

BANKRUPTCY—ASSIGNMENTS.—PROVINCES OF ONTARIO AND QUEBEC.

NAME OF INSOLVENT.	RESIDENCE.	ASSIGNEE.	RESIDENCE.	DATE OF NOTICE TO FILE CLAIMS.
Anderson, Arthur H.	Waterdown	J. J. Mason	Hamilton	Oct. 31st.
Arnold, Walter		John Lynch	Brampton	Oct. 2nd.
Aubertin, Charles	St. Mathias	T. Sauvageau	Montreal	Oct. 30th.
Baukage, Beak & Co		A B. Stewart	Montreal	Oct. 23rd.
Bedell, W. A		A. G. Northrup	Belleville	Oct. 28th.
Berry, Joseph		Thos. Miller	Stratford	Oct. 9th.
Bowman, Robert		A. J. Donly	Simcoe	Oct. 7th.
Brazeau, Mélanie (wife of F. X. Desève)	Sherbrooke	T. Sauvageau	Montreal	Oct. 11th.
Burnet, John		L. Lawrason	London	Oct. 29th.
Campbell, John		A. Schwaller	Thorold	Oct. 31st.
Chadwick, Allan, and William M. Chadwick		W. S. Williams	Napanee	Oct. 17th.
Charlebois, Alphonse, (individually and as partner of A. Charlebois & Co.)	Montreal	A. B. Stewart	Montreal	Oct. 12th.
Clarke, Albert, and Wm. Rutherford	Oil Springs	George Stevenson	Sarnia	Oct. 22nd.
Colgin, Robert		George J. Gale	Owen Sound	Oct. 17th.
Desève, Germain, (individually and as partner of A. Charlebois & Co.	Montreal	A. B. Stewart	Montreal	Oct. 12th.
Diefenbacher, Frederick	Township of Wellesley	H. F. J. Jackson	Berlin	Oct. 29th.
Dover, James	Shakespeare	Philip S. Ross	Montreal	Oct. 9th.
Dunlop, Robert, (individually and as partner of Jas. McIntyre & Co.		W. F. Findlay	Hamilton	Oct. 14th.
Dunn, Justus		Thomas Clarkson	Toronto	Oct. 26th.
Fairman, Thomas		James Holden	Whitby	Oct. 8th.
Goodbow, Peter		Thos. McIntyre	St. Mary's	Oct. 30th.
Goslee, George	Colborne	E. A. Macnachtan	Cobourg	Oct. 10th.
Graybiel, Michael		Daniel Wilson	Welland	Oct. 9th.
Gundry, Edwin	Wroxeter	S. Pollock	Goderich	Oct. 10th.
Gunn, Robert		L. Lawrason	London	Oct. 23rd.
Hans, John	Township of Maryboro	Thos. Saunders	Guelph	Oct. 2nd.
Hans, William	Township of Maryboro	Thomas Saunders	Guelph	Oct. 24th.
Hartill & Lockington		Thomas Clarkson	Toronto	Oct. 24th.
Harvey, R. L	Sherbrooke	Philip S. Ross	Montreal	Oct. 5th.
Hawley, John	Township of Torbolton	Francis Clemow	Ottawa	Oct 25th.
Hébert, Sophie	Montreal	A. B. Stewart	Montreal	Oct. 24th.
Hibbert, William	Township of Morris	Samuel Pollock	Goderich	Oct. 30th.
Kells, Edward		S. C. Wood	Lindsay	Oct. 21st.
Kennedy, Angus	Cavan	E. A. Macnachtan	Cobourg	Oct. 10th.
Lafferty, Alexander J.	Windsor	J. McCrae	Windsor	Oct. 22nd.
Lahaye, O. B. (Olivine Bouchard)	Montreal	T. Sauvageau	Montreal	Oct. 10th.
Langs, Lyman Francis		A. J. Donly	Simcoe	Oct. 7th,
Lemon, Arthur Jules	Ottawa	Francis Clemow	Ottawa	Oct. 18th.
Letourneux, Césaire	St. Timothé	A. B. Stewart	Montreal	Oct. 3rd.
Link, Adam		S. C. Wood	Lindsay	Oct. 23rd.
Maryboro, William Hans		Thos. Saunders	Guelph	Oct. 24th.
McElroy, James	Montreal	T. S. Brown	Montreal	Oct. 17th.
McMaugh, Joseph		W.A.Mittleberger	St. Catharines	Oct. 11th.
McMeckin, Gilbert	Windsor	J. McCrae	Windsor	Oct. 2nd.
Mathers, John	Village of Brampton	John Lynch	Brampton	Oct. 11th.
Middleton & Co., Wm.	Montreal	John Whyte	Montreal	Oct. 4th.
Morin, Jérémie	St. Sébastien	Wm. Coote	St. Johns Q.	Oct. 16th.
Mountjoy, Arscott		Thos. Churcher	London	Oct. 26th.
Nichol, Peter Murray	Township of Blanshard	Thos. Miller	Stratford	Oct. 15th.
O'Higgins, John	Stratford	W. F. Findlay	Hamilton	Oct. 30th.
Ouimet, Eusèbe	Montreal	A. B. Stewart	Montreal	Oct. 26th.
Parent, Alexander	Windsor	J. McCrae	Windsor	Oct. 28th.
Pidgeon, Joseph, & Co	Cobourg	E. A. Macnachtan	Cobourg	Oct. 3rd.
Pogue, George	Township of Ops	S. C Wood	Lindsay	Oct. 15th.
Porteous, Robert	Whitevale	James Holden	Whitby	Oct. 30th.
Poulin, Samuel	Montreal	A. B. Stewart	Montreal	Oct. 26th.
Prest, William		Alex. McGregor	Galt	Oct 9th.
Pringle, Gilbert	Hamilton	W. F. Findlay	Hamilton	Oct. 28th.
Reid, W. H	Hamilton	J. J Mason	Hamilton	Oct. 21st.
Rhicard, George Lewis	St. Armand West	Wm. M. Pattison		Oct. 25th.
Riddle, Andrew J., (individually and as partner of Monahan & Riddle	Toronto	Thomas Clarkson.	Toronto	Oct. 8th.
St. Laurent, Wm., (individually and as partner of St. Laurent & Co.	Quebec	T. Sauvageau	Montreal	Oct. 27th.
Saul, Henry		L. Lawrason	London	Oct. 12th.
Stephenson, John	Township of Turnberry	Samuel Pollock	Goderich	Oct. 17th.
Tracy, Benjamin		Thos. McIntyre	St. Mary's	Oct. 30th.
Trotter, William		W. S. Robinson	Napanee	Oct. 22nd.
Vansittart, Henry		Hugh Richardson	Toronto	Oct. 4th.
Walker & Smith	Caledonia	Philip S. Ross	Montreal	Oct. 1st.
Wemp, James		Richard Monck	Chatham	Oct. 16th.
Wigney, William	Montreal	T. S. Brown	Montreal	Oct. 17th.

AN AMERICAN LAWYER IN LONDON.

The Hon. I. F. REDFIELD, the author of several well-known legal works, being on a visit to England, has written several letters to the *American Law Register* (of which he is one of the editors), giving his impressions of English Courts and Judges. We make some extracts of interest.

"By being in London one learns some things about the administration of justice and the course of Law Reform, which would seldom or never come to the knowledge of an American lawyer at home. But it is, after all, matter of surprise how very little of that which it is most important to know in regard to English jurisprudence may not be fully understood by a careful study of the Reports, and a diligent reading of the Law Journals, and the elementary treatises. And the very little that we do come more fully to understand by a closer inspection, or to understand differently, perhaps, from what we otherwise should, cannot be regarded as altogether of unmixed good.

For instance, one cannot feel quite the same veneration for the wisdom of a decision in the British Court of last resort, that august tribunal, the House of Lords, after carefully watching the course of a trial there, that he would from merely reading and reflecting upon the subject. One naturally reflects upon a subject of that character, with some reference to the vastness of the interests at stake, and comes to regard the character of the Court which gives them their final shape and destination, as important and weighty, somewhat in proportion to the vastness or the insignificance of those interests in themselves. And men themselves, while sitting in the seat of justice, evoke greater and nobler powers of reflection, discrimination, and judgment, as the demands for the exercise of such powers arise. Hence, we very naturally expect the weight and dignity of the English House of Lords to rise above that of all other judicial tribunals, in proportion as the vastness and variety of the questions finally determined by it are higher and greater than those of almost any other Court. But when we come to view it with the naked eye of sense, we feel greatly in danger of losing the ordinary standard of weight and measurement. To an American it has very much the appearance of a trial before a committee of the legislature, with even less form and ceremony, if possible. It is true that lookers-on approach with something more of reserve. They meet more public men and more subordinate officers, and at first blush there is more of authority and solemnity in the going forward of the hearing. But this, so far as any undue reserve is concerned, is rather apparent than real; for the moment one breaks through the crust of this official reserve, he finds himself accepted in the fullest and most cordial manner, and thereafter really treated with more watchfulness of attention, and less of official hauteur, than almost anywhere else. So that all one needs, in such cases, is the proper introduction to secure the fullest and most considerate attention; or, if he choose to float along with the mass of spectators, and to conform to the mere outward conventionality, which is by far the readiest and most successful mode of finding out the exterior of judicial procedure everywhere, there will not be the slightest obstacle to *standing* all day in the purlieus of an English court of justice, or sitting, indeed, if one can only find room, and a chair or seat to sit upon.

But to return to the House of Lords. The room itself is a most complete model of graceful and elegant architectural fitness and proportion. It is regarded, both in effect and in detail, as one of the most perfect specimens of architectural beauty in the world. It would be impossible, in a communication of this character, to give the slightest outline of its proportions or adaptations, and especially of its many perfect gems of beauty in the filling up of the detail. Suffice it to say, that it is the very *chef d'œuvre* of Sir Charles Barry's great and crowning work of life, the Westminster Palace or Parliament Houses, covering nearly eight acres of ground, and affording the most perfect model, in modern times, of the rich and elegant tracery of the Gothic architecture. The throne and chair of state for the Queen to occupy in opening Parliament and other state occasions, stands

at the head of the chamber of the Lords. This is approached on every side by three or four circular steps, giving two or three feet in elevation; and a small space beside the steps is railed off from the main area of the room, and surrounds the throne. The upper end of the middle space between the seats in the main hall occupied by the Lords, is occupied by the woolsack, of which we have all heard so much, and really know so little. It is covered with red velvet or plush, or some other rich material, and is nearly six feet square, being divided unequally by a kind of board rising near the Chancellor's back, who sits upon the side remote from the throne, facing the house. Front of the Chancellor is a large table surrounded by the clerks and under-clerks, and opposite this, on the front bench at the right, are the members of the ministry belonging to the House of Lords, and on the opposite side are the leading Lords of the opposition, and the supporters of each side occupy the back benches on either side. Further along towards the principal entrance of the hall is a space about ten feet square, around which the Lord Chancellor and the other Law Lords sit during the argument of appeals from the Courts in England, Ireland, and Scotland. The bar is facing this, on the side of the entrance, being about six feet square, and fenced off from the area occupied by the Law Lords by a single board rising about breast high, with shelves just below on which the advocate may rest his books and papers.

There is one feature in all English Courts, so far as we have observed, which is worthy of all commendation, and it is one which we do not always witness in the American Courts, to the same extent. We mean the entire absence of all apparent anxiety to bend the decision to meet any preconceived theory, either of politics, religion, or morals, or even of philosophy. In other words, it is a seeming indifference to the present popular sentiment. We say the *present* popular sentiment, because we do not intend to intimate that a judge, any more ny other man, should attempt to educate himself up to the point of absolute indifference to a wise, far-seeing, and just public opinion; or that he can, if he would, feel entirely indifferent to that just boon of a good name and fame, which is the inevitable concomitant of worthy actions worthily performed. All we mean is, that a judge, as well as any other public man, or private man indeed, who in all that he says, and all that he does, is measuring himself and his conduct by the low standard of present public opinion, is not likely to accomplish any very heroic deeds, or to initiate any very permanent or valuable reforms, either in legislation or general jurisprudence.

It is certainly a very pleasant sight to sit in an English Court and witness the entire absence of all rivalry, not only between the Court and the bar, but apparently between the different members of the bar. Court and counsel alike seem to feel that every other consideration must be laid aside except that of reaching the absolute justice of the case In this pursuit there is observable a quietness in the course of the arguments of counsel, and especially in the conversational discussions between the Court and the counsel, which cannot fail far more effectually to enable each to see the other's views, difficulties, and doubts, than if the same were had in a spirit of controversy and opposition, and with a disposition occasionally apparent in our own country, to show the spectators the superiority of the bench above the bar. Nothing could more effectually belittle the Court, without in the same degree elevating the bar. A truly great judge is never jealous of any one, and least of all, of his bar, which is his brightest crown, the very jewel of his judicial life."

The last paragraph which we have quoted is not without application in Montreal. Judge Redfield concludes his first letter with an account of some cases he heard tried, and remarks: "We noticed with especial gratification that the English judges address the jury sitting, the jury also remaining in the same position. We have long regarded this as the only mode in which a case could be fairly presented to a jury by the Court, and practised it during most of our own long period of service in that capacity, but we believe this is rather an exceptional mode of proceeding in American Courts, and as far as

we know, as a general rule, is confined to New Hampshire, where the change occurred, at an early day, by the embarrassment of one of their ablest Chief Justices, the late Jeremiah Smith, in delivering his first charge to the jury, which proceeded so far as to compel the judge to resume his seat, and to request the jury to do the same, when he continued his charge in a very able and satisfactory manner, never after attempting to address the jury standing, and this precedent thus accidentally introduced, soon became general in that state, and has so continued ever since. It also exists in some portions of Vermont, but not universally."

A note has been appended to the above by Mr. J. T. Mitchell, of Philadelphia, another of the editors of the *Law Register*. Mr. Mitchell says: "We venture to suggest that our learned colleague is in error. It is the universal habit of judges in Pennsylvania to sit while charging the jury, and we have occasionally been present at trials in New York, New Jersey, Ohio, and Illinois, in all of which the judge remained seated, and we think the contrary habit is peculiar and local to the New England Courts, even if it obtain in all of those. We have the authority of a distinguished ex-judge of the Supreme Court of New Jersey for saying, that when he was a junior at the bar, it was the general custom for the judge to rise in addressing the *grand jury*; but even that has fallen into disuse. The only occasion upon which a Pennsylvania judge stands is while pronouncing sentence of death, and we think the undignified novelty of the judge's rising to charge a jury would be resented alike by the bench and bar of that state, as savoring far too much of advocacy rather than judicial serenity."

For the information of readers at a distance, we may add here that the invariable practice in Lower Canada has been, we believe, for the judge to remain seated. The jury are directed by the crier to rise when the judge begins his charge, but it is usual for the judge to direct them to resume their seats, if he is going to occupy much time in addressing them.

The second letter is of such interest that we reproduce the whole: "One cannot remain for months about Westminster Hall and Lincoln's Inn, and in daily attendance upon the Courts of Common Law and Chancery, without learning many things of interest to the American bar, which he would never otherwise learn. But after having received such kindness and hospitality from the English bar and the English judges as cannot fail to inspire feelings of the most profound and grateful respect and affection, one naturally feels great reluctance to speak of the detail of the administration of justice here, lest, inadvertently, some possible breach of the confidence of social life might be committed or suspected.

But, speaking only of those things which are patent and open to all, it must be conceded that the English Courts have many advantages over us in searching out the headsprings and foundations of the law, which must always give the decisions here greater weight. On one occasion this was made very obvious in the trial of a recent suit in equity, on appeal, before the Lord Chancellor and the Lords Justices, sitting as the full Court of Chancery Appeal, in the Lord Chancellor's room. A case was cited which had not been fully reported. It was the case of *The President of the United States v. The Executors of Smithson*, for the obtaining of the Smithsonian fund. The inquiry before the Court at the time was, in what name the United States might properly sue. It was contended, on the one side, and so held in Vice-Chancellor Wood's Court, that they could only sue in the name of some official party or personage, authorized to represent the interests of the Government, and to answer any cross-bill the other party might bring; while, on the part of the Government, it was very naturally insisted that they should be allowed to sue in the name given in the Constitution, and the only name by which they ever had sued in their own Courts. This suit was brought in that name and dismissed in the Vice-Chancellor's Court, because no personal party had been joined. The case alluded to was brought in for the purpose of showing that they had before sued in the English Courts of equity

in the name of the President of the United States. It became important, therefore, to show how far this case, for the recovery of the Smithson legacy, differed from the ordinary case of the Government suing for the recovery of its own property. The Court ordered the registrar to bring in the file, when it appeared that, by a special Act of Congress, the President had been authorized to sue for and recover this particular legacy, thus constituting him a special trustee to receive the same on behalf of the Government, and consequently to discharge the executor upon such receipt of the fund. This enabled the Court to perceive that it had no bearing whatever upon the general question, and thus virtually confirmed the impression and intimation of the Court of Appeal, that, as they expressed it, "the Government of the United States must be allowed to sue for their own property in their own name;" and this intimation has been since confirmed by the unanimous decision of the full Court of Chancery Appeal. The advantage of this ready opportunity of consulting the records of equity cases in the registrar's office, in order to supply any deficiencies in the reports, is often witnessed in hearings in equity in the English Courts. And there are many other traditional benefits resulting naturally from being upon the ground and having at command all the appliances of such ready access to records and documents, which can never be transferred into a distant country. This of itself must always render these localities of great interest to Americans.

And there are some other things one meets in the English Courts which naturally inspire admiration. The judges seem far more familiar with the leading members of the bar than is common in our country. Being in Court during the whole time of the delivery of the almost interminable judgment in the late case of *Slade* v. *Slade*, in the Exchequer, when the law and the fact both were, by agreement of parties, referred to the Court, we noticed billets passing between the Court and the counsel engaged in the cause in the most familiar manner, indicating the most perfect confidence and intimacy. And in all the arguments which we have listened to in the Courts, either of common law or equity, there is a constant conversation kept up from the bench, but in such a commonplace and kindly manner, that the counsel against whom suggestions and intimations are made, do not seem at all embarrassed by them. The wonder seems to be how counsel can continue such persevering arguments under such multiplied rebuffs as sometimes fall from the bench here. In one case, where the argument continued six or seven hours, there was a constant argument on the part of the bench against the decision of the Court below [it being a hearing on appeal]. But the constant and repeated intimations from the bench that it was impossible to maintain the decision of the Court below, did not seem in the least to daunt the courage of the counsel.

At the conclusion of his judgment in the case of *Slade* v. *Slade*, Baron Martin said he wished, on his own personal account alone, to enter his solemn protest against the practice of submitting matters of fact to the determination of the Court instead of the jury.—He believed nothing was more unsatisfactory than the trial of matters of fact by the judges. He believed the jury the only proper tribunal for the determination of matters of fact, and he must say that he believed one great reason why the decision of matters of fact by the jury was so satisfactory was, that they were not required to assign reasons for their decisions. He thought it not improbable that if jurymen were required to submit to the cross-examination of counsel, as to the grounds of their verdict, they would be quite as much puzzled to find satisfactory reasons for all their decisions as any of the witnesses in the present case.

It seemed that the amount of testimony in this case of *Slade* v. *Slade*, was quite fabulous, and the cost of procuring it almost monstrous, exceeding $150,000. It is true the determination of the suit involved an inquiry into the validity of a marriage celebrated in Lombardy, an Italian province of the Austrian Empire, more than forty years since, upon which depended the title to a baronetcy and large estates. And this incidentally involved in-

quiries into the civil and ecclesiastical law, both of Italy and Austria, to such an extent as to become, not only very difficult and perplexing, but almost impossible of any satisfactory determination. There was in consequence a resort to the testimony of legal experts, which was found, as usual, most unsatisfactory, there being about an equal number on either side, and each determined to vindicate the views of the party for which he had been called. This had led, in many instances, to a most extended cross-examination, in some instances extending over nearly twenty days, until in one case certainly, at the earnest request of the witness, an adjournment of the examination was had, in order to enable him to regain his health, which had been seriously impaired by the extended cross-examination. We did not suppose any new light was to be gathered from the report of these illustrations of the abuse of the duties of experts or of examiners of witnesses; but it seemed refreshing to find, that in Westminster Hall, in one of the most venerable of her ancient Courts, with her skilled and trained counsel, it was found impracticable to elicit from professional experts anything but one-sided opinions. We do not know whether there is any inherent difficulty in so selecting experts as to render them fair and impartial; but it appears that in England as well as in America, when it is allowed to be done by the parties, it is not easy to obtain any such result. That was the great difficulty in regard to the case of *Slade* v. *Slade*.

But to return to Baron Martin's protest against submitting matters of fact to the judges. He said his experience, which was now somewhat extended, convinced him that almost all the divided judgments which had been rendered in that Court arose on matters of fact or construction, and not upon matters of pure law, in regard to which the judges almost never differed. We could not but feel gratified to find so experienced and able a member of the English bench confirming our own opinion, which we had long entertained, but which we believe is not universal with the American bar. There seems to be a growing opinion with the American bar that the jury are not be relied upon as either fair or competent in the trial of matters of fact.—We believe that complaint, or the cause of it, lies far more at the door of the judges than is commonly supposed. If the judge is indifferent, and suffers the cause to glide along without much care how it is decided, or if he is so muddy in his own views or in the mode of expressing them that he cannot make himself understood by the jury, it is not improbable that the result of jury trials will become most unsatisfactory. But where the judge feels bound to master the cause and the testimony, and really sums up in a manner to make the jury understand the law and the facts fully, and also the application of each to the other, the jury will be able to reach, in the majority of cases, a satisfactory result. And a jury does relieve the judge from great responsibility, and one which it is difficult for any tribunal to sustain, where reasons must be assigned for every judgment.

There is so much testimony which is either factitious or exaggerated, that it is impossible to decide matters of fact wisely and justly without disregarding much of the formal testimony, in regard to which, there is no very obvious reason for its rejection, except the vague belief that there must be some mistake about it. But such a reason will not be likely to commend itself to the party who loses his cause in consequence of the rejection. Hence it has been said that courts of equity decide facts by counting the witnesses on either side, and that the Chancellor has no scales for weighing evidence. There will be some exceptions to these general rules, and some judges will possess an intuitive knowledge of facts, as well as law, and will find some mode of satisfying the parties with the results to which their intuition leads them.

There is another thing, which one can scarcely fail to admire in the English Courts. There is no appearance of haste; certainly not of hurry. Perhaps it is more apparent in passing from one Court to another, than anywhere else. In an American Court there seems to be a kind of horror or dread seizing upon the bench the moment one cause is coming to an end lest something else should be crowded in before the Court can reach the next cause on the calendar. Some motion or some question

seems to be the constant dread of the Court the moment there is a pause between two causes. It is not so much during the progress of the hearing, but the moment the final close is attained there is a rush for the next cause, so as to preclude all interruption. But nothing of that kind occurs here. This may be partly owing to some constitutional or habitual difference in the people of the two countries. For one cannot ride across the island of Great Britain in any direction, in an express railway train, and not observe a very marked difference in two particulars between this and our own country, in the stops and in the progress. The train starts on the moment, at the click of the bell marking its time; it runs with terrific speed to its next stopping place, and reaches it the very moment it is due. Every thing then is quiet; time enough for all changes, and everything is ready, and very likely one or more minutes to spare before the time arrives for departure. This is most refreshing. So different from the pauses in railway travelling in our own country sometimes, where there is scarcely time to get out of the train before it is off, as if life and death hung upon losing no time at stops. So in Court here. One cause is finished. Time is given to breathe; to pack up books and papers, and to get in place for taking another cause; and then, after everybody gets ready, quietly start off.

We are by no means sure that a good deal of this quiet passage from one cause to another is not attributable to the fact that no motions can be interposed except upon motion day, and then mostly at Chambers. The English judges attribute their relief from perplexing impediments and motions of every grade of perplexity to the fact of sessions at Chambers, where most of these motions are heard, and where they are attended by solicitors, and not in general by counsel.

And this brings us to dwell for a moment upon the different grades of the English bar, which are maintained with great punctilio.—The sergeants were long regarded as the highest rank of the profession. And now all the judges are made sergeants by special writ, before they can be sworn in as judges. But this is mere form. It is called taking the coif, and is regarded as a kind of degree or grade in the profession, which must be attained before they can be made judges. The order of sergeants was formerly much more numerous than at present, and they still compose a separate Inn, to which all the judges join themselves as soon as they become judges, and afterwards are not allowed to dine in the hall of their former Inn, except on state occasions, (as the Grand Dinner at the close of Trinity Term, which fell this year upon the 12th of June), when some fifty to one hundred benchers and invited guests sit down at the high table, at the end of Middle Temple Hall, and four or five hundred in other parts of that vast hall, and partake of a dinner which would do credit to the first noblemen in England.—After the removal of the cloth, the Master of the Temple, as the rector of the Temple Church is styled, returns thanks, and the benchers and honorary guests retire to the Bencher's Room for dessert, where, fruit and wine being served, the president first proposes the health of the Master of the Temple, who responds in a brief speech. Some other customary toasts follow, concluding with the health of the invited guests, who all respond, of course, in speeches of more or less brevity, as taste or inclination may suggest. On the present occasion, the predominant feeling seemed to be a desire for cordial good understanding with the American nation and people. Nothing but the entire reciprocation of that sentiment was offered in return. But the opportunity of reminding them of the fact that we claimed to be something more, and better, than a mere aggregation of separate sovereign states, held together by compact or treaty, was too inviting to be wholly disregarded. It was explained, in some degree, to that learned assembly of judges and benchers that a constitution which professed to create a paramount national sovereignty, and which in terms gave a national legislature and a national executive, and a national judiciary, having the power to enforce its own decrees, by its own police, and by the army and navy, and which had authority to define the limits of national jurisdiction, and to correct the decisions of all the State Courts bearing upon that point, must of necessity be paramount to all State Sovereignty; and that the result of

the late national conflict was only to establish the decrees of the national courts of last resort, declared years before by our great expounder of the National Constitution, John Marshall, and to enforce the eloquent expositions of our great national orator, and senator, Daniel Webster, to which men the grand result might be as fairly and as truly attributable as to the victories of our armies in the field; to all which these gentlemen responded with all earnestness and sincerity, and blessed the hour of our first and of our final independence. After having been present in that grand old hall of the benchers of three or more centuries standing, where the principles of English liberty had been cultivated and expressed, and having listened to the congratulations of the barristers and judges, and the encomiums of the elder brethren towards the younger members of the same great family of judicial teachers and benchers, one could not well believe in any natural rivalries or jealousies between the two people, except in the matter of each doing the best in its power to maintain and defend the grand and noble principles of English and American liberty. It was a grand and inspiring occasion, both to the English and the few representatives of the American bar.

But to return from this digression. The degree of Queen's Counsel has now practically superseded that of Sergeant. The first rank in the profession here next to the judges is Attorney and Solicitor-General. Then follow some other officials in the profession, such as the Queen's Advocate-General in Scotland, &c. Then come the Queen's Sergeants by special writ, not exceeding two or three; then Queen's Counsel, in the order of seniority of commission; then ordinary barristers. These latter act as junior counsel, and the Queen's Counsel as seniors. These all wear gowns and wigs; Queen's Counsel wearing silk, and the barristers stuff gowns. It is obvious from what one hears, that the English bar are becoming more or less weary of being dressed up in such artificial costume, and that they would be glad, at once, to drop the wig, and many of them the gown also. The most marked indication in this direction which we noticed was in regard to the academic dress worn by the students at Oxford. We met hundreds there with their gowns in their hands, as one would carry a coat on a warm day, or any other garment, which for any cause had become burdensome. That did not seem common anywhere except among the students.—The professors and tutors, the doctors and fellows, all wore the gown with dignified bearing and apparent self-satisfaction. But young men unconsciously catch the sense of the outward sentiment, and are proverbially sensitive to any feeling of ridicule in others towards either their conduct or their dress. This was the only possible explanation of the fact of finding so many, both within and without the college walls, with their academic gown in their hands, when the statutes of the university render it the indispensible badge to be worn at all times, in college hours. We believe, at Cambridge, there is some dispensation in that respect before dinner, and there you do not see the gown before that hour.—But you see it always at Oxford, either worn or carried, and, as it seemed to us, more commonly the latter! It is wonderful how this sense of the ridiculous will crowd out mere pageantry with sober and earnest men, when it once gets hold. We could not but notice how willingly the English judges put aside their wigs and gowns at the state dinner, upon entering the Benchers' Hall, where alone it was allowable. There is no place for the show of pageantry in dress equal to the Lord Mayor of London and the aldermen, when they appear on state occasions. Scarlet puts on its brightest hues and its broadest borders. Possibly in America we are in danger of disregarding forms too much. We have sometimes feared such a result. But one needs only to see how much of official duty here consists in mere ceremonial to feel reconciled to its entire abandonment.

THE BENCH AND BAR AT HONG KONG.

The "scenes" in court between judge and counsel on the Northern Circuit, upon which we commented a few weeks ago, undignified as they were, will yet bear favorable comparison with an incident which is reported by the Hong Kong papers received by the last mail. Mr. Pollard, Q. C., a barrister who has

practised in China for the last twenty years, was conducting a civil action in the Supreme Court at Hong Kong before the Hon. J. Smale, Chief Justice of the colony, and some reference being made to a Chinaman in the service of the plaintiffs in the case, the Chief Justice said that as the man was a servant of the plaintiffs they should have produced him, to which Mr. Pollard, the plaintiffs' counsel, replied, "You cannot produce him like a piece of paper; let him be subpœnaed in the usual way." The judge rejoined that if the witness was not produced, he would "take that into account" in his direction to the jury, upon which Mr. Pollard exclaimed, "I will put only those witnesses in the box which I, as counsel for the plaintiffs, may see fit. I may make a mistake, but I will not be dictated to or talked down by any one as to what I am to do." The Chief Justice, after declaring that the language which Mr. Pollard was in the habit of using was most disrespectful to the court, left the bench, but shortly afterwards returned and asked Mr. Pollard if he apologised. After a good deal of altercation between the judge and the barrister, the case was adjourned "indefinitely," his lordship declaring that he must have an apology from Mr. Pollard before the trial could go on. The litigants, however, preferred submitting their differences to arbitration to waiting for the restoration of a good understanding between judge and counsel. Two days afterwards (on June 29th) another "scene" took place, and the Chief Justice announced that he would give his decision on the matter on July 2, when he pronounced Mr. Pollard guilty of grave contempt of court, fined him two hundred dollars, and suspended him from practice for a fortnight, or until the fine was paid. His lordship read his judgment, which was of considerable length, from a manuscript, occasionally, however, interrupting the thread of his argument to remark upon the deportment of the offending counsel. Once Mr. Pollard smiled, on which the Chief Justice remarked, "this is very amusing, Mr. Pollard, but it is law." Shortly afterwards he suddenly exclaimed, "I am astonished at your staring, Mr. Pollard." "It was a stare of astonishment, my lord," remarked the learned counsel. "Stare on, Mr. Pollard," said the Chief Justice; "This a subject for staring." At another passage in his address his lordship paused, and looking at the contumacious barrister, said emphatically, "Mr. Pollard, your eyes are opened very wide." "And with cause, my lord," replied Mr. Pollard. His lordship pronounced Mr. Pollard to have been guilty of six contempts, which consisted briefly of one "pointed and curt answer," with an "apparent" purpose of raising a laugh against the Chief Justice; two "tones and manners," with "inferences;" one "imputation, the converse of what had occurred;" one avowal of a desire not to be "aggressive;" and one "tone" "inferring" that Mr. Pollard had more respect for the bench, that is, for the wooden chair, than he had for its occupant. At the conclusion of the Chief Justice's address, Mr. Pollard endeavored to speak, but his lordship declined to hear him, and advised him to appeal to the Privy Council, or bring the matter before the Benchers of the Inn of Court, of which he was a member. Popular sympathy in the colony appears to be strongly in favor of the offending barrister, and the fine imposed upon him has been raised by subscription in small sums and presented to him with an address.—*Pall-Mall Gazette.*

A BOOK ABOUT LAWYERS.*

The gentlemen of the bar who donned the blue in the late rebellion, will find many a precedent for their conduct in Mr. Jeaffreson's book. "As to the sarcasms on lawyers for not fighting," said Bulstrode Whitelock (afterwards Lord Keeper) in the House of Commons, "I deem that the gown does neither abate a man's courage or his wisdom, nor render him less capable of using a sword when the laws are silent. Witness the great services performed by Lieutenant General Jones and Commissary Ireton, and many other lawyers, who, putting off their gowns when the Parliament required it, have served stoutly and successfully as soldiers, and have undergone almost as much and as great hardships and dangers as the honorable gentlemen who so much undervalued them." This same Bulstrode Whitelock was captain in Hampden's regiment of horse. On

* Continued from page 83.

the side of the king fought Herbert, afterwards Lord Keeper to Charles II. in exile, and Hyde, afterwards Lord Clarendon. About the same time, Lord Keeper Littleton also drilled a corps of volunteers. John Somers, attorney-at-law, father of Lord Chancellor Somers, raised a troop of horse, at the head of which he rode as captain in Cromwell's army. During the civil war, a royalist rector, in the parish church near which his troop was quartered, preached violent sermons on Divine Right and Non-Resistance, and called down heaven's vengeance upon the rebels. Somers sent the rector a polite message, requesting him to preach more moderately; but this only served to increase his wrath. One Sunday, therefore, when the enemy was in full action, the captain took aim and sent a bullet through the sounding-board over the parson's head, and subsequently explained, that each repetition of denunciation would produce a similar interruption; and further, that on each successive occasion, for pistol practice, the ball would strike a little lower. This "military despotism" soon put a stop to political sermons.

Chief Justice Hale, in his hot youth, burned with military ardor, and sought to fight under the Prince of Orange in the Low Countries. Though he was persuaded not to go, he sang to his expostulating brothers of the law,—

> Tell us not of issue male,
> Of simple fee, and special tale,
> Of feoffments, judgments, bills of sale,
> And leases!
> Can you discourse of hand grenadoes,
> Of sally ports and ambuscadoes,
> Of counterscarps and palisadoes
> And trenches?"

In the next century, Erskine commanded a volunteer company of lawyers of Temple Bar, christened by Sheridan with the sobriquet of "The Devil's Own." The rival corps was composed of Lincoln's Inn men, and nicknamed by the populace "The Devil's Invincibles." Although Erskine had been a lieutenant in the army, and used to eat his obligatory law dinners in his scarlet regimentals, he seems to have forgotten the Casey of the period, for Lord Campbell says, "I did once, and only once, see him putting his men through their manœuvres, on a summer's evening in the Temple Gardens; and I well recollect that he gave the word of command from a paper which he held before him, and in which I conjectured that his 'instructions' were written out, as in a brief." Eldon and Ellenborough were in the rival corps,—"The Devil's Invincibles,"—but both, unhappily, in the awkward squad. Lord Eldon used to say, "I think Ellenborough was more awkward than I was; but others thought it was difficult to determine which of us was the worst." This corps had attorneys in its ranks, and it was said of it that when Lieut-Colonel Cox, the Master in Chancery, who commanded it, gave the word "Charge," two thirds of its rank and file took out their note books and wrote down 6s. 8d. As a counterpart of this story should be told one of the volunteer company of lawyers which was raised a few years since, during the apprehension of the French invasion. It is said that when the drill-master gave the order "About face," not a man of these logical patriots stirred, but that they all stood still, and cried, "Why?" Certainly, these learned gentlemen cannot be said to have felt with the six hundred,—

> "Their's not to make reply,
> Their's not to reason why,
> Their's but to do and die."

Naturally, no English book of the present day, giving any account of social life, would be complete without some reference to that noble animal, the horse. So the author has introduced some five chapters about lawyers on horseback. He dwells with fond regret on the early days, when the law was forced to have more dependence on the saddle, and less on the express train; and notices, with evident admiration, the hunting lawyers of the present day. He extols, too, with vivid admiration, how "crimson gold, burnished steel, and floating ancient, gladdened the eye," and of the "blare of trumpets, rattle of armor, tramp of iron, neighing of horses, and joyous hum of riders," in the circuit under the Plantagenets. Without any hope for a revival of the floating ancient, or blare of

trumpets, the wish may well be expressed, that our profession in America were obliged to have more familiarity with horses than essays on warranty suffice to give. It is a notorious fact that the health of a large number of our leading advocates is broken down by overwork, and by a neglect of out-of-door exercise, of which that in the saddle is the best; while in England, the large number of their most distinguished lawyers, who have, without doubt, done an equal amount of work, and have far exceeded their threescore years and ten, is a striking proof that the English habits in this regard, are far better than our own.

In the 17th century, it would seem that some knowledge of horsemanship was necessary to all lawyers. Samuel Pepys enters in his diary, on October 23, 1660: "I met the Lord Chancellor and all the Judges riding on horseback, and going to Westminster Hall, it being the first day of the term." He also records how Sergeant Glynne, an eminent lawyer, came to grief at the coronation of Charles II., "whose horse fell upon him yesterday, and is like to kill him." Later than this, the barristers rode their circuits in the saddle, while the judges were carried in their private carriages. Lord Kenyon, when a young man, appeared on a small Welsh pony from his native hills. Erskine, too, rode a pony; and Thurlow's ingenious method of hiring a horse without paying for him, has already been related. In those days, there was peril not only from highwaymen, but from flood and field. An amusing story is told of Eldon travelling the northern circuit, which is thoroughly Scotch in its literal humor. The lawyer was about to cross some dangerous sands, contrary to the advice of his landlord. "Danger, danger," he exclaimed impatiently; "have you ever *lost* anybody there?" "Nae, sir," answered mine host, slowly, "naebody has been *lost* on the sands: the puir bodies have a' been found at low water." In spite of such dangers, all historians of lawyers in England of former days are wont to extol the pleasures of the circuit, with its feasting and balls and circuit mess,—when Scott was Attorney-General of the Circuit Grand Court, and used to prosecute offenders "against the peace of our lord the junior;" when Campbell opened the court with a fire-shovel in his hand as an emblem of office; and when an eminent lawyer was duly indicted and fined a dozen of wine, for the heinous crime of being "the best special pleader" in England. Pepper Arden (afterwards Lord Alvanley) was indicted for having said that "no man would be such a fool as to go to a lawyer for advice, who knew how to get on without it." The archives of the court record:—"In this he was considered as doubly culpable: in the first place, as having offended against the laws of Almighty God, by his profane cursing, for which, however, he made a very sufficient atonement by paying a bottle of claret; and secondly, as having made use of an expression, which, if it should become a prevailing opinion, might have the most alarming consequences to the profession, and was therefore deservedly considered in a far more hideous light. For the last offence he was fined three bottles. Pd."

While the barristers were thus in the saddle on the circuit, they had doubtless left their wives in those dusty, dirty inns of Court which are now never graced by women's presence; unless, indeed, when a visit is made by a pretty girl, such as Thackeray records, with

"A smile on her face, and a rose in her hair,
And she sat there and bloomed in my cane-bottomed chair."

But in those days young couples began housekeeping in chambers where they had six rooms at their disposal, including "a trim, compact little kitchen." "Frequently, says Mr. Jeaffreson, "the lawyer over his papers was disturbed by the uproar of his heir in the adjoining room." The admirer of Dickens will recall Tommy Traddles, with his "dearest girl in the world," and her five sisters and "the beauty" playing in his chambers. Of another sort was Sarah, Duchess of Marlborough, who came to take advice of Mansfield when a young man. The lawyer was supping out, and his clerk told him, "I could not make out who she was, for she would not tell her name; but she swore so dreadfully, that I am sure she must be a lady of quality."

The subject of fees cannot but be an agreeable one to any lover of his profession, however disinterested. Going back as far as the reign of Richard II., it is found that lawyers were so unprofessional as to go to the clients' houses and give them advice. William de Beauchamp, claiming the earldom of Pembroke, "invited," says Dugdale, "his learned counsel to his house in Paternoster Row; amongst whom were Robert Charlton (then a judge), William Pinchbek, William Brauchesly, and John Catesby (all learned lawyers); and, after dinner, coming out of his chapel in an angry mood, threw to each of them a piece of gold, and said, 'Sirs, I desire you forthwith to tell me whether I have any right or title to Hastings' lordship and lands.' Whereupon Pinchbek stood up (the rest being silent, fearing that he suspected them), and said, 'No man here nor in England dare say that you have any right in them, except Hastings do quit his claim therein; and should he do it, being now under age, it would be of no validitie.'" The scene is full of character: the counsel waiting; the Norman baron coming out after dinner, and flinging them each their fee, as to a dog; the haughtiness of the language,—"I desire you forthwith to tell me," and spite of all this, the manly independence of the lawyer's opinion. At this time, and for many reigns later, it was customary for clients to provide food and drink for their counsel. Mr. Foss gives the following list of items, taken from a bill of costs made in the reign of Edward IV.:—

For a breakfast at Westminster, spent there on our counsel, ...1s 6d
To another time for boat hire in and out, and a breakfast for two days, 1s 6d

In like manner, the accountant of St. Margaret's, Westminster, entered in the parish books, "Also, paid to Roger Fylpott, learned in the law, for his counsel given, 3s. 8d., with 4d. for his dinner." Here are some items in an old record of disbursements made by the corporation of Lyme Regis:—

Paid for wine carried with us to Mr. Poulett.....3s 6d
Wine and sugar given to Mr. Poulett 3s 4d
Horse-hire, for the sergeant to ride to Mr. Walrond, of Bovey, and for a loaf of sugar, and for conserves given there to Mr. Poppel....£1 1s 0d
Wine and sugar given to Judge Anderson 3s 4d
A bottle and sugar given to Mr. Gibbs £3 3s 0d

The value of money in the sixteenth century is so different from the present, that it is difficult to make a comparison of the fees of that period with the present. Sir Thomas More, in the reign of Henry VIII., "gained, without grief, not so little as £400 by the year." Lord Campbell regards this as "an income which, considering the relative profits of the bar, and the value of money, probably indicated as high a station as £10,000 a year at the present day. This is but relative, however, and compares but poorly with Francis Bacon's income, which, when he was Attorney-General, not very many years after, amounted to £6000, and was a royal income for those times. Coke made a still larger income during his tenure of the same office, the fees and official practice amounting to no less a sum than £7000 a year.* These were very ex-

* "The salary of Attorney-General," says Lord Campbell, in a note to the "Chief-Justices," was £81 6s. 8d.; but his official emoluments amounted to £7,000 a year. His private practice, too, must have been very profitable." It is extremely difficult to say to what sum of our present money this is equivalent. Coke was Attorney-General from 1594 to 1606. The importation of American gold began to affect the value of silver in England in 1570, according to Adam Smith, and ceased in 1640. During this time, this value sank in the relation of one to four. The value of silver remained about the same until the present century, when a further decrease of fifty per cent. up to the present day may be predicated of it. Coke's term of office occurring just in the middle of the period before mentioned, it may be fair to take the average, and to consider it as worth double what it would have been worth in 1640, or £14,000. Add an increase of fifty per cent., and it becomes £21,000 as the actual equivalent in money. But its comparative equivalent is far larger. Macaulay, writing of the period of James II., nearly a century later, gives the income of the richest peer in England, the Duke of Ormond, as £22,000, and the average income of a peer as £3,000. "A thousand a year," he says, "was thought a large revenue for a barrister. £2,000 a year was hardly to be made in the King's Bench, except by the Crown lawyers. It is evident, therefore, that an official man would have been well paid if he had received a fourth or fifth part of what would now be an adequate stipend." (History of England, vol. 1, c. III.) Further on (vol. IV.), he rates £80,000 so late as the time of William III, at "more than £800,000 in our time when compared with the value of estates." To double Coke's income, even with the fifty per cent already added, cannot therefore be excessive, in order to arrive at its relative value. This makes it £42,000 in our currency of to-day. This was, it will be remembered, exclusive of his private practice, and yet is to be regarded as an extremely moderate estimate.

traordinary incomes; for, in the reign of Charles II., Somers was thought a fortunate and rising man, and made £700. Pepys, as usual, gives some valuable information. Being about to go before the House of Commons to argue an Admiralty cause, he records, "To comfort myself, did go to the 'Dog' and drink half a pint of mulled sack, and in the hall did drink a dram of brandy at Mrs. Hewlett's; and with the warmth of this did find myself in better order as to courage, truly." He acquitted himself so well with this Dutch courage, that a "gentleman said I could not get less than £1000 a year, if I would put on a gown and plead at the Chancery bar." These incomes, though good, were not the highest; for there is preserved a fee-book of Sir Francis Winnington, showing that in 1673 he received £3,371; in 1674, £3,560; and in 1675, when he was Solicitor-General, £4,066. Roger North records of his brother Francis (afterwards Lord-Keeper Guildford), that his income when Attorney-General was £7000. Doubtless these enormous incomes were not gained by the chief law-officers of the Stuarts without the doing of much dirty work. The lawyers of this period were wont to keep the money paid them in their skull-caps; and Roger North says of his brother, "His skull-caps, which he wore when he had leisure to observe his constitution, as I touched before, were now destined to lie in a drawer to receive the money that came in by fees. One had the gold, another the crowns and half-crowns, and another the smaller money." It appears, too, from "Hudibras," that this money was sometimes kept for show on the table:—

"To this brave man the knight repairs
For counsel in his law affairs,
And found him mounted in a pew,
With books and money placed for show,
Like nest-eggs, to make clients lay,
And for his false opinion pay."

Pemberton's fee for defending the "Seven Bishops" shows that legitimate business at this time gave but slight rewards. His retaining fee was five guineas; he received twenty guineas with his brief, and three for a consultation.

In the eighteenth century, Charles Yorke's (afterwards Lord Hardwicke) receipts afford an excellent example of the progress of a rising lawyer. They were, for the first years practice, £121: second, £201; third and fourth, between £300 and £400 per annum; fifth, £700; sixth, £800; seventh, £1000; ninth, £1600; tenth, £2,500. This gradually increased, until, during the last year of his tenure of the office of Attorney-General, he received £7,322. Lord Eldon used to say about himself, that he agreed with his wife, on beginning practice, that what he got the first eleven months should be his, and what in the twelfth hers; and that for the first eleven months he made not one shilling, and in the twelfth half a guinea. Out of this "eighteenpence went for charity, and Bessy got nine shillings." Whether this was so, or merely told to make a good story, it appears from his fee-book that, in 1786, ten years after he began practice, he made £6,833 7s., and that in 1796 his receipts were £12,140 15s 8d.

It seems, from the extract from Dugdale already given, that one of William de Beauchamp's learned counsel was a judge. From this and other sources it appears that judges were not precluded in ancient times from giving opinions to, and taking money from, private clients; though they were forbidden to take gold or silver from any person having "plea or process hanging before them." Indeed, down to the time of James I., and somewhat later, the salaries paid to judges were merely retaining fees, and their chief remuneration consisted of a large number of smaller fees. They were forbidden to accept *presents* from actual suitors, but no suitor could obtain a hearing from any one of them until he had paid into Court certain fees, of which the fattest was a sum of money for the judge's personal use.

That the salaries of the judges in the time of Elizabeth were small, in comparison with the sums which they received as presents and fees, may be seen from the Table of Judges' Allowance, of which the following is an extract:—

THE LORD CHEEFE JUSTICE OF ENGLAND.

	£	s.	d.
Fee, Reward, and Robes	208	6	8
Wyne, 2 tunnes at £5 .	10	0	0
Allowance for being justice of assize . .	20	0	8

It is unnecessary to say that this system of presents, countenanced and practised even by Queen Elizabeth, gave occasion to great corruption. In it is concerned the whole question of the bribery of Lord Bacon, on which it would be useless here to enter. The very handsome salaries, as well as retiring pensions, paid to judicial officers in England, has long since put a stop to this system.*

In a review of the ancient chronicles of England, it is apparent that the law university was a much more conspicuous feature of London than it has been in more modern generations, and that its members exercised a much greater influence than at present,—circumstances which render its history not only more interesting, but important. "To appreciate," says Mr. Jeaffreson, "the great influence of the law university in the fifteenth and sixteenth centuries, it must be borne in mind that the gownsmen (judges, sergeants, ancients, readers, apprentices, and students being comprised in this term) maintained to the townsmen almost as large a proportion as the gownsmen of Oxford or Cambridge maintain at the present time to the townsmen of those learned places." All that the "season" is to modern London the "term" was to old London, from the accession of Henry VIII. to the death of George II.; and many of the existing commercial and fashionable arrangements of a London "season" may be traced to the old word "term." Besides those students who went to the Inns to study, there were a large number who merely lived there for the sake of the position and convenience it gave them for enjoying the pleasures of the metropolis. In the fifteenth century the students numbered two thousand. In Elizabeth's time the number fluctuated between one and two thousand. In Charles II.'s reign, there were about fifteen hundred. Many of these young men were among the gayest gallants of their periods. Under the Court, they set the fashion in dress, slang, amusement, and vice. They performed plays and masques, or were critics of the plays acted upon the stage; and no actor could achieve popularity if the students of the Temple or the Inns conspired to laugh him down. Mr Jeaffreson relates with much gusto the pomps and processions, the masques, amateur theatricals, the jests, the drinking bouts and revels, in which these young men took part under the Stuarts. We shake our heads, in these sober days of the nineteenth century, at such routs; but it was an age of debauchery, and even the veterans of the bar exceeded the limits of strict propriety. Chief Justice Saunders was a hard drinker, taking nips of brandy (so says Roger North) with his breakfast, and seldom appearing in public "without a pot of ale at his nose, or near him," which was even served in Court. Evelyn tells how, at Mrs. Castle's wedding, "Sir George Jeffreys, newly made Lord Chief Justice of England, with Mr. Justice Withings, danced with the bride, and were exceeding merry." "Where," asked Lord Chief Justice Holt (if the story is true) of a criminal just sentenced to death for horse-stealing, whom he recognized as a boon-companion in the days of his hot youth—"where are all our friends of the Devil's Tavern?" "Ah, my Lord!" said the man, "they are all hanged but myself and your lordship." It is to be remembered, that in those times are to be found the foulest blots on the administration of justice which our common law has ever known. Much later than this, that sound old port wine, which used to be the pride of Britain, caused other high legal functionaries to perform curious freaks. "Returning," says Sir Nathaniel Wraxall, "by way of frolic, very late at night, on horseback, to Wimbledon from Addiscombe, the seat of Mr. Jenkinson, near Croydon, where the party dined, Lord Thurlow, the Chancellor, Pitt, and Dundas found the turnpike gate, situated between Tooting and Streatham, thrown open. Being elevated above their usual prudence, and having no servant near them, they passed through the

	Annual Salary.	An. Pension on retirement.
* Lord Chancellor of England	£10,000	£5,000
Lord Chief-Justice of Queen's Bench	8,000	3,750
Lord Chief-Justice of Common Pleas	7,000	3,750
Master of the Rolls	6,000	3,750
Lords Justices (each)	6,000	3,750
Vice-Chancellor of England	5,000	3,500
Chief Baron of the Exchequer	7,000	3,750
Each Puisne Judge or Baron	5,000	3,500

gate at a brisk pace, without stopping to pay the toll, regardless of the remonstrances and threats of the turnpikeman, who, running after them, and believing them some highwaymen who had recently committed some depredations on the road, discharged the contents of his blunderbuss at their backs. Happily, he did no injury." Lord Eldon was a great lover of port wine. He and his brother William, afterwards Lord Stowell, used to dine together, on the first day of each term, in a tavern near the Temple. Mr. Jeaffreson tells a story of Lord Stowell's recalling, when an old man, these terminal dinners to his son-in-law, Lord Sidmouth. The latter observed, "You drank some wine together, I dare say?" Lord Stowell, modestly: "Yes, we drank some wine." Son-in-law, inquisitively: "Two bottles?" Lord Stowell, quickly putting away the imputation of such abstemiousness, "More than that." Son-in-law, smiling, "What! three bottles?" Lord Stowell, "More." Son-in-law, opening his eyes with astonishment, "By Jove, Sir, you don't mean to say that you took four bottles?" Lord Stowell, beginning to feel ashamed of himself: "More; I mean to say we had more. Now don't ask any more questions."

The following amusing tale of virtuous indignation may in this connection be repeated. Alexander Wedderburn's (Lord Loughborough) forte was never virtue. Though not a noted gambler, he was a constant frequenter of Brookes's and White's, and was well known to the world to be versed in all the mysteries of gambling and dicing. Sitting one day at *nisi prius*, he exclaimed with great warmth, "Do not swear the jury in this cause, but let it be struck out of the paper. I will not try it. The administration of justice is insulted by the proposal that I should try it. To my astonishment, I find the action is brought on a wager as to the mode of playing an illegal, disreputable, and mischievous game called 'hazard'—whether, allowing seven to be the main and eleven to be the nick to seven, there are more ways than six of nicking seven on the dice? Courts of justice are constituted to try rights and to redress injuries, not to solve the problems of gamesters. The gentlemen of the jury and I may have *heard* of 'hazard' as a mode of dicing by which sharpers win and young men of family and fortune are ruined; but what do any of us know of "seven being the main," or "eleven the nick to seven?" Do we come here to be instructed in this lore? and are the unusual crowds (drawn hither, I suppose, by the novelty of the unexpected entertainment) to take a lesson with us in these unholy mysteries, which they are to practise in the evening in the low gaming houses in St James street—pithily called by a name which should inspire a salutary terror of entering them? Again, I say, let the cause be struck out of the paper. Move the Court, if you please, that it may be restored; and if my brethren think I do wrong in the course I now take, I hope that one of them will officiate for me here, and save me from the degradation of trying 'whether there be more than six ways of nicking seven on the dice, allowing seven to be the main, and eleven to be a nick to seven,'—*a question, after all, admitting of no doubt, and capable of mathematical demonstration.*"

Speaking of cards, the eminent puisne Judge, Mr. Justice Buller, although he did not entertain progressive ideas on the law of libel, and gave evidence of former good character a curious turn against prisoners, was certainly right in his view of whist, that best of all games for a lawyer; for he used to say that his idea of heaven was to sit at *nisi prius* all day, and play whist all night. Had he been living, he would have appreciated an excellent repartee of Lord Chelmsford's. As Frederick Thesiger, he was engaged in the conduct of a cause, and objected to the irregularity of the opposing counsel, who, in examining his witnesses, repeatedly put leading questions. "I have a right," maintained the counsel doggedly, "to deal with my witnesses as I please." "To that I do not object," retorted Sir Frederick. "You may *deal* as you like, but you shan't *lead*.

The subject of the non-professional culture possessed by lawyers presents an interesting study. In older times, a large proportion of the best students from universities entered, what was then pre-eminently the profession of letters,—the Church. During the

last fifty years, however, the bar has so far invaded on the province of the clergy, as to occasion no little alarm to the ecclesiastics. "The number of men," says Mr. Jeaffreson, "now upon the books of Lincoln's Inn, who have won the 'high honors' of Oxford and Cambridge, is a suggestive fact." A list compiled from the last volumes of Foss's "Judges of England," is given, containing eighty-two names of the most distinguished judges of the last three reigns, some of whom are still living. Of these, it is stated that thirty-two received no education at Oxford, Cambridge, Edinburgh or Dublin; one was educated at Edinburgh, four belong to Dublin, eleven were trained at Oxford; and thirty-four came from Cambridge, twenty-three of these being from a single college,—that of Trinity, Cambridge, which can fairly boast of being, above all others, the nursery of English lawyers. Of the lawyers thus educated, among those who have taken very high honors, may be mentioned Lord Tenterden, of Corpus Christi College, Oxford, winner of the only two honors then open to competition,—the Chancellor's Medals for Latin and English Composition; Lord Langdale, of Caius College, Cambridge, senior wrangler, and senior Smith's prizeman; Sir J. Taylor Coleridge, Corpus Christi College, Oxford, first classman, winner of three Chancellor's prizes; Lord Lyndhurst, Fellow of Trinity College, Cambridge, second wrangler, Smith's prizeman; and Sir Edward Hall Alderson, Caius College, Cambridge, senior wrangler, Smith's prizeman, senior medalist. It was the latter whose classical ears were shocked, when Baron of the Exchequer, by the application of counsel for a *nolle prosequi*. "Stop, Sir," he said, "consider that this is the last day of the term, and don't make things unnecessarily long." A fellow story to this, of the late Lord Justice Knight Bruce, properly finds its place here. A barrister, lately called, who had been a double first classman at his university, was making a long and tedious argument before him, and quoted the maxim, "*Expressio unius est exclusio alterius*," giving the *i* in *unius* short. The Lord Justice, arousing himself from a sort of half slumber, said, "*Unius*, (*i* long) Mr. ——; *unius*. We always pronounced it *unius* at school."—"Oh yes, my lord!" replied Mr. ——; "but some of the poets make it short, for the sake of the metre."—You forget, Mr. ——," said the judge, "we are *prosing* here." In an anecdote told of Lord Campbell, the advantage was on the side of the counsel. In an action brought to recover for damages done to a carriage, one of the counsel repeatedly called the vehicle in question, a "broug-ham," pronouncing both syllables of the word *brougham*. Whereupon Lord Campbell, with considerable pomposity, observed, "*Broom*, is the more usual pronunciation: a carriage of the kind you mean is generally, and not incorrectly, called a 'broom.' That pronunciation is open to no grave objection, and it has the great advantage of saving the time consumed by uttering an extra syllable." Half-an-hour later, in the same trial, Lord Campbell, alluding to a decision given in a similar action, said: "In that case, the carriage which had sustained injury was an *omnibus*—"—"Pardon me, my lord," interrupted the counsel, with such promptitude that his lordship was startled into silence; "a carriage of the kind to which you draw attention is usually termed a *buss*. That pronunciation is open to no grave objection, and it has the great advantage of saving the time consumed by uttering *two* extra syllables." The interruption was naturally followed by a roar of laughter, in which Lord Campbell joined more heartily than any one else.

As an offset to the nice ear of these judges, the Latinity of Lord Kenyon may be noticed. "*Modus in rebus*," his lordship would remark if a trial was too long: "there must be an end of things." When a case of glaring fraud was brought before him, he exclaimed, The dishonesty is manifest; in the words of an old Latin sage, apparently '*Latet anguis in herba.*'"—Again he said, with a face of great wisdom, "In *advancing* to a conclusion on this subject, I am resolved *stare supra antiquas vias*." Coleridge, in his "Table Talk," is authority for the story that, in a trial for blasphemy, he said to the jury, "Above all, gentlemen, need I name to you the Emperor Julian who was so celebrated for the practice of every Christian virtue, that he was called *Julian the Apostle*." His knowledge of the poets was

certainly peculiar. "The allegation," he once exclaimed indignantly during the examination of an unsatisfactory witness, "is as far from truth, as old Booterium from the Northern Main,—a line I have heard or met with, God knows *where*;" and there is something unspeakably funny in the metaphor addressed by him to a prisoner convicted of stealing a large quantity of wine belonging to his employer, that "he had feathered his nest with his master's bottles," and in the magnificent bathos of this touching peroration: "Prisoner at the bar, a bountiful Creator endowed you with a powerful frame, a comely appearance, and more than ordinary intelligence; and through the care of your respectable parents you received at the outset of life, an excellent education; *instead of which you have persisted in going about the country stealing ducks.*"

RECENT ENGLISH DECISIONS.

Ship and Shipping — Charterparty—Bill of Lading—Liability of Owner of chartered Ship —Principal and Agent—Master and Shipowner — Carrier — Liability for stowage of Goods—Stevedore.—A ship was chartered for a voyage from Oporto to the United Kingdom, to load from the factors of the affreighter a full cargo of wine or other merchandise, at 18*s.* per ton; the captain to sign bills of lading at any rate of freight without prejudice to the charter; the ship to be addressed to charterer's agent at Oporto on usual terms. The ship was accordingly consigned to the charterer's agents at Oporto, and was put up by them as a general ship, without any intimation that she was under charter; the plaintiff shipped some casks of wine, and received bills of lading in the common form signed by the master.—The wine was stowed by a stevedore appointed by the charterer's agents and paid by them, the money being ultimately repaid them by the master. The wine having leaked from improper stowage:—

Held, that as the charter did not amount to a demise of the ship, and the owners remained in possession by their servants, the master and crew, the shipper was entitled to look to the owners as responsible for the safe carriage of the wine: inasmuch as he had delivered it to be carried in the ship in ignorance that she was chartered, and had dealt with the master, who was still the owner's master, as clothed with the ordinary authority of a master to receive goods and give bills of lading by which his owners would be bound.

Held, also, that the employment of the stevedore made no difference, at all events as regarded the shipper, as he was no party to the employment, and had a right to look to the owners for the safe stowage of the goods, as part of the carrier's duty, in the absence of any special agreement.—*Sandeman* v. *Scurr*, Law Rep. 2 Q. B. 86.

Principal and Agent — Foreign Market—Exigencies of Market—Order to purchase, Substantial compliance with—Money paid.—The defendant, who resided in Liverpool, gave to the plaintiffs, who carried on business at Pernambuco, an order to purchase 100 bales of cotton of a specified quality, on the following terms: "I beg to confirm my letter of the 23rd of February, and hope you will have executed fully all the cotton ordered, and consider it still in force. If executed, please regard this as a new order for 100 more." The plaintiffs acting on this order, purchased in the market, and paid for, ninety-four bales of the specified cotton. No direct evidence was given as to the then state of the Pernambuco market; but the circumstances of the case rendered it reasonable to infer that the plaintiffs, in purchasing ninety-four bales, had done all that was practicable. The defendant declined to pay for these bales on the ground that his order had been inadequately performed:—*Held*, that the order must be construed with reference to the state of market for which it had been given, and that it had been substantially complied with.—*Ireland* v. *Livingston*, Law Rep. 2 Q. B. 99.

Action — Staying Proceedings till Costs of former Action paid. — Where a plaintiff having failed in an action brings a second action for substantially the same cause, unless the plaintiff satisfy the Court that a real probable cause of action exists, the proceeding is so *primâ facie* vexatious and harassing that the Court will stay the second action until the costs of the former action have been paid.—*Cobbett* v. *Warner*, Law Rep. 2 Q. B. 108.

LAW JOURNAL REPORTS.

COURT OF QUEEN'S BENCH.

APPEAL SIDE.

June 1,19,1867.

THE QUEEN *v.* JOHN PAXTON.

Reserved Case—Extradition Treaty—Forgery.

A fugitive from Canada was surrendered to the United States authorities on a charge of forgery: that being one of the offences enumerated in the Treaty. The prisoner was put on his trial and convicted on an indictment for feloniously uttering a forged promissory note for the payment of money. The case being reserved on an objection that the prisoner could not be tried for any offence but that for which he had been extradited:—

Held: That the charge of forgery included the lesser charge, and conviction maintained.

This was a case reserved from the Court of Queen's Bench, Crown side, by *Drummond, J.*, under the following circumstances:—

At the term of Queen's Bench, Crown Side, on the 24th September, 1866, the prisoner, John Paxton, was indicted for feloniously uttering a forged promissory note for the payment of money. On his arraignment, on the 10th of October, a special plea was filed by his counsel, setting out that the prisoner had been extradited from the United States, for a different crime, viz: forgery, and that he could not be called upon to answer any other charge.

To this plea there was a demurrer on the part of the Crown, the points urged being as follows:—

1st. That the plea does not allege any matter which by law constitutes any valid plea to the jurisdiction of the Court, or in abatement to the indictment, the offence charged being alleged to have been committed within the jurisdiction of the Court.

2nd. That the matters alleged in the plea did not constitute any legal ground for not answering the indictment, but could only be taken cognizance of by the Executive authority as involving a question of international policy.

3rd. That the crime charged against the prisoner was one of the offences included within the provisions of the Treaty.

4th. That the plea omits to specify the particular charge of forgery, and does not show affirmatively that the offence was not connected with the promissory note, upon which the indictment was framed.

5th. That the crime of forgery includes that of which the prisoner is accused.

At the March term, 1867, the demurrer was maintained and the plea rejected, the question of law raised by it being reserved.

The prisoner then pleaded not guilty, and the trial having proceeded, a verdict of *guilty* was rendered.

Sentence was deferred till the opinion of the Court had been obtained upon the points of law raised by the plea.

Quebec, June 19, 1867.

Judgment was rendered by DUVAL, C. J., CARON, DRUMMOND, and BADGLEY, JJ., maintaining the verdict.

E. Carter, Q. C., for the private prosecution.

B. Devlin, for the prisoner.

June 8, 1867.

MULLIN, APPELLANT, and ARCHAMBAULT, RESPONDENT.

Practice—Motion for leave to appeal.

An application was made on the last day of the Appeal term, for leave to appeal to the Privy Council from a judgment rendered five days previously:—

Held, that the motion came too late.

Mr. Dorion, Q. C., counsel for the Appellant, moved for leave to appeal to the Privy Council from the judgment rendered June 3rd. (*Ante*, p. 90).

DUVAL, C. J. I will not receive your motion on the last day of term. The case would thereby be locked up till September next, and the end attained.

Mr. Dorion. Notice has been given. Time was required to communicate with our client before making this motion.

DUVAL, C. J. The party should have been in Court when judgment was rendered. If we were to receive this application, we must re-

ceive all similar applications, and thus parties would obtain indirectly what they cannot obtain directly. Make your motion on the 1st September. We refuse a rule, because a rule would suspend proceedings in the meantime.

Laflamme, Q. C., counsel for the Respondent, represented that delay would be especially prejudicial in this case, the action being one in ejectment: further, that the amount of rent in question did not admit of an appeal.

Mr. Dorion. It is not a question of rent, but of damage caused to my client.

DUVAL, C. J. I entertain no doubt about it at all; it is not a question of property, but a question of lease or no lease.

Application rejected.

June 8, 1867.

EX PARTE FOURQUIN.

Practice—Interdiction—Curator.

Held, that the curator to a person voluntarily interdicted, must be brought into the proceedings to obtain *contrainte* for *folle enchère*, though the *folle enchère* was made before interdiction.

Fourquin, the prisoner, being detained in prison at Sorel, his counsel applied in the first instance for a writ of *habeas corpus*. The circumstances set out in the petition were, that Fourquin had been subjected to contrainte for *folle enchere*. Subsequently to the *folle enchere*, but before proceedings had been taken to obtain *contrainte*, the prisoner was placed under voluntary interdiction, and one Parent was appointed his curator. In the proceedings taken to obtain *contrainte* the curator had not been brought in.

An objection was raised that there was nothing to show that the prisoner had been interdicted. M. Girouard, counsel for the prisoner, contended that this was properly established by affidavit, and cited an English case in which the fact of the prisoner being a clergyman and exempt from imprisonment, had been established by affidavit in an application similar to this.

DUVAL, C. J. The curator should have been brought into the case. The Court cannot grant a writ of *habeas corpus*, but the judgment is that the writ of *contrainte* was illegally issued, and ordering that the prisoner be discharged, if there be nothing else against him.

DRUMMOND, BADGLEY, and MONDELET, JJ., concurred.

D. Girouard, for the Petitioner.

June 4, 1867.

MORRISON ET AL, APPELLANTS; and DAMBOURGES ET AL, RESPONDENTS.

Practice—Copy of Writ of Appeal.

Held, that the attorney for the appellant may certify the copy of a writ of appeal.

A motion was made in this case, and also in two others, (Charlebois *v.* Bertrand, and Boucher *et al*, *v.* Duhaut,) that the appeal be dismissed, because the writ was not signed by the clerk of Appeals or his deputy, but was certified to be a true copy by the appellants' attorneys.

MONDELET, J. The writ is properly signed, and the motion must be rejected.

BADGLEY, J. The practice of attorneys in certifying copies of writs has received the sanction of the Court during the last half century, and cannot be now overturned.

AYLWIN, J. There are but nine days in which the business of this Court must be transacted. Of these, two are frequently Sundays, and another is sometimes a holyday, thus occasionally leaving only six days for business.—The Court should open at ten a.m., but it is more often eleven before business is fairly commenced, and the moment four o'clock comes, the judges leave. Besides all this, in accordance with some American custom, it is now decided that there shall be a recess, and thus another three-quarters of an hour is lost. Then again, the Court has now to dispose of reserved cases, and other Crown business, which has precedence over all other business, and usually occupies three or four days.—Yesterday, the motion in the present case, to grant which would be to overturn the invariable practice during the forty years which have elapsed since I commenced my career, was argued during two whole hours, and the Court was treated to a *luxe d'erudition* on a matter established beyond all question. How

under these circumstances is the business of the Court to be transacted? I am prepared now to give judgment in every case heard last term, not only here but at Quebec, but nothing is done. Under these circumstances, I have this day sent in my resignation, because I am satisfied that justice cannot be properly administered.

DUVAL, C. J. The practice which we are now called upon to overturn, is one which has been followed for half a century, and has received the express sanction of all the judges during that period. The Court cannot now depart from that practice. The motion must be rejected.

Lefrenaye & Armstrong, for the Appellants.
Piché, for the Respondents.

MONTHLY NOTES.

COURT OF QUEEN'S BENCH.

APPEAL SIDE.

June 8.

DORION (defendant in the Court below) Appellant; and DOUTRE *ès qualité* (plaintiff in the Court below) Respondent.

Surety—Signification of Transfer.

This was an appeal from a judgment rendered by *Loranger*, J., in the Superior Court on the 30th of September, 1864, and confirmed in the Court of Revision on the 22nd of January, 1865, by Smith and Berthelot, JJ., (Monk, J., dissenting).

The facts of the case were as follows: On the 18th of January, 1860, Anne Aurélie Routier, by F. E. Dorion, her husband and attorney, made an obligation in favour of Pierre Doutre, advocate, for $360, payable in sixty monthly payments of $6 each, beginning from the 15th February, 1860, without interest, but in case three of said payments should not be paid at maturity, Pierre Doutre might demand the whole sum due. By the same deed, F. E. Dorion *ès qualité* transferred to Pierre Doutre the sum of $400 as collateral security. This $400 was due by one Richard under a transfer made to Anne Aurélie Routier by A. A. Dorion on the 31st December, 1859. On the same day, by a writing *sous seing privé*, the defendant, V. P. W. Dorion, became security of Anne A. Routier for the payment by Richard of the $400 transferred to Pierre Doutre. On the 23rd May, 1860, Richard settled with Anne A. Routier, instead of with the transferree. On the 8th of January, 1863, Mr. Joseph Doutre, the testamentary executor of Pierre Doutre, brought the present action against Anne A. Routier and V. P. W. Dorion for $200, balance of the obligation of 18th January, 1860.

Anne Routier made default, but the appellant Dorion pleaded that he had not become security for the payment of the obligation sued on; the only engagement contracted by him was that Richard would pay the sum of $400 transferred to Pierre Doutre; that the latter having neglected to signify his transfer, Richard had paid this sum to Anne A. Routier, on the 23rd May, 1860, and thus the appellant's suretyship terminated. The plaintiff answered that it was the duty of the appellant to signify the transfer.

Judgment was rendered by *Loranger*, J., in the Circuit Court, on the 30th of September, 1864, maintaining the action against the surety. The reasons assigned were that the absence of signification of the transfer could not be invoked by V. P. W. Dorion. This judgment was confirmed by the Court of Revision on the 25th January, 1865, *Monk*, J., dissenting. The defendant Dorion appealed.

DUVAL, C. J. The judgment must be reversed. We are all decidedly of opinion that it was for the creditor to signify the transfer. It has been said that this woman, Anne Routier, in receiving the money subsequently, has not done right. To this, it must be answered that the *caution* has nothing to do with that. The *considérants* of the judgment are:

Considérant que feu Pierre Doutre, représenté par le demandeur en Cour de Circuit, a négligé de faire signifier le transport fait au dit Pierre Doutre par Anne A. Routier, de ses droits, actions et hypothèques contre Richard; qu'en conséquence de tel défaut de signification, le dit Pierre Doutre a, par sa faute et négligence, perdu son recours contre le dit Richard, et s'est par là mis dans l'impossibilité de céder ses droits et actions à l'appelant, V.

P. W. Dorion, qui est déchargé de sa responsabilité comme caution, etc.

Judgment reversed and action dismissed.

DRUMMOND, BADGLEY and MONDELET, JJ., concurred.

Dorion & Dorion, for the Appellant.

Doutre & Doutre, for the Respondent.

WOODMAN ET AL., (defendants in the Court below) Appellants; and GENIER (plaintiff in the Court below) Respondent.

Sheriff's Sale—Last and highest bid.

This was an appeal from a judgment rendered in the Superior Court at Beauharnois, by *Loranger*, J., on the 28th of March, 1865. The facts of the case were these: On the 12th October, 1859, the plaintiff was the proprietor in possession of an immoveable in the District of Beauharnois. Hainault, one of the defendants, in his quality of Sheriff, took this immoveable in execution. The sale took place on the 12th October, 1859, when the property was adjudged to Bard P. Paige and Henry Woodman, for £573. The plaintiff charged the Sheriff with having made a fraudulent sale, as several parties were present willing to bid more, but were not allowed an opportunity to do so. He accordingly brought an action and inscribed *en faux* against the return of the Sheriff and bailiff, with prayer that the sale be declared null, and the plaintiff be reinstated in possession.

The defendants pleaded that the sale was regularly carried out. The most important evidence was given by one Cameron, who described the transaction thus: "I followed by a bid of £10, and after that it continued by bids of £5 or less, until it reached the sum of £570. This last amount being my bid, I asked the bailiff again if the property was mine, but he did not give me any answer. There was a stay again, and the bailiff sat down on the platform; then a gentleman whom I heard called Paige, said £3, and immediately I said £1. I gave my bidding £1, as quick as the £3 were out of Mr. Paige's mouth. The bailiff told me that I was too late and refused my bid."

The judgment of the Superior Court held that the bid of Cameron was in time, and should have been accepted, and that the sale was in consequence null. From this judgment the present appeal was instituted.

BADGLEY, J. This is an appeal from the Superior Court at Beauharnois. Woodman, one of the appellants, obtained judgment against Genier, and caused his real property to be seized under a *fi. fa.* At the time of the sale, the bailiff employed received bids up to £570. Shortly afterward, Paige, one of the plaintiffs, bid £573, which was simultaneously or almost simultaneously overbidden by Cameron, who bid £574. The bailiff refused to receive the last bid, and knocked down the property. Cameron was quite competent to pay his bid, and was within the allowed time. The last and highest bidder must be adjudged the purchaser, but the highest bidder cannot be ascertained till the close of the sale, and therefore there must be some formal intimation of that close. Under these circumstances the judgment of the Superior Court must be confirmed.

DUVAL, C. J., DRUMMOND and MONDELET, JJ., concurred.

Leblanc & Cassidy, for the Appellants.

Doutre & Doutre, for the Respondent.

SUPERIOR COURT.

October 5, 1867.

SHANNON *et al. v.* WILSON, *et al.*

Practice—Serment Supplétoire.

MONK, J. In this case a woman was sued as a widow upon an obligation. In the deed she declared herself to be a widow. Now when she was sued she came into Court and said that her husband was not dead. Another feature in the case was an intervention by the husband. The parties had joined issue upon the merits. The Court was of opinion that the evidence to show that the husband was living was not conclusive. The Court would, therefore, order him to come into Court for the *serment supplétoire*. If he came into Court, and said he was not dead but living, the Court must dismiss the case.

[On the 17th October, the husband appeared before the Court in person, whereupon the plaintiff's action was dismissed as against the wife, and judgment went only against the intervening party.]

Kelly & Dorion, for the Plaintiffs.

C. P. Davidson, for the Defendants.

Perkins & Ramsay, for the Intervening party.