Vol. III. OCTOBER. No. 8

The BARRISTER

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26	.68	8.16	39	.86	10.32	52	2.70	32.40
27	.69	8.28	40	.90	10.80	53	2.85	34.20
28	.70	8.40	41	.95	11.40	54	3.00	36.00
29	.71	8.52	42	1.00	12.00			
30	.72	8.64	43	1.10	13.20			

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The Supreme Court surplus funds are invested in (1) Dominion Stock, $100,000; (2) Government Stock deposited in Great Britain, £20,000; (3) Debentures deposited in United States, $50,000; (4) Deposited with New Brunswick Government, $20,000; (5) Municipal and other Debentures, $93,170.84; (6) Real Estate and First Mortgages on Improved Property, $1,429,930.62; (7) large current deposit accounts with the Molsons Bank of Canada and the National Bank in London, England.

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The Barrister.

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EDITORIAL.

His Excellency the Governor-General has appointed the Honorable John Alexander Boyd, Chancellor of Ontario, to be a Commissioner under chap. 138 (R.S.C.) to enquire into and report upon additional charges preferred against His Honor James P. Wood, Judge of the County Court of the County of Perth, Ont.

Daniel McDonald, of the Town of Goderich, in the Province of Ontario, Esquire, has been appointed Deputy Registrar in Admiralty of the Exchequer Court for the District of Toronto, in respect of actions which may arise in the Counties of Huron and Bruce.

The Law Society Benchers have decided to hold Christmas examinations in equity and real property for the Law School in accordance with the recommendation of the Principal.

Dr. L. H. Davidson, acting dean, and Judge Wurtele, professor of real estate law, have resigned from the staff of McGill University, Montreal, as a result of the trouble in the law faculty, incident upon the appointment of Prof. Walton, of the Scotch bar.

At a meeting, recently in Montreal, of lawyers and notaries, graduates of McGill law faculty, it was decided to establish a new law school under the control of the bar of the Province of Quebec and the Corporation of Notaries. This is the outcome of the dissatisfaction which exists owing to the importation of a Scotch lawyer by the University corporation as dean of the law faculty.

The London and Ottawa weekly courts are evidently not a success, and frequently there is practically no business at these sittings, to attend upon which a High Court judge makes a special journey from Toronto. At a recent Ottawa sittings held by Mr. Justice Ferguson, his Lordship made a few remarks expressing his opinion of the court. The system was established some two years ago, and was thought at that time to be a great boon, especially to the legal fraternity. His Lordship said it was rather extraordinary that he should have to come all the way to Ottawa to decide a case of such little importance, and which could have been adjudicated upon in Toronto with little cost or trouble. He thought it a pity that the time of the judges should be taken up in attending weekly High Courts in Ottawa and London, for which there did not appear to be any business. The time of the

judges at present is a matter of great importance, and should be considered. The expense to the Government should also be seriously considered, and if the system is to be continued, he thought some effort should be made to bunch the cases. Any case of little importance, and requiring immediate attention, could be settled at Toronto at very trifling expense. In concluding, he said the judges are willing to do their duty, but thought the profession should consider the time and expense incurred by the present system.

CANADIAN BAR ASSOCIATION.

The annual session of the Canadian Bar Association opened at Dalhousie University, Halifax, on August 31st, when Mr. J. E. Robidoux, Provincial Secretary of Quebec, and president of the society, delivered a long address on the objects of the organization and its importance to the Dominion generally. Mr. C. S. Harrington, of the Halifax bar, also spoke. An address of welcome to the members of the Bar Association and the members of the Behring Sea Claims Commission was delivered by Lieutenant-Governor Daly, who was especially happy in his effort. Hon. Don M. Dickinson made an eloquent and felicitous reply, which evoked the most enthusiastic applause. A large number of lawyers were present, and Judges King, Putnam, Townsend, Ritchie and Henry occupied seats on the platform.

LAW STAMPS.

A case which exemplifies the injustice of the present law stamp tax, which the legal profession are in spite of themselves forced to collect, is that of Ostrom v. Sills recently before the Ontario Court of Appeal. It was an action for alleged obstruction of a watercourse the existence of which is negatived by the decision of that Court which held that the damage was occasioned by surface water. It was said that $40 would have originally settled the cause of action and was a fair estimate of the amount involved. The litigation has proceeded at considerable length and, as was remarked by Mr. Justice Moss in delivering his judgment, there has been nothing short in the case but the temper of the parties. In the endeavor to obtain justice through the courts the parties have had to pay not only for their lawyer's services, but for law stamps to an amount in excess of $100, the proceeds of which go to the Provincial Government. If the exigencies of our political economy will not allow of the making of our courts of justice free, there should at least be some modification of the Government tax to compare more favorably with the amount involved. At present the workman's case under the employer's liability law for $300 damages for personal injuries is taxed as heavily as the foreclosure of a million dollar mortgage.

CURBSTONE LAWYERS.

Among the lawyers of all large cities there are a great many attorneys who have offices and yet never do much in the way of practising their profession. There are others who apparently have considerable business who have never been known to have an office. Some of these curbstone lawyers do business for years, carrying their library and "office" files in their well worn high hats. When the canvass is made for the legal directory the curbstone lawyer will usually glibly locate himself in one of the well known down town office buildings. The canvasser, however, is generally acquainted with the man who has simply the city for his professional address and the attorney's directory seldom sets him down as the occupant of a building with an elevator service.

FOREIGN CORPORATIONS.

The time for filing the statements of foreign corporations doing business in Ontario required under the new law of last session expires on November 1st.

The section is embodied in the Ontario Companies Act 1897, Ont. (60 Vict.) chapter 28, as section 104, and is as follows:

Every company not incorporated by or under the authority of an Act of the Legislature of Ontario which now or prior to the first day of November, A.D. 1897, carries on business in Ontario, having gain for its purpose or object, for the carrying on of which a company might be incorporated under this Act, shall, on or before the first day of November, A.D. 1897, make out and transmit to the Provincial Secretary, a statement, under oath, shewing:

(*a*) The corporate name of the company;

(*b*) How and under what special or general Act the company was incorporated, and the Acts amending such special or general Act;

(*c*) Where the head office of the company is situated;

(*d*) The amount of the authorized capital stock;

(*e*) The amount of stock subscribed or issued and the amount paid up thereon;

(*f*) The nature of each kind of business which the company is empowered to carry on, and what kind or kinds is or are carried on in Ontario.

(1) If a company makes default in complying with the provisions of this section it shall incur a penalty of twenty dollars per day for every day during which such default continues, and every director, manager, secretary, agent, traveller or salesman of such company who with notice of such default transacts within Ontario any business whatever for such company, shall for each day upon which he so transacts such business incur a penalty of twenty dollars.

(2) Such public or other notice of the provisions of this section shall be given by the Provincial Secretary as the Lieutenant-Governor-in-Council may think proper.

(3) The Lieutenant-Governor-in-Council may, after the statement required by this section has been received by the Provincial Secretary, relieve in whole or in part any company or person from any penalty incurred by reason of default in transmitting such statement.

CRIMINAL APPEAL.

The proposed amendment of the Law of Criminal Procedure in England, allowing an appeal to the convicted, is attracting the attention of all English speaking people, says Mr. Clark Bell, president of the Medico-Legal Congress.

A bill has been introduced in the Parliament of Great Britain, which has already reached a second reading, entitled a bill for the creation of a Court of Criminal Appeal, which has given rise to a discussion of the subject in England, the echoes of which have reached the ears of those who have a regard for the welfare of England in the Western Hemisphere.

The bill has a memorandum enclosed stating that "It is framed to give effect to the recommendations of the judges, in their report in 1892 to the Lord Chancellor. So far as is consistent with that purpose the drafting follows the bill brought in by Sir Henry James, (now Lord James of Herford) in 1890."

It is perhaps unfortunate that the reasons of the bill are placed on such narrow lines as the acknowledged disparity of sentences. Its introducer has been quoted as saying: "The bill was rendered necessary by the disparity of the sentences which were passed for precisely the same class of offences and committed under similar circumstances."

Disparity of sentences is a recognized evil on both sides the Atlantic; one most difficult to remedy, but it

is only an incident to the major and more important question which confronts the British publicists, where under the present system an innocent person wrongfully convicted on a trial before a single judge, is placed wholly outside the judicial power to correct any errors or mistakes of law or fact occurring on the trial, or review or modify the sentence.

It must be felt, however, that the radical defect in the existing system lies in this :—that it should be within the power of the judges of England to remedy by review any conviction where it has resulted from either :

a. The introduction of improper evidence.

b. The improper exclusion of evidence.

c. By means of a trial based upon the revelation of newly discovered evidence or

d. On a review by an appellate tribunal composed of several judges, entirely removed from the excitement and prejudices so often surrounding the trial; of all the evidence and facts of the case, and where it appears to the court that the prisoner should not have been convicted, or that injustice had been done.

It is not compatible with the rights and safety of the citizen; with the dignity of the judiciary; nor with the majesty of the law itself; that the supreme judicial authority of the nation should be placed in a position where it cannot correct an acknowledged error of law by a single judge, made in the heat or excitement of a trial, or a gross error of fact found by a jury; in cases where great public excitement, and even a hostile expression of public feeling, has surrounded both judge and jury, in criminal cases, especially in capital cases, where human life is at stake.

While the conviction of innocent persons on criminal charges may be conceded to be exceedingly rare, there is no one who will dispute or deny that such cases do sometimes occur. It surely is unnecessary to cite examples here. But we must not fall into the error of regarding them so rare as not to require suitable recognition.

Mr. Justice Grantham states, as a fact, that 4600 petitions were made last year to the Home Secretary from convictions, upon which 420 orders had been made by that officer, granting relief asked, in whole or in part in England. What stronger fact could be found for the absolute necessity and propriety of appeal in criminal cases?

Why should English law deprive English judges of the power of remedying such miscarriages of justice?

It is not necessary to speak of the defects of the present system, which must rely wholly on a Home Secretary; who may not be a lawyer at all, or familiar with the principles of law. No Englishman can deny that an English full bench of judges, would be a safer and far better tribunal to pass upon such a case, than a Home Secretary who is a political officer, and must take care that no act of his shall injure his party, and that his reasons for action will satisfy his political friends.

The tribunal proposed by the bill, six judges selected by the judges of the Queen's Bench division of the High Court of Justice, sitting with the Lord Chief Justice, should surely command the confidence of the British public, and ensure against miscarriage of justice or injustice to the citizen.

It is doubtful if any judge sitting on the British bench would claim that his decisions in a civil case ought not to be subject to review by an Appellate Court.

Is there any greater danger in the ruling of a single judge in the one case than in the other? Has the hurry and excitement of a trial, any conditions which make a trial judge infallible in criminal, and occasionally erring in civil trials? Is the liberty

or the life of the citizen charged with crime, of less value in British eyes, than the bank account of the defendant; which should give a right to an appeal to save his property, and deny it to save his life?

The venerable Judge A. L. Palmer, who for so many years has adorned the Supreme Bench of the Province of New Brunswick, in explaining the workings of the Appellate Court there, from the decision of a single judge; where all the judges sit in review of the decisions of one; (who in that province sits also in review of his own decision and discusses with his confreres the reasons that influenced his ruling in the court below); states that he has, where his own rulings have been under consideration, when persuaded by the reasoning of his associates, voted to reverse his own decision, and that similar instances are not unfrequent.

How much more dignified, how much more honorable to the judiciary of that Province is such a method of rectifying a judicial error, occurring on a trial before a single judge, than to place it outside of the power of the judiciary to correct its own errors or rectify its own mistakes within the lines of well defined judicial procedure.

Canada has always had its Minister of Justice, clothed with as great, and now with greater powers than the Home Secretary of Great Britain, in such cases, and the judges of the Dominion now correct by review on appeal in criminal cases, errors of law or of fact. The objections to the establishment of a Court of Criminal Appeal have been summed up by Lord Ludlow, in a charge he is reported to have recently made to a grand jury, in commenting on the bill now pending. His lordship discusses the difference between the trial of civil and criminal cases thus:

"The comparison of criminal cases with civil is delusive; they stand altogether on a different footing.

"In civil cases the verdict proceeds on the weight of the evidence, and no verdict of a jury is allowed to be impeached, unless it is so unreasonable as to be almost perverse, a state of things which, in a criminal case, would justify the interference of the Home Secretary. In criminal cases the accused is presumed to be innocent until proven guilty, and the jury are emphatically told that they must not convict, unless they are satisfied, beyond a reasonable doubt, of the guilt of the accused.

"The risk of an innocent person being convicted in England is infinitesimal, and that risk, in my opinion, will be practically removed if, as I hope soon will be the case, the accused and the husband and wife of the accused are permitted to give evidence in criminal cases.

"The existence of a Court of Appeal empowered to reverse a conviction of facts will introduce an element of uncertainty in the administration of the criminal law highly detrimental to the deterrent effects of punishment.

"It will relax, too, the sense of stern responsibility now so keenly recognized by the juries, proceeding, in my judgment, from the feeling that their verdict is final and irreversible.

"Is there to be an appeal in every criminal case? If so the temptation to appeal will be overwhelming—and at whose cost?

"In the case of the poor man, it must be at the cost of the public, otherwise the rich will have an unfair advantage over the poor."

This learned judge may be said to voice the present objections to reform in British Criminal Procedure, on the part of some members of the British bench, or of those who oppose.

The light which experience has thrown on this subject, upon the objection presented by his lordship, in the American States and the British Provinces of North America,

has been brilliant, convincing, steadfast and so conclusive that it is doubtful if any Canadian or American judge would share the apprehension Lord Ludlow has expressed.

Facts, experience and results, are to our civilization not unlike the Rœntgen Ray to science which penetrates those substances we were taught to regard as opaque by our early schoolmasters.

Is the responsibility resting upon a Canadian jury less stern, less keenly recognized, less conscientious, less careful, intelligent and searching on a trial for murder, where the life or death of the accused is trembling in the balance, than that of a jury in London, in Liverpool, in Manchester, or anywhere in England, Ireland, Scotland or Wales?

Each takes the same oath, almost identical as to form and substance.

How can the right of Appeal lift in any sense the responsibility that rests upon the conscience of a juror?

The Government, before it takes the life of the condemned, in all American courts, would, in case he appealed under the forms of law, see to it that his case was properly and ably presented to the Court of Appeal, and at the expense of the state, if the accused was poor and without means.

The consideration of the cost of an appeal to the state is too low a plane for the discussion of so grave a question, as the life of a citizen, charged with a capital crime.

In the Dominion of Canada, the power exercised by the Home Secretary in Great Britain is vested in the Minister of Justice, and he is also given a power unprecedented in modern governments; a power in any case of his own volition, and in his discretion, to order a new trial before any court in any part of the Dominion.

Such a power could not be granted an executive in the American States, because all judicial power and functions are vested in the judiciary by the organic law.

The right of appeal, if given in England, should not and would in no wise impair the power or function of the Home Office.

In Canada the right of appeal is entirely judicial, and is outside the functions of the Minister of Justice.

It is only recently that in the government of the United States a Court of Criminal Appeal has been created in the Federal Courts. Their early practice in this regard was based on English precedent, but the right of appeal in criminal cases was found to be necessary and proper, and the appellate tribunal was recently created.

EXPERT TESTIMONY.

It will be remembered that a would-be facetious barrister once remarked that prevaricators might be properly arranged in an ascending series, to wit, ordinary fibbers, liars and experts; an arrangement which I fear meets with the approval of many members of the bench and bar to-day. The cause for such harsh classification is not so very far to seek. It is based upon ignorance on the part of the bar, and at times upon what is worse than ignorance on the side of the "expert." With the culpable acts of the pseudo scientist we cannot waste our time. That he merits prompt condemnation is axiomatic; but a word is wanted touching upon what may be termed the ignorance of the court.

"When I take my place upon the witness stand," said a prominent toxicologist once to me, "I can never predict in what shape I shall be upon leaving it," a feeling with which most of us can, I fancy sympathize pretty keenly.

Is it that we fear exposure of the weak points in our professional armor? Do we dread to say in public "I do not know?" Hardly that, I take it. We are now possessed of

so very little of that which one day may be known, that no true scientist hesitates for an instant to plead legitimate ignorance. What really troubles us upon cross-examination is that the court does not speak our language, a language often quite difficult of direct translation; that it is but rarely schooled in the principles of our science; and that, in consequence, it frequently insists upon categorical answers to the most impossible kind of questions.

The hypothetical questions showered upon the expert witness are sometimes veritable curiosities, so peculiar are they in their monstrosity.

All scientific men are willing and anxious to have their work scrutinized carefully by their peers; but to be exposed to the one-sided criticism frequently encountered at the bar is quite another matter; for it must be remembered that after the adverse counsel has opened up what appears to be a glaring inconsistency in the testimony, the re-direct-examination may utterly fail to repair the breach, because of a lack of familiarity with a technical subject on the part of the friendly attorney.

This leaves the witness in the unenviable position of disagreeing with the general drift of his own testimony, while it deprives him of suitable means of insisting upon its revision and correction.

According to the view of Mr. W. L. Mason, advanced at a recent science convention in Detroit, there is but one way to escape such dilemma, and that is by direct and immediate appeal to the judge; urging that the oath taken called for a statement of the whole truth, and not the misleading portion already elicited.

To illustrate how serious a matter the partial testimony of an expert witness may be, and to show also to what extent lawyers may go who look only to the winning of their causes, he refers to an already reported poison case in which he was employed, and which he roughly outlined as follows:

Much arsenic and a very little zinc were found in the stomach.

The body had not been embalmed, but cloths wrung out in an embalming fluid containing zinc and arsenic had been spread upon the face and chest.

Medical testimony showed that no fluid could have run down the throat. Knowing the relative proportions of zinc and arsenic in the embalming fluid, the quantity of arsenic found in the stomach was twelve times larger than it should have been to have balanced the zinc, also there present, assuming them to have both come from the introduction of the said embalming fluid by cadaveric imbibition. Other circumstantial evidence was greatly against the prisoner.

At the time of my appearing for the people, on the occasion of the first trial of the case, my direct testimony brought out very strongly the fact that a fatal quantity of arsenic had been found in the stomach, but no opportunity was given me to testify to the presence of the zinc found there as well, although the fact of its existence in the body was known to the prosecution through my preliminary report. Through ignorance of the nature of such report on the part of the defence, no change was made in the character of my testimony during the cross-examination, and I was permitted to leave the witness-stand with a portion of my story untold. No witnesses were called for the defence, and the case was given to the jury with the darkest of prospects for the prisoner.

For many reasons, unnecessary to recount here, I was distinctly of the opinion that murder had been committed, but I felt, nevertheless, that common justice demanded that the prisoner should have been entitled to whatever doubt could have been thrown upon the minds of the jury, no matter how far-fetched the foundations for such doubt might have been.

The first trial having resulted in a

disagreement of the jury, I was pleased to learn, before the second hearing of the case began, that the defense was prepared to go into the question of the embalming fluid; for the responsibility of permitting only a part of what I knew to be drawn from me, to the entire exclusion of the remaining portion, was greater than I wished to assume. The nature of my report to the coroner having been established, and certain opinions relating thereto having been fully ventilated, the jury were possessed of "reasonable doubt," and acquitted the prisoner. What now were the duties of the expert upon the occasion of the first trial of this case, and how should he have construed the meaning of his oath?

One eminent legal light, to whom the question was referred, held that the expert was distinctly the property of the side employing him, and that his duty was simply to answer truthfully the questions put to him, without attempting to enlighten the court upon the facts known to him, but not brought out by the examination, no matter how vital such facts might be.

Another held that although the above course would be proper in a civil case, yet, in a matter involving life and death, the witness should insist upon the court becoming acquainted with his whole story. Do not such differences in legal opinion make it very desirable that the expert, at least in capital cases, should be the employee of the bench rather than of the bar, in order that whatever scientific investigations are made may be entirely open to public knowledge and criticism?

Although the expert should earnestly strive to have what he has to say presented in the best form, he must remember that to secure clearness, particularly before a jury, technicalities should be reduced to a minimum. To a degree they are unavoidable, but let them be as few as possible. Illustrations should be homely and apt; capable of easy grasp by the jury's minds, and if possible taken from scenes familiar to the jury in their daily lives.

It is an unfortunate fact that the expert must be prepared to encounter in the court-room not only unfamiliarity with his specialty, but also deep-rooted prejudices and popular notions, hoary with age and not to be lightly removed from the mind by the words of a single witness. Sanitary experts, in particular, run up against all sorts of popular superstitions, and are inveighed against as "professors" by those who consider themselves the "practical" workers of the time; and, let it be noted, the burden of proof is uniformly laid upon these "professors'" shoulders, while the most astounding and occult statements made by the "practical" men may be received without verification.

One source of trouble, which perhaps is peculiar to the water expert, lies in the impossibility of utilizing analytical results, such as were made years ago.

Those who are not chemists fail to grasp the fact that the examination of water may not be looked upon from the same point of view as the analysis of an iron ore. The statement that water analysis is but of recent birth, and that it is yet in its infancy, is hard for them to appreciate, holding, as they naturally do, that what was true twenty years ago must be true to-day, if science does not lie.

A pit into which many an expert witness falls is prepared for him by insidious questions leading him to venture an opinion upon matters outside of his specialty. It is a fatal error to attempt to know too much. Terse, clear answers, well within the narrow path leading to the point in question, are the only safe ones; and when the line of inquiry crosses into regions where the witness feels himself not truly an expert, his proper course is to refuse to testify outside of the boundaries of his legitimate province.

Unfortunately the expert is as often

invited to take these collateral flights by the side employing him as by the opposition. Affidavits in submitted cases are commonly written by the lawyers and not by the expert, although they are, of course, based upon his reports. In the strength of his desire to win the case, the lawyer often prepares a much stronger affidavit than his witness is willing to swear to.

The writer has had no little difficulty just at this point, and has had plenty of occasion to observe the irritation displayed by counsel upon a refusal to indorse statements which have been "too much expanded."

Every expert witness, especially in his early cases, is sure to have adverse authorities quoted against him; therefore, it behooves him to be so familiar with the literature of his subject as to be capable of pointing out that such and such a writer is not up to date, or that such and such a passage, if quoted in full, would not bear the adverse construction that its partial presentation carries. When the expert reaches a position of such prominence that he can state a thing to be so because he says it, irrespective of whatever may be written on the subject to the contrary, his course then is greatly simplified; but long before he attains that altitude he will have put himself upon record in many cases, and happy for him if the record so made be such as cannot be quoted to his disadvantage.

"If I had only not written my first book," is the reflection of many a distinguished author, while one of the great masters of music, referring to an opera, said: "It is one of my early crimes."

Above all things, the expert "should provide things honest in the sight of all men."

It is well for him to be deeply interested in his case, to feel in a measure as if it were his own, but it is unwise in him to become so partisan as to let his feelings affect his good judgment, and it would be indeed criminal should he permit his interest in any way to contort the facts.

Before the case is brought to a final hearing, it may be apparent that experiments before the court are possible and they may be demanded by the counsel in charge of the case. If such experiments be striking, easy of execution, and not too long, by all means make them.

Practical illustrations, particularly such as involve some fundamental principle, have great weight with the court; but these illustrations must not be such as wold turn the court-room into a temporary laboratory and involve the loss of much time in vexatious waitings.

Such experiments as are determined upon should be thoroughly rehearsed beforehand, no matter how simple they may be, for, of all failures, the court-room experiment which declines to "go off" is perhaps the most dismal.

This brings to mind a kindred topic upon which there should be a word of caution; laboratory experiments, which work to perfection, may utterly fail when expanded to commercial proportions, so that it is wise to bear in mind the danger of swearing too positively as to what will happen in large plants, when the opinion is based only upon what is observed to occur upon the smaller scale. Like conditions will, of course, produce like results, but it is marvellous how insidiously unlooked-for conditions will at times creep into one's calculations, and how hard it is even to recognize their presence.

When preparing his case for presentation, the expert often errs in not dwelling more largely upon certain points because he thinks them already old and well known. To him they may be old, but to the public they may be of the newest. Not only is the public unequally posted with the specialist, but what it once knew upon the subject may have been

forgotten. It is well, therefore, to insert, in a special report, matters that would be properly omitted from a paper prepared for a professional audience.

Sanitary problems are of especial interest to the public, but the amount of ignorance, or rather false knowledge, displayed concerning them is surprising and often difficult to combat. The sanitarian is not unfrequently called upon suddenly to defend a position involving complex statistics; and, because the data cannot be forthwith produced, the inference is drawn that his points are really without facts to support them, and that they are consequently not well taken.

Long before he gets into court, particularly if the time for preparation of the case be short, the expert may well "pray to be delivered from his friends." He may receive a peremptory order by telegraph to "determine the mineral qualities of this rock," when the telegram should have read "Assay this ore for silver," and later it may be a matter of surprise that a quantitative knowledge of the copper present was not obtained while passing along the line for the determination of the silver; for it is generally not known that the complete analysis of any thing is quite rare, and correspondingly tedious and expensive.

Toxicologists who hear me may call to mind some case involving a search for the presence of an alkaloid, strychnia for example, during which search the district attorney, in his eagerness for information, may have asked to know what the indications were as to the presence of the poison, at a time when the extraneous organic matter was not nearly removed. He may have wished no final report, but only the simple probabilities, whereon to base a possible arrest. Such requests are very common, and are akin to a demand for a proof of the pudding during the early baking, when we all know that such proof comes at a much later stage of the proceedings.

Finally, "When doctors disagree, who shall decide?"

This question is often very vigorously settled by the jury, as was instanced in a recent celebrated murder trial in New York city. In that case what the experts had to say on either side was simply thrown overboard as a whole, and the finding was based upon the testimony of the remaining witnesses.

What can be said upon this question of the disagreement of expert witnesses? First, it must be noted, they are far from being the only class of people who fail to agree, and that, too, on very important subjects. Do my hearers think it would be a very difficult task to find a small army of men who would testify very variously and very positively upon questions of politics or religion? Would it be hard to find "good men and true" who would give under oath greatly differing opinions concerning the propriety of instituting free trade or establishing an inheritance tax? Experts are subject to the same errors of judgment as befall the rest of professional humanity, and when their opinions clash, they are entitled to the same respect that we grant to the members of the bench when they hand down the decision of a divided court.

One fruitful opportunity for disagreement always arises when questions are brought into court touching upon matters newly discovered and apart from the well-beaten path of common professional knowledge. Doubt is often left upon the minds of those seeking the light, even when the testimony is given by the specialist who originally developed the new point in question, for one cannot be expected to be thoroughly educated in that which he has himself but recently discovered.

Many of us have dreaded to see the "ptomaines," or putrefactive alkaloids, make their way into court

with their mystifying influences upon judge and jury and their tendency to protect crime. Now that they are in, what is to be the end? Even with no "ptomaine theory" possible, the ptomaine form of argument is not unknown. The writer was once asked in an arsenic case, whether he was willing to swear that at some future time an element would not be discovered giving the stated reactions now called arsenical. Such nonsense is, of course, instituted to impress the jury, and is suggested by similar questioning in the alkaloid cases.

A recent and somewhat amusing instance arose from an attempt to introduce the rather new conception of "degeneracy" into a murder trial. The defense sought to show that the prisoner was a "degenerate" and offered expert testimony as to the meaning of the term and as to the signs whereby such a condition was to be recognized; whereupon the prosecution called attention to the fact that the defendant's experts themselves exhibited every one of the signs in question.

The expert witness should be absolutely truthful, of course; that is assumed, but beyond that he should be clear and terse in his statements, homely and apt in his illustrations, incapable of being led beyond the field in which he is truly an expert, and as fearless of legitimate ignorance as he is fearful of illegitimate knowledge.

Mounting the witness-stand with these principles as his guide, he may be assured of stepping down again at the close of his testimony with credit to himself and to the profession he has chosen.

Lawyer—"I am afraid I can't do much for you. They seem to have conclusive evidence that you committed the burglary."

Client—"Can't you object to the evidence as immaterial and irrelevant?"—*Tid Bits.*

NOTES OF CASES, ONTARIO.

WINCHESTER, M. C.] [SEPT. 11.

TORONTO TYPE FOUNDRY v. TUCKETT.

Practice—Want of Prosecution.

Plaintiffs had omitted to set action down within six weeks after close of pleadings. Held, that before defendant is entitled to an order of dismissal under Rule 434 the plaintiffs must not only have made default in setting down action for trial within six weeks from close of pleadings, but they must also have made default in proceeding to trial, as provided by Rule 542. Motion dismissed. Costs to plaintiffs in cause.

H. Cassels for defendants.

C. W. Kerr for plaintiffs.

* * *

MEREDITH, C. J.] [SEPT. 13.

RE JONES v. JULIAN.

Division Court—Jury.

Motion for prohibition to the Third Division Court in the County of Essex, on the ground that the defendant was deprived by the inferior Court of his right to a trial by jury of all the questions arising in the action, and of his right to a general verdict at the hands of the jury. It did not appear that the course taken was objected to at the trial. The learned judge left certain questions to the jury, and entered a verdict upon their answers. Defendant contended that all the questions arising were not left to the jury, and even if they had been the judge had no power to enter a verdict upon findings, which was usurping the functions of the jury.

Held, that all the facts really in dispute were submitted to the jury, and, having been found in favor of plaintiff, the judge had the power to enter the verdict upon the answers to questions submitted without objection, and that by section 304 of

the Division Courts Act the High Court practice was applicable.

Motion refused with costs.

D. L. McCarthy for defendant.

D. Armour for plaintiff.

* * *

THE DIVISIONAL COURT,] [SEPT. 15.
(Q. B. D.)]

ALDIS v. CITY OF CHATHAM.

Municipal Corporation — Repair of Highway—Snow and Ice.

Appeal from judgment of the Judge of the County Court of Kent, dismissing the actions, which were brought to recover damages for injuries sustained by reason of infant plaintiff's fall upon a sidewalk in the city of Chatham, alleged to be out of repair. No notice of the accident was given, as required by the proviso added to sec. 531 (1) of the Consolidated Municipal Act, 1892, by 57 Vict., ch. 50, sec. 13, as amended by 59 Vict., ch. 51, sec. 20. The absence of the notice was held by the County Court Judge to be fatal to the actions. The plaintiffs contended that, as the accident was not owing to snow or ice upon the sidewalk, the statute did not apply. Held, that notice of the accident was necessary in all cases coming under sec. 531 (1), and was not confined to cases of snow or ice under the amending proviso, and therefore the actions failed. Per Armour, C. J., that this was the plain meaning of the statute, and the Court of Appeal could not have intended to decide otherwise in Drennan v. City of Kingston, 23, A. R., 406. Appeal dismissed with costs.

E. Bell for plaintiffs.

W. Douglas, Q.C., for defendants.

* * *

COURT OF APPEAL.] [SEPT. 17.

REGINA v. MURRAY.

Dies Non—Commitment.

Appeal by defendant from order of MacMahon, J., dismissing application by defendant for his discharge from custody upon the return of a habeas corpus. Defendant was brought before a justice of the Peace on the 1st July last, charged with attempting to pick pockets, and was on that day committed for trial. Being brought before the County Court Judge a few days later, he elected to be tried summarily, and was tried by the judge at his Criminal Court, under the Summary Trials Act, convicted, and sentenced to three months' imprisonment in the Central Prison. The defendant contended that the commitment by the magistrate, being made upon a dies non juridicus. was a nullity, and the subsequent proceedings, being founded upon the commitment, were also void. Held, that the County Judge's Criminal Court, being a court of record, the only way of obtaining relief was by writ of error, and the writ of habeas corpus was improvidently issued. Appeal dismissed.

D. O'Connell (Peterborough) for defendant.

A. M. Dymond for the Crown.

* * *

DIVISIONAL COURT,] [SEPT. 17.
Q. B. D.]

POWERS v. CARMAN.

Newspaper Libel—Security for Costs.

Under 57 Vict. (Ont.), ch. 27, s. 7. there is no appeal beyond a judge in Chambers on an application for security for costs in a newspaper libel action.

Clute, Q.C., for defendant.

J. H. Moss for plaintiff.

* * *

DIVISIONAL COURT,] [SEPT. 17.
Q. B. D.]

REGINA v. WILLIAMS.

Criminal Case—Authority of Solicitor —New Trial.

Defendant was charged with manslaughter and acquitted; but the Crown obtained a reserved case upon the question as to whether the defendant's depositions at the Coroner's

inquest were admissible against him, the trial Judge (Robertson, J.) having rejected the same, following Reg. v. Hendershott, 26 O. R. 678. Held, that service of a copy of the case and notice of hearing upon the solicitor retained by the defendant for the trial was not good service, as the solicitor's authority would, *prima facie,* terminate with defendant's discharge from custody on his acquittal. Held, also, there is in such case no cause pending which the Appellate Court can hear, unless a new trial is moved for and notice duly served; and as no one appeared for the defendant, the case was directed to stand over until notice of application for a new trial is served personally upon the defendant.

J. R. Cartwright, Q.C., for the Crown.

* * *

COURT OF APPEAL.]

WALKER v. ALLEN.

Devolution of Estates—Children of Deceased Brother.

Where brothers or sisters are entitled to share on an intestacy, the children of a deceased brother or sister of the intestate are entitled to share *per stirpes.*

Re Colquhoun 26 O. R. 104 overruled.

(Burton, C. J. O., Osler and Maclennan, JJ. A.

* * *

MR. HODGINS, Master-in-Ordinary.] [SEPT. 21.

RE JOHN EATON CO., LIMITED.

Company — Winding-up — Appointment of Liquidator.

Judgment upon application to appoint as permanent liquidator of the company in a winding-up proceeding under the Dominion Act Mr. Clarkson, the assignee, for the benefit of creditors under an assignment executed by the company before the winding-up proceedings were instituted. The assignee had been appointed interim liquidator, on the order being made for the winding-up. The learned Master-in-Ordinary said:—

Certain evidence warrants me in disapproving in the strongest language allowable to judicial utterances the attempted bargaining respecting the Court appointments of liquidator and solicitor. Had I allowed the objection that the letters and interviews about that bargaining were "privileged communications," I would have made the Court a condoning party to a proceeding known in outside affairs as "log-rolling." No privilege can be claimed or allowed by which any such bargaining respecting appointments of trust from this Court might be concealed or condoned. And if ever similar efforts to promote or control such appointments here should culminate in a bargain, I hesitate not to say that it will be my duty to use such judicial power as I possess to free the Court from the taint of complicity with such bargaining.

It is no part of my judicial duty to consider how the newspaper controversy or the contentions in these proceedings may affect Mr. Clarkson personally or in his commercial relations with the business community. Disregarding the quarrels and antagonism displayed in this case, and giving weight to what the justice of the case requires, I must consider only the best interests of the creditors of this company, and the qualifications of the officer to be appointed liquidator.

Were I to appoint some other person as liquidator than the assignee and trustee in whom the estate and rights of action of this company have been vested, such an appointment would most probably lead to the antagonisms deprecated by many judges, practically illustrated here, and waste the assets of the creditors in prolonged litigation on questions of provincial or Dominion jurisdiction.

Evidence has been adduced before me with the view of showing that

Mr. Clarkson, the trustee for the creditors under the assignment, should not be appointed permanent liquidator. But, I find that substantially the same facts as to Mr. Clarkson's previous connection with the company and the Bank of Toronto were before the learned judge who appointed him interim liquidator; and his decision on those facts cannot be reviewed by me. If he is unfit for the position of permanent liquidator, he was unfit for that of interim liquidator to which the learned judge appointed him.

The possibility of dissensions continuing induces me to decline appointing two liquidators, and giving the chance of appeals to the Court, not for direction merely, but upon questions of antagonism, and thereby occasioning great expense and delay to the creditors of this company.

Without considering further reasons, I think the best interests of the creditors will be conserved by my adopting the reason given by Mr. Justice Robertson in his judgment, that "as the estate is now in the hands of Mr. Clarkson, under the voluntary assignment, I appoint him interim liquidator." For the same reason, and others indicated above, I appointed him permanent liquidator.

As to costs, I intimated at the opening of these proceedings that the English practice had laid down a rule which I might have to follow. These proceedings show the propriety of adopting it; but as the order gives the petitioning creditor the costs of the reference, and as he has failed in his nomination of liquidator, he can only be allowed the ordinary costs of an ordinary application where there has been no contest.

J. Parkes for opposing creditors.

S. H. Blake, Q.C., for assignee and consenting creditors.

* * *

ATTORNEY-GENERAL FOR ONTARIO v. CAMERON.

ROSE, J.] [SEPT. 25.

Succession Duties—Accumulations.

Supplementary special case stated for the opinion of the Court in regard to succession duties upon the estate of the late Alexander Cameron, of Windsor, and Toronto, as to how the duty should be computed, upon what sum or sums, and when paid on the capital sum of the estate. The parties agreed, in accordance with the principles of the judgment already given (27 O. R. 380), that the duty on the legacies payable before the final distribution is to be computed on the amount of each legacy as it is paid. Held, as to the capital, that the duty to be computed and paid is to be upon the amount of capital actually distributed upon the final distribution, whether the same may have been increased by accumulations or by rise in values, or have been diminished; but the period of distribution is not necessarily at the end of twenty-one years. Until the beneficiaries are entitled to possession or to actual enjoyment of the moneys directed to be paid to them, the duty is not payable, and the amount of such duty cannot be ascertained until the time the right of possession accrues. There is no final distribution of the estate until the moneys reach the hands of the persons who shall become entitled thereto. Judgment accordingly.

J. R. Cartwright, Q.C., for the plaintiff.

E. D. Armour, Q.C., for the defendants.

* * *

GRIFFIN v. FAWKES.

STREET, J.] [SEPT. 22.

Production of Documents—Privilege.

Appeal by plaintiff from order of Master in Chambers, requiring plaintiff to produce certain documents sought to be protected. The action was brought to enforce an award,

which was based upon the assumption that the plaintiff was the holder of certain title deeds, which were the documents sought to be protected. The defendants denied that plaintiff holds these deeds, and denied that she ever did hold them. Held, that as by the terms of the award the possession and delivery over of the deeds and the payment of the sum awarded to plaintiff are to be concurrent acts, the plaintiff must show herself to be in a position to obtain the money by producing the deeds at the trial and proving them. If she fails to do so, she must fail in the action. Under these circumstances the claim to protection, because "the said documents are documents of title, and are not relevant to the defendants' case, but are part of my case only, and do not impeach my case," is well taken. To deny the due execution of a deed sought to be protected, or to set up that it is forged, or to plead *non est factum*, does not give defendant a right to have it produced on an affidavit of documents, where the deed is a part of the title to be proved at the hearing by plaintiff, for the *onus* of proving it lies on him, and if he fails he can go no further. Frankenstein v. Gavin (1897), 2 Q.B., 62, followed. Appeal allowed with costs.

W. R. Smyth, for plaintiff.

Bradford, for defendants.

* * *

BACON v. RICE LEWIS & SON, LIMITED.

FALCONBRIDGE, J.] [SEPT. 23.

Fixtures—Machinery.

Action by the executors and trustees of the will of John Bacon, deceased, for an injunction restraining defendants from interfering with or removing the engine, boilers, machinery and implements used by one John Perkins for carrying on a manufacturing business, from the premises on the corner of Front and Princess Streets, in the city of Toronto, the plaintiffs being mortgagees of the land, and to have it declared that the same are fixtures, and that defendants are not entitled thereto under their chattel mortgage from Perkins, and for damages. The plaintiffs, when they advanced their money on their mortgage, advanced it on the security of the factory as a going concern, and supposed that all the machinery was covered by their mortgage, and that the agent of the mortgagor Perkins understood that the plaintiffs were advancing their money on the building and machinery, and that the machinery was to be covered by the mortgage. Perkins placed the machinery in buildings which he had specially constructed for the manufacture of engines, etc.; the machinery was specially adapted for, and was essential to the carrying on of such manufactures; and he intended the machines to remain there "as long as he lived, and to turn it over to his son after he was gone," *i.e.* permanently. There is a bedding, more or less substantial in the earth, for all of the machines in question, and their removal would cause displacement of the soil.

Held, that the bolting to foundation timbers firmly embedded in the soil is equivalent to other recognized modes of attachment—*e.g.*, nailing to a floor. The evidence showed that all the machines in the engine shop (other than the large planer and the shafting lathe), were spiked down or fastened to the floor when first placed in the factory, but as other machines were from time to time brought in, for purposes of light and convenience, new positions were assigned to machines, and in some cases belts or fastenings were not replaced; but the omission to refasten was not with intent that the machines should be regarded thereafter as chattels. The mortgagor Perkins, before he made a second chattel mortgage to defendants covering these machines, had made a mortgage to plaintiffs.

Held, they must be regarded as part of the realty, and as covered by plaintiff's mortgage.

Dickson v. Hunter, 29 Gr. 73 approved.

Judgment for plaintiff as prayed (with a reference as to damages), as to all the goods except certain specified articles, with full costs of suit.

Ludwig, for plaintiffs.

A. Hoskin, Q.C., and D. E. Thomson, Q.C., for defendants.

ENGLAND.

WRIGHT, J.] [103 L. T., 246.

HUNT v. HUNT.

Divorce Proceedings—Separation Deed not to Molest.

A deed of separation contained a covenant by the husband not to molest his wife. Both parties were British subjects. The husband now served notice on the wife that he intended to proceed for a divorce in Texas, and that he intended to examine witnesses in England. The wife sought an injunction to prevent her husband molesting her, and also claimed damages.

Held, that the wife was entitled to succeed, for though the *bona fide* taking of divorce proceedings in England would not have amounted to molestation, yet taking proceedings in Texas, where there could be no right to interfere, the parties being English, was vexatious and unreasonable, and amounted to a breach of the covenant. (Wright, J.)

* * *

STIRLING, J.]

RE ASHTON. INGRAM v. PAPILLON.

Double Portions.

The rule of equity that a provision by will for a child is satisfied or adeemed *pro tanto* by a subsequent provision *inter vivos* applies where both provisions are made by the father, on whom the duty of making a provision for his child *prima facie* falls; but it does not apply where both provisions are made by the mother or grandfather or any other person, in the absence of evidence which satisfies the Court that such mother, grandfather or other person has put her or himself *in loco parentis.* (32 Eng. L. J. 419.)

* * *

STIRLING, J.] [AUG. 5.

IN RE STUART. SMITH v. STUART.

Trustee—Breach of Trust—Liability.

In determining whether a trustee has acted reasonably or not, the Court will consider whether it is probable that he would have acted in the matter as he did if he had been acting in a matter of his own.

A trustee invested trust funds upon mortgage on the advice of his solicitor, and relying upon him and on valuations of surveyors employed by him. The valuations did not satisfy the requirements of section 8 of the (Imp.) Trustee Act, 1893—firstly, because the solicitor acted in respect of the mortgages on behalf also of the mortgagors, and the surveyors employed by him were not instructed and employed independently of the mortgagors, and it did not appear that the trustee reasonably believed they were instructed and employed independently of the mortgagors; and, secondly, because in all the valuations except one no values were stated of the properties proposed to be mortgaged; all that was given being the amounts respectively for which the valuer considered the properties to be good securities, and in the case of the only one in which the value was given the amount lent exceeded that value. The mortgages proved insufficient, and no special circumstances were put forward.

Held, that the trustee would not have advanced the money without further inquiry if he had been dealing with money of his own, and that it was not a case for the Court to exercise its jurisdiction under the Judicial Trustees Act, 1896, to give him relief from personal liability for a breach of trust.

HOUSE OF LORDS.] [JULY 6.

POWELL (APPELLANT) v. THE BIRMINGHAM VINEGAR BREWERY COMPANY (RESPONDENTS).

Trade Name—"Yorkshire Relish" Case.

When a trader has long been the sole maker of a particular kind of article, and called it by a non-descriptive trade name by which alone the article has become known in the market, a rival trader is not at liberty to make and sell a similar article under the same name unless he so distinguishes his goods as to prevent their being mistaken for the goods of the original maker, and affirming the decision of the Court of Appeal, L. R. (1896) 2 Chy. 54, held that the appellant was not entitled to use the name "Yorkshire Relish" in connection with any sauce other than the respondents' without clearly distinguishing such sauce from that of the respondents.

UNITED STATES.

WEBER v. SHAY.

[46 N. E. REP. 377.

Solicitor—Services to Prevent Indictment of Client.

A contract by an attorney at law to render services to prevent the finding of an indictment against one suspected of crime is because of its corrupting tendency illegal and void and that without regard to the attorney's belief as to the guilt or innocence of the accused; and the attorney cannot recover for such services. (Ohio Supreme Court.)

* * *

TURNER v. ST. CLAIR TUNNEL CO.

[70 N. W. REP. 146.

Personal Injury—Negligence—International Law.

Defendant was engaged in constructing a tunnel under the St. Clair River, the boundary between Michigan and Ontario. Plaintiff was employed in Michigan by defendants in the work on the Michigan side and was afterwards directed to the Ontario side to work and while there was injured.

Held that whether or not defendants were liable on the ground of negligence in putting the defendant upon a dangerous work without proper safeguards was to be determined according to Ontario law. (Mich. Supreme Court.)

* * *

FIDELITY & CASUALTY CO. v. FORDYCE.

[41 S. W. REP. 420.

Employers' Liability Insurance.

Where a policy provides for payment of sum for which the insured "may become liable for" in damages for personal injuries, and that the insuring company shall have charge of the defence in litigation against the insured in respect thereof, the liability of the company accrues when the insured's liability has been finally determined and not until after the termination of a pending appeal from the judgment at trial. (Ark. Supreme Court.)

* * *

COMMONWEALTH v. LANGLEY.

[47 N. E. REP. 511.

False Pretences—Corporation.

An officer of a corporation who induces persons to purchase worthless stock by false and fraudulent representations is guilty of obtaining money under false pretences, although the money never became his but went to the corporation and he received none of it. (Mass. Supreme Court.)

* * * *

PRYSE v. PEOPLES' BUILDING ASSOCIATION.

[41 S. W. REP. 574.

Interest—Building Association System.

The obligation of borrowing members of a building association to pay

dues or premiums in addition to interest is in its nature one for the payment of interest the transaction being in effect a borrowing and lending of money, and such obligation is within the provisions of a constitutional enactment as to the regulating of the rate of interest. (Kentucky C. A.)

PERSONAL.

J. S. L. McNeely, barrister, has located at Almonte, Ont.

F. W. Gwillam, barrister, has removed from Moosomin, N.W.T., to Slocan City, B.C.

Mr. A. S. Clarke and Mrs. Clarke, Mount Forest, have returned from their vacation trip.

Mr. M. C. Biggar, barrister, Sudbury, has mysteriously disappeared without apparent cause.

Mr. W. H. Kingston, Q.C., Mount Forest, Ont., was recently married in Manitoba, to Miss Stevenson.

Mr. M. Wilkins, barrister, Arthur, Ont., with Mrs. Wilkins and family, have returned from their holiday trip to Ottawa.

Mr. W. F. Parker, of Halifax, N.S., has resumed practice there, from which he recently retired on account of illness.

Mr. Geo. E. Martin, of Hamilton, was made a presentation by the Wentworth County Law Association on his removal to British Columbia.

T. C. Casgrain, Q.C., of Quebec, has removed to Montreal, and will practice as a member of the newly-constituted firm of McGibbon, Casgrain, Ryan & Mitchell.

Messrs. Wilson, Kerr & Pike, of Chatham, Ont., have formed a new partnership, and will continue the occupation of the offices of the late firm of Wilson, McKeough & Kerr, recently dissolved.

Mr. E. G. Ponton, a well-known barrister of Belleville, Ont., died on Sept. 21st, aged 40 years. In the rebellion of 1885 he was adjutant of the Midland Battalion. A widow and three children survive him.

The Right Hon. Sir Henry Strong, P.C., Chief Justice of Canada, occupied a seat on the bench at the opening of the Court of Review at Quebec, on Sept. 27th, and was presented by the District Bar with an address of congratulation on his appointment as a member of the Judicial Committee of the Imperial Privy Council.

Mr. Frank H. Robinson, Manager of the Goodwin Law Book and Publishing Company, died on September 22nd of typhoid fever, after a short illness. Mr. Robinson was very popular with the legal profession and the announcement of his sudden demise will be read with feelings of deep regret by all with whom he had been accustomed to associate.

During the Law Society term just ended, the following gentlemen were called to the Bar, and were sworn in and enrolled as barristers :—A. B. Thompson (called with honors and awarded a silver medal), A. M. Stewart (called with honors), S. B. Woods, T. B. Rowland, W. McFadden, W. H. Moore, J. F. Gross, T. P. Morton, E. F. Appelbe, F. B. Osler, T. L. Church, R. E. Eagen, J. F. Hollis, H. G. W. Wilson, A. A. Carpenter, A. M. Lewis, E. C. Cattanach and G. C. Heward.

Mr. John H. Moss, of the firm of Barwick, Aylesworth and Franks, has consented to stand as a candidate for the presidency of the Osgoode Legal and Literary Society, and has come out at the head of the following "ticket" :—President, John H. Moss; 1st Vice-President, I. D. McMurrich; 2nd Vice-President, Thomas White; Secretary, Wm. Finlayson; Treasurer, James G. Merrick; Secretary of Committees,

Henry C. Osborne; Committee, A. J. Kappele, W. R. Wadsworth, R. C. H. Cassels. No other candidate has so far been named to oppose Mr. Moss.

MISCELLANY.

During the recent sessions of the various State Legislatures, the fool killer has missed many opportunities to establish his claim to being a public benefactor. When somebody introduced into the Kansas Legislature the other day a bill to make the ten commandments a part of the statutes, there was a good deal of laughing at that State all over the country, but in the language of the street "there are others."

In fact, this appears to have been a good year for fool bills. A Massachusetts Solon asks for a salaried state board to examine blacksmiths. A North Dakota man wants to license barbers, and a smooth-faced gentleman in the Indiana House would like to impose a tax on whiskers. A Massachusetts man also wants chiropodists to pass a State examination. Members of the Michigan and Missouri Legislatures have attempted to follow the lead of the wise legislators of the Argentine Republic, who, in their distressed efforts to provide a population for their large and fertile country, have decided to provide a remedy for depopulation by making marriage almost compulsory. The Michigan man only proposes to tax bachelors, but the Argentines provided that "young celibates of either sex who shall without legitimate motive reject the addresses of him or her who may aspire to his or her hand, and who continue contumaciously unmarried, shall pay the sum of 500 piastres for the benefit of the young person, man or woman, who shall be so refused." The Missouri man accepts this proposition as well as the tax on bachelors. Minnesota steps to the front with a bill to prevent women from sending flowers to criminals. This bill, however, is not quite so foolish as the people who have suggested it to the gentleman from Minnesota. Actuated by Southern gallantry, no doubt, a Missouri man wants to fine railroad hands $25 for flirting with women passengers, while a Nebraska man asks that all bull's horns shall be removed when the animal becomes two years old. In the interests of the long suffering and outraged public, Michigan and Indiana rise in their might and demand that bills of fare shall be printed in English only, and an Indiana man recently offered the Legislature a bill making it a misdemeanor to wear squeaky boots to church. Oklahoma Territory has tried legislation against bloomers, and Alabama against shirt waists.

All hail to America, the land of the freak, and the home of the brave! —*The Collector.*

WAUNETA is a little town in Chautauqua county, Kan. There is a doctor there who is proprietor of the drug store, justice of the peace and constable. He sells the boys liquor and then arrests and fines them for drunkenness. One day lately he had three of the five voters of the town in his court at the same time.

HUMORS OF THE LAW.—Hoax.—"There was a fellow in court to-day charged with stealing a horse and leaving his bicycle in place of it."

Joax.—"What did they do? Convict him!"

Hoax.—"No; the jury were all cyclers and they recommended that the prisoner be sent to an insane asylum."

After twenty-five days of session, at an expense of $1,000 per day, the Kentucky legislature has succeeded in passing a law punishing those who throw overripe eggs and other missiles at public speakers. This is the only bill that has been passed, and while it may be a very good law, $25,000 is a trifle expensive for it.—*Chicago Law Journal.*

OBITER DICTA.—Clients will bring you business, and business will bring you cases, and these you bring into court and the court is hired to listen to you, even though you talk mostly *obiter dictum*. I have often thought it a wise arrangement that judges and juries were compelled to listen; as the man said, they are compelled to listen by law or they wouldn't by G—. I have had judges look at me when I felt that that man was right. You have all been placed where you were at loss as to what more to say. Whenever you get into that state you had better take your first loss and close out the deal, otherwise you may find yourself in the predicament of the man who had hold of the bear while the latter was ascending the tree, he could hold on but he needed somebody to help him let go. There is a great deal too much of *obiter dictum* in every walk of life, and there is too much at the bar and in the courts. Our pleadings are full of *obiter dictum*. Sometimes, with the exception of the venue and names of the parties, they are all *obiter dictum* for they are beside the question to be tried.—*C. E. Kremer in Chicago Legal News.*

BOOK REVIEW.

THE CANADIAN ANNUAL DIGEST 1896, by Charles H. Masters, Reporter of the Supreme Court of Canada and Charles Morse, LL.B., Reporter of the Exchequer Court of Canada; pp. 371; Toronto, 1897: Canada Law Journal Company, price $3.50.

A digest of the cases reported for the year 1896 in the Supreme Court of Canada, Exchequer Court, Ontario Appeal and Ontario Reports, Ontario Practice, Quebec Queen's Bench, Quebec Superior, Nova Scotia, New Brunswick and New Brunswick Equity, Manitoba and British Columbia Reports.

This is by far the best digest ever published in Canada both in thoroughness of the summaries made, and the manner of their arrangement, and the authors deserve congratulation for having successfully carried out an enterprise hitherto unattempted in welding together in digest form the decisions of the federal courts and of all the provinces in Canada. So far as Ontario is concerned, the work is most opportune, for it continues the Ontario series of digests, the last of which is for the years 1891 to 1895 inclusive. In fact the necessity for a provincial digest covering less than a ten year period would seem to be done away with by the present work, which it is announced will be continued from year to year.

The notes of cases are very complete, and not after the style of many digests, little more than an index to the reports; and where the abstract directly relates to two principal subject matters it will be found under both, thus saving much of the reader's time usually expended in looking up the cross references. The classification of subjects and general plan of work closely follows that of Mews' English Annual Digest, that *vade mecum* of the English practitioner, and it can be predicted that no practising Canadian lawyer who carefully examines the Canadian digest, will for twice its price consent to do without it. The compilation of this first annual has entailed more than ordinary labor, for the Quebec civil law cases had to be translated from the French, and classified as far as possible under the corresponding headings of English law, with appropriate cross references from the French subject title. It is much to be hoped that the growing spirit of nationalism in Canada will be fostered amongst lawyers and courts by the attention drawn to it by a work of this character, and, as must inevitably result with the progress of confederation, that more deference will be paid by provincial courts, particularly those of Ontario, to decisions from other provinces.