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TABLE OF CASES

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CURRENT TOPICS AND CASES.

The year 1896 deserves a white mark in the calendar of the judges. Among the thirty-six superior judges of Quebec Province, including six in the Court of Appeal and thirty in the Superior Court—the Vice-Admiralty Judge at Quebec and the two judges of the Circuit Court at Montreal might also be included—not a single death occurred. In fact, the year elapsed without change of any kind in the judicial world, except the retirement of Mr. Justice Baby from the Court of Appeal and the appointment of Mr. Justice Ouimet in his stead. The retired judges were equally fortunate, no death having occurred among the seven ex-members of the Bench. By a singular coincidence the Bench in England was equally exempt from mortality in 1896, not a single vacancy having been created by death, although three ex-judges passed away, namely, Justices Blackburn, Grove and Denman.

Among the members of the Provincial Bar the deaths in 1896 were comparatively few in number, the principal

members who have died in Montreal being Mr. L. W. Marchand, Q.C., Clerk of Appeal; Mr. A. H. Lunn, Mr. Louis Laflamme, and Mr. Euclide Roy.

The New Year's honours, so far as colonial judges are concerned, have been wafted to Hong Kong and the Punjab, and Canada is not mentioned in the list. The Chief Judge of the Chief Court of the Punjab and the Chief Justice of the Supreme Court of Hong Kong have been knighted, and one Scottish judge, Lord Kinnear, receives a peerage. We hope to be able to record before long that the Acting Chief Justice of the Superior Court at Montreal in this Province has received the distinction which was accorded to Chief Justice Casault while filling a similar position at Quebec.

Real estate agents are distinguished for the perseverance with which they beset persons who may be supposed to be willing to sell a piece of land or other property. It is extremely desirable, therefore, that in the matter of remuneration and commissions they should be kept within the rules which apply to ordinary contracts, and that they should not be permitted to create so-called customs or usages which would give them rights superior to other persons who are ready and anxious to give their services for a consideration. In *Plummer* v. *Gillespie*, the pretension of the real estate agent went so far as to allege that wherever a sale is brought about by the agent having called the attention of the purchaser to a property, the agent should be entitled to a commission, although the owner was not aware of his intervention. If this were law, the result might be an unseemly scramble among real estate agents of the locality whenever a piece of property was, or was supposed to be, in the market. Mr. Justice Archibald very naturally rejected the plaintiff's preten-

sion, remarking, "I cannot think that a custom of that character can be binding in law. Unless, either expressly or tacitly, the proprietor has given authority to an agent to sell, I cannot adopt the rule that he incurs the obligation of paying a commission."

Another case of interest, decided by the same learned judge, is *Cusson* v. *Delorme*. In this case the plaintiff, by mere inadvertence and in ignorance of the line of his property,—ignorance which seems to have been shared by his neighbour—built his wall a few inches beyond the true division line as subsequently ascertained. He had called his neighbour in to see the line drawn, and no objection was made, but after the wall was erected the neighbour complained of the encroachment, and asked for the demolition of the wall. The value of the land taken does not appear to have been proved, but it is certain that it was extremely small, while, on the other hand, the cost of the wall was far from being inconsiderable. The court, in view of the fact that there had been something like acquiescence and renunciation of right on the one hand, and that the maxim "*de minimis*," etc., might almost be applied on the other, declined to maintain the action for demolition.

The Society of Comparative Legislation, founded in 1894, has issued the first number of the journal the main object of which is to record the result of its researches. Half of the number is occupied by a review of the legislation, in 1895, of the sixty legislatures throughout the empire. At the suggestion of the society, a number of questions were recently addressed by Mr. Chamberlain to the colonies, requesting information as to their modes of legislation and the form of their laws. The answers obtained are published in the first number of the society's journal, and form a valuable addition to the accessible information on the subject.

The Roentgen rays have already proved to be of much service in judicial investigations, and have recently been used to correct a mistake of justice. A man was convicted of stealing a florin, and was sentenced to nine months' imprisonment. He maintained that the coin had accidentally slipped down his throat. The X rays were applied and the coin was disclosed to view, with the result that the prisoner was discharged. We presume there was no suspicion in this case that the coin was swallowed, after the accusation of theft was made, for the purpose of manufacturing evidence in favor of the prisoner's pretension.

SUPREME COURT OF CANADA.

OTTAWA, 9 Dec., 1896.

Quebec.]

SENESAC v. VERMONT CENTRAL RY. CO.

Appeal—Finding of court below—Absence of proof—Interference with, on appeal—Railway company—Negligence.

An action was brought by S. against a railway company for damages from loss of property by fire from a woodshed on the company's premises spreading to the adjoining property of S. The Superior Court and the Court of Review both held that the origin of the fire was a mystery and that it was not proved to have been caused by any fault of the company. On appeal from the decision of the Court of Review (Q. R., 9 S. C. 319):

Held, that as there was nothing to show that the judgment appealed from was clearly wrong or erroneous the Supreme Court would not interfere with it.

Appeal dismissed with costs.

Geoffrion, Q.C., for the appellant.

Greenshields, Q.C., and *Lafleur*, for the respondent.

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9 Dec., 1896.

Ex. Adm.]

THE SHIP "CUBA" v. MCMILLAN.

Maritime law—Collision—Rules of the road—R. S. C. c. 79, s. 2, ss. 15, 16, 18, 19, 21 to 23—Compliance with signal—Negligence.

The steamship "Elliott," from Charlottetown to Sydney, C.B.,

arrived off Law Point in Sydney Harbour about 7.30 p. m., and stopped for a pilot, who came aboard and headed her up channel at full speed on a course towards the northerly side, her proper course in a narrow channel. After proceeding awhile the mast-head light of a vessel was seen over the southeast bar moving in a northerly direction across the mouth of the harbour. Presently both side lights became visible also, and all three were seen for about ten minutes a point, or a point and a half, on the port bow. This vessel was the "Cuba," outward bound, and she saw the "Elliott's" red light about two miles off a point or point and a half on her starboard bow. Each vessel soon made out the other's course.

The "Elliott" seeing that the "Cuba" kept her bearings for some time, with both side lights always visible, further ported her helm, and the "Cuba" went further to starboard. When they were about a quarter of a mile apart, the "Elliott's" helm was put hard to port, and the "Cuba" turned sharply to port, shutting out her red light. When about two cable lengths away the "Cuba" signalled by two blasts of her whistle that she was going to port. The "Elliott" then reversed her engines, but perceiving almost immediately that the bow of the "Cuba" was turned to starboard, instead of to port, set them going again at full speed, hoping to cross clear of the "Cuba's" bow. The vessels were, however, too close together, and the "Cuba's" bow struck the "Elliott" a little abaft amidships.

Held, that from the evidence and finding of the local judge in Admiralty, Nova Scotia District (5 Ex. C. R. 135), the vessels were not end on or "meeting" ships nor "crossing" ships with the lights red to green or green to red, but they were "passing" ships, one side-light of the "Elliott" being seen dead ahead of the "Cuba." In such case there is no statutory rule imposed as unless the course is changed, the vessels must go clear of each other; it is governed by the rules of good seamanship. The "Elliott," therefore, violated no statutory rule in porting her helm, and acted consistently with good seamanship.

Held, further, that the "Cuba" was in fault in persisting, without good reason, in keeping on the wrong side of the fairway; in starboarding her helm when it was seen that the "Elliott's" was hard to port with the vessels rapidly approaching; and, after signalling that she was going to port, in reversing her engines whereby her head was turned to starboard.

Held, also, that though the "Elliott" may have violated the statutory rule requiring her to slacken speed or stop and reverse if necessary when approaching another vessel so as to involve risk of collision, yet as the omission to do so would have led to no injurious consequences if the "Cuba" had acted in conformity with her signal, she was not for that reason responsible for the accident. R. S. C. ch. 79, s. 5.

The rule as to steam vessels keeping to their starboard side of a narrow channel does not override the general rule of navigation. The "Leverington" (11 P. D. 117), followed.

Appeal dismissed with costs.

Mellish, for the appellant.
Harris, Q.C., for the respondents.

Nova Scotia.] 9 Dec., 1896.

McLAUGHLIN v. McLELLAN.

IN RE ESTATE OF JOHN A. P. McLELLAN, deceased.

Will—Execution of—Testamentary capacity—Mental condition of testator.

In proceeding before a Court of Probate to prove a will in solemn form, evidence was offered to show that the testator when he gave instructions for the preparation of the will and when he executed it, was not possessed of testamentary capacity.

Held, affirming the decision of the Supreme Court of Nova Scotia (28 N. S. Rep. 226) that although the testator suffered from a disease that induced drowsiness or stupor, and when he gave the instructions and executed the will was in a drowsy condition, and there was difficulty in keeping his mind in a state of activity so as to ascertain what his wishes were, yet as it appeared that he understood and appreciated the instructions he gave and the document itself when read over to him, it was a valid will.

Appeal dismissed with costs.

Mellish for the appellant.
Laurence for the respondents.

Ontario] 9 Dec., 1896.

CITY OF TORONTO v. C. P. RY. CO.

Municipal corporation—By-law—Assessment—Local improvements —Agreement with owners of property—Construction of subway—Benefit to lands.

An agreement was entered into by the corporation of Toronto

with a railway company and other property owners for the construction of a subway under the tracks of the company ordered by the railway committee of the Privy Council, the cost to be apportioned between the parties to the agreement. In connection with the work a roadway had to be made, a part of which fronted on the company's lands, and which when made, cut off to some extent the lands from abutting as before on certain streets, and a retaining wall was also found necessary. By the agreement the company abandoned all claims to damages for injury to its lands by construction of the works. The city passed a by-law assessing on the company its portion of the cost of the roadway as a local improvement.

Held, that to the extent to which the lands of the company were cut off from abutting on the streets as before the work was an injury, and not a benefit to such lands, and therefore not within the clauses of the Municipal Act as to local improvements; that as to the length of the retaining wall the work was necessary for the construction of the subway and not assessable; and that the greater part of the work, whether or not absolutely necessary for the construction of the subway, was done by the corporation under the advice of its engineer as the best mode of constructing a public work in the interest of the public, and not as a local improvement.

Held, further, that as the by-law had to be quashed as to three fourths of the work affected, it could not be maintained as to the residue which might have been assessable as a local improvement if it had not been coupled with work not so assessable.

Notice to a property owner of assessment for local improvements under sec. 622 of the Municipal Act, cannot be proved by an affidavit that a notice in the usual form was mailed to the owner; the court must, upon view of the notice itself, decide whether or not it complied with the requirements of the Act.

In the result, the judgment of the Court of Appeal (23 Ont. App. R. 250) was affirmed.

Appeal dismissed with costs.

Robinson, Q.C., and *Caswell*, for the appellant.

Armour, Q.C., and *MacMurchy*, for the respondent.

QUEEN'S BENCH DIVISION.

LONDON, 16 December, 1896.

HINDLE v. BIRTWISTLE (31 L.J.)

Factory and Workshop Acts—Dangerous parts of machinery—Omission to fence—Liability.

Case stated by the Recorder of Blackburn.

Messrs. Hindle, who were cotton manufacturers, were convicted by the magistrates of Blackburn for neglecting to fence a certain dangerous part of the machinery in their factory—to wit, the shuttles. It appeared that a shuttle flew out of one of the looms in the factory and injured a weaver, but the evidence showed that such an accident might arise either from negligence of the weaver or from some foreign substance accidentally getting into the shuttle race, or from some defect in the yarn. By section 5 of the Factory and Workshop Act, 1878, and section 6 of the Factory and Workshop Act, 1891, "all dangerous parts of the machinery" in a factory are required to be securely fenced.

The Recorder quashed the conviction.

The Attorney-General (*Sir R. Webster, Q.C.*), *H. Sutton* and *L. Sanderson* for the appellant.

Sir E. Clarke, Q.C., and *E. Sutton* for the respondents.

THE COURT (WILLS, J., and WRIGHT, J.,) were of opinion that the above sections were not restricted to machinery which was dangerous in itself, but applied equally to machinery from which, in the ordinary course of working, danger might reasonably be anticipated. They therefore remitted the case to the learned Recorder.

COURT OF APPEAL.

LONDON, Nov. 28, 1896.

Before LORD RUSSELL, L. C. J., LINDLEY, L.J., SMITH, L.J.

In re ROBINSON. WRIGHT v. TUGWELL. (31 L. J.)

Charity—Endowment of Church—Continuing condition—Ecclesiastical Law—Public worship—Preaching—Black gown.

Appeal from a decision of NORTH, J.

Mrs. Robinson by her will gave a legacy of 1,500*l.* towards an

endowment for a proposed church at Boscombe, Bournemouth, and, amongst other stipulations, she made it an 'abiding condition that the black gown shall be worn in the pulpit unless there shall be any alteration in the law rendering it illegal,' and that any new incumbent should sign the conditions. The church was built, and dedicated to St. John the Evangelist, and in 1895 it was consecrated. In 1891 a question arose, on the further consideration of an action brought to administer the estate of the testatrix, how the legacy, if payable, was to be paid; and North, J., held that the condition as to the black gown was not impossible, but that it was a continuing condition, and that the 1,500*l.* must be carried over to a separate account, with liberty for the incumbent to apply for payment of the income to himself if he performed the conditions. The case is reported 61 Law J. Rep. Chanc. 17; L. R. (1892) 1 Chanc. 95.

The Rev. S. A. Selwyn, the incumbent, now applied for payment to him of the dividends which had accumulated since 1891, and for an order that future dividends should be paid to him as long as he remained incumbent. The executor objected to this on the ground that Mr. Selwyn had not signed the conditions, and that he did not preach in a black gown. Mr. Selwyn replied that he was ready to sign the conditions, but that the wearing of a black gown was illegal, and that that condition therefore failed, so that he was entitled to the dividends as a legacy of personalty released from the condition. North, J., refused the application, and the incumbent appealed.

Their Lordships dismissed the appeal. They said that there was no statute, rubric, advertisement, injunction, or canon which prescribed that to preach in the black gown was illegal; and for three centuries down to a comparatively recent date there had been continual use of it by clergymen of the Church of England when preaching. The case of *Ridsdale* v. *Clifton*, 46 Law J. Rep. P. D. & A. 27; L. R. 2 P. Div. 276, did not decide that the use of the black gown in preaching was illegal. It contained no allusion to the black gown or to preaching. The sermon did not form part of the administration of the sacrament of the Lord's Supper. Neither could preaching be regarded as one of the other rites of the church within the words of the advertisement of Queen Elizabeth. The warrant in law for the black gown was constant user for centuries.

THE LEGALITY OF THE BLACK GOWN.

The decision of the Court of Appeal last week, in *Wright* v. *Tugwell*, affirming the legality of the black gown in the Anglican pulpit, is another illustration of the fact that the Queen, through her Courts, is supreme over all ecclesiastical persons and things within the realm. As regards the Church of England, this supremacy springs primarily from the Act of Supremacy, interpreted and corroborated by the *articuli cleri*. Apart from this aspect of the case, the affirmance by the Court of Appeal of the legality of the black gown possesses very considerable intrinsic legal interest. It limits definitively the range of the judgment of the Privy Council in *Ridsdale* v. *Clifton* to the vestments which may be worn during the administration of the Holy Communion, and, what is more important still, it involves the conclusion that preaching is no part of the Communion Office. The former of these results—if one may say so without any disparagement to the persistence and ingenuity with which the contrary opinion was argued—was inevitable. The *obiter dicta* of the Privy Council in the *Ridsdale Case* may go farther. But the *ratio decidendi* is clearly confined to the celebration of Communion. The severance which the Court of Appeal have now effected, however, between the sermon and the Communion Office is distinctly startling. But we believe it to be legally and historically justifiable, not to speak of the notorious facts as to the times and seasons and the places in which the sermon in this country used to be delivered. The result, however, may be to give a decided impetus to the use of other and, as some might think them, more exceptionable vestments than the black gown. Possibly it may raise the whole vestment controversy, which many ecclesiastical experts regard as the next issue on which the ecclesiastical Courts will have to adjudicate.—*Law Journal*, (London).

INTRAMURAL INTERMENTS.

Both in Canada and in England the decease of an archbishop and his interment in his cathedral church, have directed attention to the above subject. The following from the *London Law Journal*, will therefore be of interest :—

The revival in the case of the lamented Primate of the mediæval custom of burying a prelate in his cathedral church natur-

ally suggests a consideration of the past and present position of the law in reference to intramural interments. At common law every parishioner had a right to interment in the parish churchyard. It does not seem probable that at any time a common law right existed to burial within a church. In fact, it is most probable that the modern practice of placing cemeteries without the limits of the town actually existed in early Saxon days. Some time or other, however, before the time of Edward the Confessor, the practice of intramural interments had sprung up and was checked by a canon of uncertain date (Spel. Conc. 559, *n.* 9), which, whatever its legal force, practically regulated the law until modern times. It laid down that to prevent the conversion of churches into charnels, the privilege of intramural burial should be restricted to priests and holy men. At common law the parson only had the power to give permission for such burial, and even he could only give permission for the particular burial about to take place, and could not confer a general right. To this rule there was, however, an exception. Although before the Norman epoch intramural interments took place within the nave, and it was only after Lanfranc's time that vaults within the chancels seem to have been sanctioned, the right of burial in a chancel may be at common law prescribed as belonging to a messuage. "Upon the foundation of freehold the common law has one exception to the necessity of the leave of the parson—namely, when a burying place within the church is prescribed as belonging to a manor-house, the freehold of which they say is in the owner of the house, and that by consequence he has a good action at law if he is hindered to bury there." (Gibs. 453; Brooke Little, 'Law of Burials,' p. 20). The incumbent could not at common law grant any part of the church or churchyard for the purpose of a vault for an individual or a family without a faculty. To come to modern legislation. So far as modern churches are concerned the practice is chiefly regulated by 58 Geo. III. c. 45, s. 80, and 11 & 12 Vict., c. 63, s. 83 (repealed and re-enacted by section 43 of the Public Health Act, 1875, part 3, schedule 5), which latter Act forbids the making of any vault or grave within any church built subsequently to August 31, 1848. As to other churches, under 14 & 15 Vict., c. 185, which applied only to the metropolis, section 5, all bu ials in any place prohibited under that Act by an Order in Council are prevented, an

exception subject to a license from the Secretary of State being made in favour of any persons possessing by any faculty, usage, or otherwise, a right of interment in any church, churchyard, or graveyard, excepted by such Order. Section 8 exempts from these provisions Westminster Abbey and St. Paul's, subject to the royal assent being obtained. By 16 & 17 Vict., c. 134, s. 37, which applies to the burial of the dead outside the metropolis, no burial is to take place within any church, chapel, churchyard, or burial place, after an Order in Council closing the same. Section 4 of this Act makes a provision identical to that contained in the Metropolitan Act as to the reservation of existing rights. Canterbury Cathedral being closed under the provisions of this Act, the late Primate will be buried by the permission of a family whose prescriptive rights have been reserved under this last mentioned section, with the consent of the Secretary of State.

HANDCUFFING ACCUSED PERSONS.

There is apparently a vast amount of ignorance in the police force throughout the country with reference to the power of a constable to handcuff an accused person arrested on suspicion; in other words, any person who has not yet been put upon his trial. In another part of this week's issue will be found a note of a case in which the question was raised as to the conduct of the police in chaining prisoners who had not yet been put upon their trial when they are being taken through the streets. A prisoner complained before the Manchester magistrates that this had been done to him, and Mr. Armitage (the chairman) characterized this degrading system as being illegal and most improper. Mr. Armitage is quite right. As far back as 1825, it was laid down in *Wright* v. *Court*, 4 B. & C. 596, that handcuffing could only be justified in cases where it is necessary to prevent the prisoner from escaping when he has attempted to escape. In the unreported case of *Norman* v. *Smith*, tried at the Manchester Assizes in 1880, a plaintiff was awarded £15 damages for being wrongfully handcuffed. Last year in *Reg* v. *Taylor*, 59 J. P. 393, the Lord Chief Justice observed that "handcuffing was only justifiable where reasonable necessity existed, and if it were resorted to in the absence of such necessity, the person so treated might bring an action to recover damages for such a grievous indignity." The grievance of which the Manchester prisoners

complained was equally degrading and the indignity equally grievous. Where the prisoner is a man of notoriously bad character, or violent or dangerous, or where he threatens or assaults the constable, or where, perhaps, the offence of which he is charged is of a grave nature, the constable would be justified in handcuffing him. In the absence of such reasonable grounds, prisoners should not be handcuffed. In cases of drunkenness and trivial offences, they certainly should not be handcuffed unless they come within the exceptions mentioned above. Females and aged or infirm persons should not be handcuffed. It will be permissible, however, to depart from these limitations where there is any attempt made to escape.—*Justice of the Peace*.

RECENT UNITED STATES DECISIONS.

Damages.

One who procures the discharge of an employee not engaged for any definite time, by threatening to terminate a contract between himself and the employer which he had a right to terminate at any time, is held, in *Raycroft* v. *Tayntor* (Vt.) 33 L. R. A. 225, to be not liable to an action by the employee for damages, whatever motive may have prompted him to procure the discharge.

Express company.

The power of an express company to establish limits beyond which it will not collect or deliver packages carried or to be carried by it is sustained, in *Bullard* v. *American Express Co.*, (Mich.) 33 L. R. A. 66, as against a person who has knowledge of such limits; and it is held immaterial that the limits extend farther from the office in one direction than in another. A note to the case reviews the authorities on the duty of an express company as to the delivery and collection of packages.

Negligence.

An intoxicated person who refuses to go into a car when there is standing room inside, but goes down upon the steps of the platform without the knowledge of the conductor or other person in charge of the train, after he has been several times requested to come inside, and loses his balance when the car lurches in rounding a curve, is held, in *Fisher* v. *West Virginia & P. R. Co.* (W.

Va.) 33 L. R. A. 69, to be guilty of such negligence on his part as will preclude any recovery against the carrier. His intoxication is held to be no excuse for his contributory negligence.

Liability of a street railway company for the injuries received by a young woman who became suddenly ill while on the car and, after twice requesting the conductor to stop it so she could get off, and on his failing to do so, became frightened and dazed on becoming worse, and staggered towards the rear of the car, and fell through the door unconscious, is held, in *McCann* v. *Newark & S. O. R. Co.* (N.J.) 33 L. R. A. 127, to be a question for the jury, involving questions of negligence of the carrier, her contributory negligence, and the proximate cause.

The liability of an electric railway company for the death of a boy less than eight years old who was struck and killed by a car in crossing the street behind a car that was standing, when no signal of the approaching car was given, although he did not look for it, is held, in *Consolidated Traction Co.* v. *Scott* (N. J.) 33 L. R. A. 122, to present questions for the jury as to the negligence and contributory negligence; and the court held that it was not *per se* negligence for one to cross the track of a street railway in a city street without stopping to look and listen.

Telegraph company—Libel.

The liability of a telegraph company for sending a libellous message is adjudged in *Peterson* v. *Western Union Telegraph Co.* (Minn.) 33 L. R. A. 302, where the message was on its face susceptible of a libellous meaning and there was evidence to show that it was published maliciously.

Tomb, Rights in.

The owner of a tomb who has permitted the remains of the dead to be deposited therein on his assurance to the relatives that it might be a permanent resting place is held, in *Choppin* v. *Dauphin* (La.) 33 L. R. A. 133, to be without rightful authority to cause the removal of the remains therefrom.

A trademark in the term "Syrup of Figs," for a medicine described as the laxative and nutritive juice of figs, is denied protection in *California Fig Syrup Co.* v. *Frederick Stearns & Co.*, (C. C. App. 6th C.) 33 L. R. A. 56, on proof that the fig juice was not an essential part of the medicine, but was used merely as a basis for the name.

LONGEVITY OF LAWYERS.

The patriarchal age of ninety-seven, to which Sir James Bacon had attained, will recall to recollection some well-known instances of longevity in the cases of eminent members of the Bench and Bar. Sir Edward Coke, who died in his eighty-third year, was seventy-eight when he suggested, in 1628, the famous Petition of Right, which he succeeded in carrying through the House of Commons, whose chair he had filled in 1593—five-and thirty years previously. Again, the famous Serjeant Sir John Maynard, in 1689, who, in his eighty-ninth year, was selected, notwithstanding his great age, to fill the post of First Commissioner of the Great Seal. Two references made by Sir John Maynard to his years are worthy of immortality. On one occasion, when arguing before Jeffreys, he was told by that judge that "he had grown so old as to forget his law." "Quite true, my Lord," was the reply, "I have forgotten more law than ever you knew." Again, when paying homage as leader of the Bar to William III., the King, amazed at seeing a man who had been a conspicuous member of Parliament in the reign of James I., said, "Mr. Serjeant, you must have survived all the lawyers of your standing." "Yes, sir," said the old man, "and but for your Highness I should have survived the laws, too." In the present century, two occupants of the woolsack have reached their ninetieth year. Lord Lyndhurst was born in 1772; he died in 1863. Lord Brougham was born in 1778; he died in 1863. On the Irish Bench and at the Irish Bar there have been some striking instances of longevity. The Right Hon. James Fitzgerald, who filled the post of Prince Serjeant, an office now abolished, which had the precedence of the Attorney-Generalship, was upwards of ninety at his death in 1830. Again, the Right Hon. Thomas Lefroy, who was Lord Chief Justice of Ireland from 1852 to 1866, was, on his retirement from the Bench in the latter year, ninety-one years old. He survived till 1869. Lord Norbury, an Irish Chief Justice of the Common Pleas from 1800 till 1827, died in 1831, in his ninety-second year. The first Lord Plunket, an Irish Lord Chancellor, lived to enter on his ninetieth year, and the late Right Hon. Francis Blackburne was in his eighty-sixth year when, in 1866, he was appointed for the second time to the post of Lord Chancellor of Ireland.—*Law Times (London).*

GENERAL NOTES.

THE DECLINE OF WINDING-UP BUSINESS.—A tone of sadness pervades the Inspector-General's report in winding-up. Vice, not virtue, seems to triumph. Companies create fictitious capital to obtain credit from the trading community, others begin business knowing their capital insufficient; traders form one-man companies to evade bankruptcy; the public examination section is a dead letter; worst of all, companies do not want to be wound up compulsorily; only the small fishes come to the net. This is true. For fifty companies that are wound up by the Court, there are 900 that wind up voluntarily. Even if a winding-up petition is presented it is withdrawn. Anyone who attends petition day in the winding-up Court must be struck with this. Petition after petition is settled. Sometimes, if there is a suspicion of collusion, a petition stands over to see if another creditor will take it up; but another creditor never does. Indeed, Mr. Justice Williams has more than once expressed an opinion that the chief utility of a winding-up has gone with the public examination. But it is in vain to lament. If the annals of winding-up, and of bankruptcy too, testify to anything, it is to the preference of Englishmen, whether they are shareholders or creditors, for managing their own affairs; and it is a healthy instinct.—*Law Journal* (*London*).

PROXIES ON A SHOW OF HANDS.—The old common law mode of voting by show of hands is a rough-and-ready way of taking the sense of a meeting, but it has the great merit of enabling the company to get quickly through business which would be intolerably delayed if the whole constituency of the company had on each occasion to be consulted. The effect of admitting proxies on a show of hands, as was done *In re Bidwell Brothers*, would be to introduce this evil in a modified form. If one member brought proxies for use on a show of hands, another would do so too; each would hold up a sheaf of proxies, and the chairman would have the task of examining each proxy and holding an informal poll. Voting by show of hands would vanish. It is therefore matter for congratulation that the Court of Appeal should have vetoed this new-fangled practice—*Ernest* v. *The Roma Gold Mines Company*. What weighed with the Court in *In re Bidwell Brothers* was, that if the proxies there had been disallowed there would not have been enough to demand a poll. The answer is that if shareholders will not take the trouble to go to a meeting, they must expect those who do to get an advantage over them.—*Ib.*