The Legal News.

Vol. XI. SEPTEMBER 8, 1888. No. 36.

The law under which Pitcher has been convicted, bears testimony to the fact that Canada does not desire to harbour criminals. The law punishes the bringing of stolen property into Canada, the same as if the stealing had taken place in the country. This enactment supplies, to a small extent, the deficiency of the Extradition Treaty. Bank directors and others who are put to expense and inconvenience in attending to prove a case under the Canadian law, should bring their influence to bear to obtain the sanction of a more efficient Treaty, under which fugitives like Pitcher would be sent home for trial. In fact, if the Treaty were known to cover all such cases, there would be very few fugitive bank officers.

The *Law Journal* (London) relates a curious instance of the trouble in which a person may be involved by dispensing with competent legal assistance.

"Occasionally, the person who evades the clear duty of every man when in trouble about his property to consult a respectable solicitor, finds that he has made an expensive mistake. An illustration of this has just been supplied by an exhibitor at the Anglo-Danish Exhibition, who had a dispute with the manager of the 'space department,' as to the amount of rent due at the close of the exhibition. The exhibitor wanted his goods (show-cases, &c.) for exhibition elsewhere, but did not feel inclined to pay the full rent demanded, the Exhibition having been closed prematurely. The manager claiming a lien on the goods, the exhibitor went to a Police Court and invoked the aid of the sitting magistrate, who offered him a summons under section 40 of the Metropolitan Police Act, provided the value of the goods did not exceed 15*l*. This offer the exhibitor, who was all impatience to have his property transferred from South Kensington to some remote venue in Wales, jumped at with celerity. Mark the result. The summons was heard, and on every question raised, the magistrate was in favour of the complainant, who not only got an order for immediate delivery of his property, but a substantial sum for his costs. Charmed, no doubt, by Mr. D'Eyncourt's urbanity and celerity, the exhibitor went away triumphant, and forthwith appeared outside the ruins of the exhibition with vans and horses to retake possession of his property, but to no purpose. To his horror he found that his adversary had outrun him in the race, for, when he returned next day to complain to his worship that the order of the Court was set at nought, he discovered that the defendant had paid into Court the full value of the goods, less the rent adjudged to be due, but plus the costs. It was in vain that he protested that he did not want the money and only wanted his property. The answer was the production of the order made on the summons, which was in the common form, and gave the defendant his election. 'I can do nothing more for you' was the valedictory remark of the learned magistrate, and the complainant had to content himself with the money in Court, and went away to reflect on the danger of playing with edged tools."

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

London, July 14, 1888.

Present: Lord Watson, Sir Barnes Peacock, Sir Richard Couch.

Dunn et al. (plaintiffs), Appellants; and Larbau (defendant), Respondent.

Identity of land sold—Possession—Prescription.

Held: (*affirming the judgment of the Court of Queen's Bench, Montreal, 7 Leg. News, 218*), *that the description of the property sold sufficiently identified it with the land in dispute, and that the respondent's possession during more than ten years gave him a perfect title.*

The judgments in the Courts below will be found in 7 Leg. News, pp. 218—220.

Lord Watson:—

The subject of controversy in this appeal is a parcel of land forming part of the 8th concession of the Seigniorie de Monnoir,

which consists of a strip of ground of uniform breadth lying north and south. It was originally laid off in 36 lots bounded by parallel lines running east and west, numbered consecutively from 92, the northmost to 126, the southmost lot.

On the 11th November 1854, the late William McGinnis, who is now represented by the appellants, acquired, under a deed of sale, five of these lots, numbered from 99 to 103 inclusive, which are described in his title as bounded on one side by lot 98 and on the other by lot 104. On the 18th March 1857, the respondent Lareau acquired by purchase a piece of land, which is described in the deed of sale as lot No. 104, bounded on the north side by the land of William McGinnis, and on the south by that of Moïse Daigneault. The deed expressly states that the said land "*a été vendue avec ses circon-*"*stances et dépendances, ainsi que le tout se*"*composait, et dont l'acquéreur a déclaré être*"*content et satisfait pour l'avoir vue et visi-*"*tée.*"

About a twelvemonth before the respondent purchased lot No. 104, William McGinnis made a survey of the land which he had acquired in November 1854, and spotted or blazed off the block which he then understood to contain his five lots. In so doing he marked off the southern boundary along a straight line, which now represents the northern boundary of the land in dispute. At that time, the lot immediately to the south of the land in dispute was, as it still is, occupied by Moses Daigneault, who purchased it in December 1851, as being lot 105. It is impossible, in their Lordships' opinion, to hold that McGinnis was in possession, either actual or constructive, of the disputed land, after he had marked off his five lots, or at least supposed he had done so; and it is a matter of admission that from 1857 until the commencement of the present litigation—a period of nearly 20 years—the respondent had peaceable and uninterrupted possession of the land in question without challenge by McGinnis. The appellants now say that William McGinnis was under a misapprehension as to the extent of his five lots. They allege that the land in dispute is in reality lot 103, and not lot 104; and on that footing they seek to recover possession of it from the respondents.

According to the Civil Code of Lower Canada (Art. 2251), a person who in good faith acquires land by purchase, prescribes the ownership thereof by effective possession for ten years, which possession must be "in virtue of his title." It follows from that qualification that possession for ten years will not avail him, unless it can be ascribed to his title—in other words, his possession must be of the very subject which his title describes and professes to convey to him. A title to Blackacre cannot be made the basis of a prescriptive right to Whiteacre. In cases where possession is inconsistent with the possessor's title, he cannot acquire a prescriptive right until he has had possession for the full period of thirty years, which is sufficient to confer the right of ownership irrespective of title. If it were conclusively shown that the disputed lot is No. 103 and not No. 104; and if it could also be shown that the respondent's title merely gives him a conveyance to lot No. 104 wherever it may be found, the appellants would be entitled to prevail. It is therefore necessary to consider how far they have succeeded in establishing either of these propositions.

The fact that their author, William McGinnis, for twenty years and upwards treated the disputed land as outside his lots, and for at least nineteen years permitted the respondent to possess it as No. 104, lays a very heavy onus on the appellants. The Judge of first instance, and one of the Judges of the Court of Appeal, were of opinion that the disputed land has been shown to be lot 103, but four of the Judges of the Appeal Court came to the opposite conclusion. Their Lordships would have hesitated to differ from the majority of the Court below upon a pure question of fact; but in the view which they take of the case it is unnecessary to decide the point. The whole case of the appellants rests upon the assumption that the respondent's deed of sale conveys to him nothing more than a right to lot 104, if and wheresoever it can be found. That assumption appears to their Lordships to be erroneous. The subject sold to him is not merely described as lot No. 104, but as an area of

land which had been seen and examined, lying between the property of McGinnis and and that of Daigneault. That is a specific description, not with reference to numbers, but with reference to the actual and visible state of possession of the adjoining lands; and having regard to the admitted stste of possession in 1857, at the time when the respondent's deed of sale was granted, their Lordships have no hesitation in holding, with the Court of Appeal, that the description of the subject sold, completely identifies it with the land in dispute. The respondent's possession, which was in perfect good faith, was in conformity with, and must be ascribed to his title; and the lapse of ten years' possession has therefore perfected his right in competition with the appellants.

Their Lordships will humbly advise Her Majesty that the judgment appealed from ought to be affirmed, and the appeal dismissed with costs.

Appeal dismissed.

Lacoste, Q.C., Doherty, Q.C., and *Bathurst*, for the Appellant.

Lareau, and *Fullerton*, for Respondent.

QUEEN'S BENCH DIVISION.

LONDON, Feb. 7, 1888.

WENNHAK v. MORGAN AND WIFE.

Libel—Publication—Uttering to Wife of Defendant—Indorsement by Master of Cause of Dismissal on Servant's Written Character—Questions for Jury.

The plaintiff was a domestic servant, and had been in the service of the defendants. Upon entering their service, the plaintiff handed to the female defendant a written character, couched in general terms, and not addressed to any particular person, given to him by a former mistress. The character remained in the defendants' possession. The defendants having dismissed the plaintiff for alleged misconduct, the male defendant indorsed the character with these words: "This man has lived with us five weeks, and we dismiss him for staying out all night and leaving the house open." The plaintiff having requested the female defendant to return the character to him, she handed it back to him bearing that indorsement. The plaintiff commenced this action, alleging, first, that the words indorsed upon the character were a libel; and, secondly, that the character remained his property, and that the defendants had maliciously defaced it and rendered it useless for the purpose for which it was intended. The case was tried before MATHEW, J., and a jury, and the learned judge ruled that there was no evidence of publication of the alleged libel, but that the character remained the property of the plaintiff, and that he was entitled to a verdict for nominal damages, evidence of special damage not being admissible upon the second cause of action.

The plaintiff moved for a new trial on the ground of misdirection.

The COURT (HUDDLESTON, B., and MANISTY, J.) held that Mathew, J., was right in ruling that there was no evidence of publication of the libel, inasmuch as the defendants, being husband and wife, were but one person in law; and although in particular matters the old common law rule has been altered by statute, no alteration has been effected in such cases as the present. But upon the second cause of action it should have been left to the jury to say whether the character remained the property of the plaintiff, and whether the defendants acted maliciously or *bonâ fide*; and that the judge should not have withdrawn the question of damages from the jury, who, if they had been of opinion that the defendants had not acted *bonâ fide*, might have awarded substantial damages to the plaintiff. The Court accordingly granted a rule absolute for a new trial of the second cause of action.

Rule absolute.

THE DISTRICT MAGISTRATES' ACT.

The reasons for disallowance of the Quebec Act of last session relating to district magistrates are set forth as follows in the report to the Council made by the Minister of Justice on the 3rd September:—

"The undersigned has the honor to report that the Lieutenant-Governor of the province of Quebec transmitted to the Secretary of State for Canada, on the 7th day of August last, certified copies of the Acts of the Legis-

lature of that province, which had been assented to by him on the 12th day of July last. On the 8th day of August, these copies were received by the Secretary of State and referred to the undersigned for report. Among these Acts is one to which it would seem that early consideration should be given, namely, that marked 'Assembly bill No. 12,' and intituled, 'An Act to amend the law respecting district magistrates.'

"The undersigned would call attention to section 96 of the British North America Act, which provides that 'The Governor-General shall appoint the judges of the Superior, District, and County courts in each province'; and section 99 of the said Act, which provides that 'the judges of the Superior courts shall hold office during good behaviour, but shall be removable by the Governor-General on address of the Senate and House of Commons;' and to section 100 of the same act, which enacts that 'The salaries, allowances and pensions of the judges of the Superior, District, and County courts shall be fixed and provided by the Parliament of Canada.'

"The Act of the Legislature of Quebec before referred to professes to enable the Lieutenant-Governor of the province by proclamation to abolish the Circuit Court sitting in the district of Montreal (the Circuit Court being a court now presided over by the judges of the Superior Court of the Province of Quebec), and to establish in that city for the said district a special court of record under the name of the 'District Magistrates' court of Montreal.' It provides (section two) that the court shall be composed of two justices called 'District Magistrates of Montreal,' who shall be advocates of ten years' practice, be chosen from among the members of the bar of the province, and be appointed under the Great Seal of the province by the Lieutenant-Governor-in-Council. It contains other provisions as to the qualifications of the judges newly to be created and provides (section 4) that they shall hold office during good behaviour, but may be removed from office only upon the joint address of the Legislative Council and Legislative Assembly. Also by section 5 it enacts that the salaries of these judges are to be paid out of the Consolidated Revenue fund of the province, and by sections 6 and 8 that 'All the powers now possessed by the judges of the Superior Court and the duties imposed on them respecting the affairs, proceedings, matters and things within the jurisdiction of the Circuit Court sitting in the district of Montreal are hereby conferred and imposed upon the district magistrates of Montreal;' and that 'the jurisdiction of the said court is the same, *mutatis mutandis*, for hearing and deciding civil matters as that exercised under the law by the said Circuit Court of the district of Montreal.'

"The undersigned is of opinion that the provisions of the Act which profess to confer upon the Lieutenant-Governor-in-Council the power to appoint these judges, the provisions also which relate to their terms of office, their qualifications for office and their mode of removal from office are clearly in excess of the powers conferred on the provincial legislatures by the British North America Act, and clear invasions of the powers conferred by the British North America Act on the Parliament of Canada and on Your Excellency; and as any delay in disallowing the statute of Quebec in question may lead to confusion and private injury in the administration of justice, he recommends that the same be now disallowed."

INDICTMENT—ILLICIT INTENTION.

The *Journal of Jurisprudence and Scottish Law Magazine* refers to a decision of the Vermont Supreme Court in *State* v. *Miller*, of which the following is an abstract:—

Under a statute providing that "a man with another man's wife, or a woman with another woman's husband, found in bed together, under circumstances affording presumption of an illicit intention, shall each be punished," etc., an indictment charging that the respondent "being then and there a man," was found in bed with another man's wife, "under circumstances affording presumption of an illicit and felonious intention," is bad for lack of allegation as to what the "illicit intention" was. The rule as to when it is sufficient to charge an offence in the words of the statute was stated in *State*

v. *Higgins*, 53 Vt. 191, being quoted from Mr. Pomeroy, and was thus: "Whether an indictment in the words of a statute is sufficient or not depends on the manner of stating the offence in the statute; if every fact necessary to constitute the offence is charged, or necessarily implied by following the language of the statute, the indictment in the words of the statute is undoubtedly sufficient; otherwise not." That rule in substance has always been the test applied to indictments in this State. Under it this indictment is insufficient. The "illicit," as its derivation indicates, means that which is unlawful or forbidden by the law. Bouv. Law Dict.; Webst. Dict. It is not claimed that every illicit intention would warrant a conviction under this statute. It must be a particular unlawful intention. Therefore, as the indictment stands, all the allegations might be true, and the respondent be not guilty. The illicit intention might have been to steal, burn or murder, as well as to have unlawful sexual connection.

The journal above named thereon remarks:—

There is a refreshing interest in this decision. To go back to the very beginning, the statutory provision as to the evidence which is to infer guilt of conjugal infidelity is peculiar. The accused must have been found "in bed" together. The law takes no cognizance of the offense unless it be committed "in bed." Then to most minds it would have appeared that the mere fact of a man's being found in bed with his neighbor's wife was sufficient to "afford presumption of an illicit intention." But not so apparently in the eyes of the framer of the statute. There must be other "circumstances" concurring with the common couch ere guilt can be inferred. Again turning to the indictment, there is a novelty in the description of the accused as having on the occasion of the offense "been then and there a man." In the view of the prosecutor no doubt the accused might at some other place or at some other time have been a woman, but that is of no moment, seeing that at the place and time of the alleged offense he was "then and there a man." The decision itself would seem to suggest that even in the new world the recent changes in the criminal procedure in Scotland would appear revolutionary. But the most interesting suggestions of all are those conveyed in the last two sentences of the report: "As the indictment stands, all the allegations might be true, and the respondent not guilty. The illicit intention might have been to steal, burn or murder, as well as to have unlawful sexual connection." Now, going to bed with one's neighbor's wife has always been deemed of itself to infer a heinous offense, but hitherto one had no idea of the vast possibilities of crime which such conduct opened up. We presume from the context that stealing, burning and murdering are cited merely as examples *ex grege*, and that the illicit intention inferred by this conduct might have been any offense known to the criminal law. In this view a charge taking the form of our old indictments might run somewhat as follows: "Whereas by the laws of this and every well-governed realm an attempt to commit wilful fire-raising is a heinous crime, and severely punishable, yet true it is and of verity, that you, the said John Smith, are guilty of the said crime, actor or art or part, in so far as on or about the 10th day of August last, in the house No. 247 High street, at present occupied by William Brown, tailor, you the said John Smith did go to bed with Jessie Spence or Brown, wife of the said William Brown, and this you did with the intention of committing wilful fire-raising." There is here a valuable suggestion for the defense in actions of divorce. Hitherto it has been deemed sufficient to prove that A slept with B's wife, and there remained no other possible defenses save lenocinium and condonation. But all this will be changed if we adopt the American suggestion. It will be prudent, however, for the defender to choose some comparatively venial offense as a cloak for the conjugal misconduct. Thus, in answer to an article in the condescendence for the pursuer libelling an act of adultery, we might have: "Answer for the co-defender—Admitted that the co-defender slept with the defender on the occasion libelled. *Quoad ultra* denied. Explained that co-defender went to bed with the defender with the intention of night poaching."

REFRESHMENTS ON THE BENCH.

In the late Lord Cockburn's "Circuit Journeys" it is recorded that "at Edinburgh the old judges had a practice, at which even their barbaric age used to shake its head. They had always wine and biscuits on the bench when the business was to be plainly protracted beyond the usual dinner hour. The modern judges—those, I mean, who were made after 1800—never gave in to this: but with those of the preceding generation, some of whom lasted several years after 1800, it was quite familiar. Black bottles of strong port were set down beside them on the bench, with glasses, carafes of water, tumblers, and biscuits; and this without the slightest shame or attempt at concealment. The refreshment was generally allowed to stand untouched and as if despised, for a short while, during which their lordships seemed to be intent only on their notes. But in a little while some water was poured into the tumbler and sipped quietly, as if merely to sustain nature. Then a few drops of wine were ventured on, but only with the water. Till at last patience could refrain no longer, and a full bumper of the pure black element was tossed over, after which the thing went on regularly, and there was a comfortable munching and quaffing, to the great envy of the parched throats in the gallery. The strong headed ones stood it tolerably well. Bacchus had never an easy victory over Braxfield. But it told plainly enough upon the feeble or the twaddling, such as Eskgrove and Craig. Not that the ermine was absolutely intoxicated. But it was certainly muzzy. This, however, was so ordinary with these sages that it really made little apparent odds upon them. Their noses got a little redder and their speech somewhat thicker, and they became drowsier. But these changes were not perceptible at a distance; and they all acquired the habit of sitting and looking judicial enough, even when their bottles had reached the lowest ebb."

Lord Cockburn himself never emulated these giants, not even in his younger days, when he bids thus: "Take notice, there never was the slightest drunkenness. Elevation there was; but it stopped far, far below the intoxication mark. Excess in wine was never the habit of any set of friends into which I have been thrown." Yet at his Jedburg circuit dinner in 1851 "nineteen persons drank thirty-five bottles of port."

ADVICE TO YOUNG LAWYERS.

In Philadelphia, Justice Paxton, of the State Supreme Court, in the rooms of the Pennsylvania Historical Society, delivered an interesting address on the "Road to success in the Law, or Practical Hints to the Junior Bar." Among other things he said:—

"If you find your client is trying to obtain possession of anything to which he has no legal right, you are, in assisting him, a participer in the crime, and you are committing robbery by means of the law.

"You must not tell falsehoods, not even with a mental reservation. When a lawyer obtains a reputation for sincerity and honesty he is on a fair road to success.

"Remain in your office when you are not forced to be absent from it by professional duties. You can obtain many clients by always being at your post.

"To all I recommend patience; do not solicit business, as that is most unprofessional.

"Be careful how heavily you charge your first client; in your eagerness to get the golden egg, don't kill the goose that lays it.

"If your client's case is a hopeless one tell him so at once. Frivolous litigation only rebounds upon the lawyer.

"Attend to your client's business promptly. I press this upon you with all earnestness. It is the lazy man with little business, who is careless of the little he has.

"Don't learn to lean upon the advice of others. Depend on yourself. Get the law from the books and not second hand from an old practitioner.

"Be prompt in paying your clients the money you have collected for them. This I consider of vital importance.

"Be careful of your habits. I have heard of the care of large estates taken from men simply because they drank. There are no drinking saloons, licensed or unlicensed, along the road to success.

"In addressing a jury don't make long

speeches; don't ask the witnesses unnecessary questions; don't make unnecessary objections; the jury who look to the court for their law lose confidence in the lawyer whose objections are constantly overruled.

"When you bring your case before the Supreme Court don't cite too many authorities. We have always five or six cases to consider a night, and it is really not necessary in a case involving a promissory note to cite every case in which the word promissory note occurs."

GENERAL NOTES.

LEVYING ON A BANKRUPT'S PENSION.—An application was made to the Judge of Warwick County Court yesterday for payment of part of Colonel Greenway's income to a Trustee, for the benefit of the creditors in his bankruptcy. Colonel Greenway was partner in the bankrupt bank, but prior to joining he served for a number of years with the British army in India, and is receiving a pension of £170 per annum for his services. Mr. Lloyd Chadwick appeared for the Trustee, and asked that £70 per annum should be deducted for the benefit of the creditors on the separate estate, the deficiency on which amounts to £15,000. Mr. Sanderson, who represented the bankrupt, made an appeal *ad misericordiam* for the bankrupt, who had been reduced by the failure to poverty, except for the pension he enjoyed. The bankrupt had rendered very distinguished services to the Crown in India. The Judge made the order asked for, but remarked that its effect would be to punish Colonel Greenway rather than to benefit the creditors. The payment of £70 a year was a mere drop in the ocean compared with the liabilities that had to be satisfied; but still it was the bankrupt's duty to do what he reasonably could toward the deficiency, even though it had no appreciable effect upon the estate.—*Pall Mall Gazette.*

THE TOUCH FEMININE.—A contemporary law journal, edited by a lady, refers to an interesting event in the following terms:—"To us a child of hope is born; to us a son is given. This was the refrain of the song at the beautiful home of Elbridge Hanecy during the past week. May the good angels guard and protect him as well as the quartette of little girls who came earlier to bless this home."

A GREAT JUDGE ON CIRCUIT.—The following is from Sir Frederick Pollock's "Remembrances: "My father's circuit-goings were great events in the family. He travelled in a landaulet which opened and shut easily. There was no box seat in front, but there was a 'rumble' behind for the clerks. The capacity for luggage was small, but there was a front boot and a strangely-shaped oaken case to fill the whole of the space under the seat inside, and there were the sword-case and the pockets for books and small articles. Provision was always made for dinner on the road, and in the summer a morella cherry pie was specially prepared for it, and of course there would be two or three bottles of the excellent wine for which my father's cellar was famous. The start was generally made in the evening, and the first night would be passed at Stevenage or Alconbury Hill, the second at Scarthing Moor or Barnby Moor, where stood capital roadside inns with large gardens." The following example of an old-fashioned habit of Lord Ellenborough's is given: "Lord Westmoreland was on his legs in the House of Lords, and giving his opinion on the question in debate, said: 'My Lords, at this point I asked myself a question.' * * * Lord Ellenborough, in a loud aside: 'And a d——d stupid answer you'll be sure to get to it.'"

PERSONAL IDENTITY.—We have frequently referred in these columns to the fallaciousness of evidence of personal identity. A remarkable illustration of this has been chronicled this week. On Monday week the East Surrey coroner held an inquest on the body of a woman who had been found dead in bed at a common lodging-house. Previous to her death, the deceased woman had informed a fellow-lodger that her name was Eliza Gorham, and that her solicitor was a Mr. Mayo. At the inquest, Mr. Mayo, Jr., and a sister of Eliza Gorham positively identified her as Eliza Gorham, whose husband had obtained a decree *nisi* in the Divorce Court in December last. On the other hand, Mr. Gorham, the husband of Eliza Gorham, was equally positive that the woman was not his wife, and Mr. Mayo, Sr., and Eliza Gorham's mother and brother also failed to identify her. The matter became more complicated when it appeared that Eliza Gorham had an old-cut scar at the back of her head and a piece off one of her lower teeth, and the woman who laid the body out, swore that the deceased woman had such a scar on the head, and there was also a piece off one of the lower teeth. It further appeared that Mrs. Gorham was given to habits of intemperance, as also was the deceased woman. Eventually the case was taken as that of a woman unknown, and a verdict of death from an affection of the heart brought on by drink was returned. In consequence of the publicity of the proceedings at the coroner's inquiry and the description given of the dead woman, a Mr. Frederick Ralph Fussell, an artist, of Mablethorpe, Louth, Lincolnshire, who is instituting divorce proceedings against his wife Elizabeth, aged forty-five years, and which cause is in the list for hearing next week, came to London, and having consulted with his London solicitor, the two repaired to Ewer Street Mortuary to view the body of the woman lying there dead, and having done so, they both immediately identified her as Elizabeth Fussell, as well as recognized her clothing. —*Law Journal* (*Lond.*)

A LEADING CASE.

Her name was Sniggs—it didn't suit
  Her rich, æsthetic nature,
And so she thought she'd have it changed
  By act of Legislature,

She sought a limb—a legal man
  With lots of subtle learning,
And unto him she did confide
  Her soul's most faithful yearning.

He heard her through, he asked her wealth,
He pondered o'er her story,
And then he said he would consult
His volumes statutory.

She sighed and rose; he took her hand,
And sudden said, "how stupid!
I did forget the precedent
Of 'Hymen v. Cupid!'

"Just substitute my name for yours."
The maiden blushed and faltered,
But in two weeks she took her name
To church and had it altar'd.

—*Albany Law Journal.*

REQUIREMENTS OF A JUDGE.—A judge requires learning, integrity, industry, patience, courtesy and unruffled temper. He should be one whose firm purpose is to declare the law without fear, favor or affection, who looks for his highest reward in his own conscience and the veneration that will accompany him through life and follow him weeping to the tomb. Not only should our bearing toward the Court tell our disposition, but indicate to the assembled citizens the deference due those selected to expound the law and administer justice. We should be indulgent to their imperfections and peculiarities of temperament. They grow weary. We of the bar, when our case is argued or trial over, can leave the presence, the burden lifted from our brain; yet, with the judge the ending of one case is but the beginning of another.—*Dan'l Dougherty to New York State Bar Association.*

CATHOLIC CEMETERIES.—In *Dwenger* v. *Geary*, it was held by the Indiana Supreme Court that where land is conveyed to the Bishop of the Roman Catholic Church to be used as a cemetery for the interment of Catholics of a city within his diocese, and the land is laid off into lots immediately after the conveyance, and is consecrated as a Catholic cemetery under the laws and by the rites and ceremonies of the Church, and is used as a Catholic cemetery for a period of years, it passes under the dominion of the Church functionaries, and no man has a right of burial in such cemetery unless, under the laws or polity of the Church, he is a Catholic in good standing at the time of his death, and of this the ecclesiastical authorities are the exclusive judges.

LAWYERS IN HONGKONG.—A firm of solicitors in Hongkong write: "A local magistrate of Hongkong, who is not a lawyer, and seems to have an antipathy to legal gentlemen appearing before him in the Police Court, has openly expressed his determination to give his decision, if possible, against the side taking legal assistance. We wonder what he does in any case in which each side is represented."

PIGG'S PIG.—The following is a true copy of an indictment found by the grand jury of Lawrence county. Ky., at its October term of the Criminal Court, omitting the date and the defendant's name; "Lawrence Criminal Court. Commonwealth of Kentucky against ——, Defendant—Indictment. The grand jury of Lawrence county, in the name and by the authority of the Commonwealth of Kentucky, accuse——of the offence of malicious mischief, committed as follows: The said——, on the — th day of——, A. D. 18—, in the county and circuit aforesaid, did unlawfully, wilfully, and maliciously kill and destroy one pig, the personal property of George Pigg, without the consent of said Pigg, the said pig being of value to the aforesaid George Pigg. The pig thus killed weighed about twenty-five pounds, and was a mate to some other pigs that were owned by said George Pigg, which left George Pigg a pig less than he (said George Pigg) had of pigs, and thus ruthlessly tore said pig from the society of George Pigg's other pigs, against the peace and dignity of the Commonwealth of Kentucky. A. S. Auxier, Commonwealth's Attorney. A true bill: O. D. Botner, Foreman. Filed——, A.D. 18—. G. F. Johnson, Clerk."—*Washington Law Reporter.*

A SKULL AS AN EXHIBIT.—Quite a sensation was created by the production of a skull in Court, at Newton, N. J., during the trial of Robert T. Westbrook for the murder of Dennis J. Morris. The defense was that the deceased fractured his skull by a fall during the altercation. To prove that this was probable, Dr. Andress was called as an expert. He had a large package which he fondly handled, and, while telling his story, unwrapped. He said that on January 9th, he visited New York and procured a head taken fresh from the body of a man sixty years old. Returning to Sparta he fastened it on an apparatus resembling a human body, the whole weighing about ninety pounds. This was dropped from an angle of forty-five degrees, the skull striking a round stone. It was fractured worse than that of Morris, although he weighed one hundred and eighty pounds. The prosecution were so surprised they forgot to object, and before any one knew what was coming, the shrunken and ghastly trophy of medical experiment rolled on the floor. The effect was electrical. Women shrieked, men shrunk backward, and the Court turned pale. One woman fainted, and for a few moments the room was filled with uproar, the persons in the rear striving to get a view, while those in front retreated from the grinning skull. When order was restored, the head was taken from the Court, and, on an objection, the whole evidence was stricken from the records. The Court said that the principle involved was unsettled in this State, and somewhat resembled the evidence on which the McPeek case was taken to the Supreme Court.—*National Law Review.*

PRAYERS FOR THE DEAD.—Where the testator by his will devised and bequeathed all his estate, real and personal, in trust for the uses and purposes set forth in the will, which were to pay certain legacies, amounting to about $18,000, and to apply the residue, about $10,000, "for the purpose of having prayers offered in a Roman Catholic Church, to be by them selected for the repose of my soul, and the souls of my family, and also the souls of all others who may be in Purgatory." *Held*,—That the trust thus attempted to be created by the second clause of the will is void; because there is no beneficiary in existence, or to come into existence, who is interested in or can demand the execution of the trust, and no defined or ascertainable living person has or ever can have any temporal interest in its performance, nor is any incorporated church designated so as to entitle it to claim any portion of the fund.—*Holland* v. *Alcock*, ex'r, N. Y. Ct. App.