The Legal News.

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Under the title of "Constitutional Questions in the Province of Quebec," Messrs. J. P. Sexton and L. H. Pignolet have summed up briefly the decisions to which the B. N. A. Act has given rise, as well as the principal arguments for and against the propositions advanced on either side. The pamphlet will be found interesting by those who are examining the scope of provincial and federal jurisdiction.

Even assuming what it is rather difficult to credit, that the motive of the *Pall Mall Gazette* in spreading filth before the whole world was a worthy one, the *Law Journal* points out that it is no defence that the motive of the publication was honestly to expose and condemn what ought to be condemned. "This," remarks the *Journal*, "was held once for all in 1868 by Chief Justice Cockburn and Justices Blackburn, Mellor and Lush, in the case of the '*Confessional Unmasked*' (37 Law J. Rep. M. C. 89). Lord Campbell's Act (20 & 21 Vict. c. 83) allows a magisterial order for the seizure of books and papers which are of such a character that the publication of them would be a misdemeanour. The Metropolis, City of London, and Town Police Clauses Acts impose a penalty of 40*s.* on selling such publications in the streets, and generally, the writers, printers, publishers, and sellers are liable to fine and imprisonment upon conviction by a jury."

The Solicitors' Journal, referring to the opinion expressed by the late Lord Chief Justice Cockburn, that handwriting is the one unchanging characteristic of a man, says:—"It appears to us that if entertained at all it ought to be entertained only subject to some important qualifications. There is a period in the life of most people during which the handwriting is unformed, and for the purpose of comparison, writing during this period should be excluded. We are constrained to say, as the result of some observation, that in some men this period lasts very long. There is a certain member of Her Majesty's Privy Council, who, although he must have covered reams of paper during the course of a busy life, never seems to have thought it necessary to acquire any formed style of handwriting. Being a person of strong will, it is quite conceivable that he may, even yet, some day resolve to write a decent and uniform hand, and if he makes that resolution he will unquestionably carry it out. But in that case what would become of the evidence of identity afforded by his handwriting? Suppose the late Dean of Westminster had devoted himself for a week to forming a hand which could be read, does any one doubt that he would have succeeded in his purpose, and that his style of (so-called) handwriting would have wholly changed? Again, it is obvious that physical changes in the hand or arm may occasion the adoption of a different handwriting. Disuse for a lengthened period of the habit of writing may conceivably lead to forgetfulness of the mode in which letters were formerly framed. Letters written in haste are apt to differ considerably from letters written with deliberation, and letters written with a fine pointed pen are often singularly unlike letters written with a quill pen. And again, peculiarities in handwriting are apt to be dropped. There was a curious instance of this in the letters of the genuine Roger Tichborne. From a very early period he had adopted a habit of placing a dot over the letter 'y' whenever it occurred at the end of a word, but in his letters after the year 1851 this peculiarity was entirely absent. For some reason or other he had abandoned the habit. This is, of course, an extreme instance of eccentricity, but there are few people without some peculiar habit in writing. We know, for instance, a learned and very distinguished queen's counsel, the chief characteristic of whose handwriting is the habit of crossing his 't's' over instead of through the vertical stroke. We know an eminent solicitor whose peculiarity is the horizontal tail which he adds to certain letters occurring at the end of words. But it is quite possible that these persons

may drop these habits. Perhaps they may do so if they read these remarks. The general results at which we arrive are, first, that no reliance can be placed on what we may call tricks of handwriting, or even on the formation of particular letters. The general character of a man's handwriting may afford such evidence; but even as to this, caution is requisite to ascertain that the handwritings compared were written at or about the same date. We doubt whether it is safe to assume that any man will, throughout the whole of his life, retain even the same general character of handwriting. And lastly, it may be questioned whether Lord Chief Justice Cockburn was right in his assertion that 'there is nothing in which men differ more than in handwriting.' We should be rather disposed to think that very many persons write alike."

COUR DE POLICE.

MONTRÉAL, 8 juillet 1885.

Coram DEMONTIGNY, *Magistrat.*

LARUE v. DENAULT.

Parjure — Fait matériel — Informalités — Assermentation — Faits et articles.

JUGÉ:—1o. *Que dans une accusation de parjure, la question de savoir si le serment a été volontaire et corrompu est une question de fait qui doit être laissée à l'appréciation du jury.*

2o. *Que du moment qu'il y a affirmation ou déclaration prise de vive voix, par affidavit, par interrogation ou déposition sous serment, le fait est considéré essentiel pour servir de base à une accusation de parjure.*

3o. *Que les réponses sur faits et articles doivent être prises par le juge ou par le protonotaire, et ne peuvent l'être régulièrement par un sténographe officiel, sans avoir été reconnues devant le juge ou le protonotaire.*

4o. *Que l'on ne peut baser une accusation de parjure sur une déposition irrégulièrement prise.*

Le défendeur est traduit devant le magistrat sur accusation de parjure, c'est-à-dire d'avoir devant la Cour Supérieure du district de Montréal, le 7 avril dernier, répondu faussement, volontairement et avec corruption, à des questions sur Faits et Articles.

A l'enquête préliminaire, il fut prouvé que le défendeur a comparu cour tenante pour répondre *viva voce* à des questions sur faits et articles, dans une cause où il était défendeur.

Que ces réponses ont été reçues par un sténographe officiel assermenté et que lui-même l'accusé a été assermenté.

Qu'à la question 2e, "Is it not true that you purchased from Albert Edouard Fillingrin, brother of the said plaintiff all the right of said Albert Fillingrin in the estate and succession of his father and mother for the sum of three hundred dollars;" l'accusé a répondu faussement: "Non, je les ai achetées pour la somme de $90 que j'ai payé comptant."

Qu'un acte notarié fait foi qu'en effet il a payé ces droits $300.

Le défendeur souleva devant le magistrat, à l'enquête préliminaire, les questions suivantes:

Que pour constituer le parjure il faut un fait matériel que la personne sous serment jure faux volontairement et par corruption, et que dans l'espèce l'accusé a juré un fait insignifiant à la cause.

Que d'ailleurs il n'avait aucun intérêt à en agir ainsi parce que le fait n'influait aucunement sur la cause, et parce qu'il y avait un acte authentique qui constatait le fait. Que partant le serment n'a pas été corrompu.

Qu'il est le résultat d'une erreur involontaire, l'accusé confondant la vente faite par le demandeur avec celle faite par son frère.

Que le serment n'a pas été régulièrement donné et suivant les formalités exigées dans la réception des faits et articles.

DEMONTIGNY, J. Parmi les points soulevés par l'accusé, il y a des questions qui doivent être soumises au petit juré et d'autres qui sont du ressort du magistrat fonctionnant ministériellement.

Quant à savoir si le serment a été volontaire et corrompu, ceci dépend des circonstances qui doivent être laissées à l'appréciation d'un jury ou d'un autre procès.

Il en est de même de la question de savoir si l'accusé avait intérêt à nier ce qu'il a nié.

Apparemment il n'avait pas intérêt, mais encore est-il que le défendeur pouvait avoir posé cette question pour passer à une autre.

D'ailleurs, d'après la s. 7 du ch. 23 de 32-33 Victoria: "Tous témoignages et preuves, qu'ils soient pris de vive-voix ou par affidavit, affirmation ou déclaration, interrogation ou déposition, seront réputés et considérés essentiels au point de vue de la responsabilité encourue par toute personne d'être poursuivie et punie pour parjure volontaire et corrompu ou pour subornation de parjure."

La question de savoir si le serment a été régulièrement pris est la plus grave qui se soit soulevée dans la cause.

L'accusé avait été appelé, comme défendeur dans une cause pendante en Cour Supérieure par le demandeur William Fillingrin, à répondre *viva voce*, cour tenante, aux interrogatoires sur faits et articles qui devaient là lui être posés.

Or l'art. 226 du C. P. C. dit: "La partie peut aussi être assignée à venir répondre sur faits et articles de vive voix, cour tenante, ou aux séances d'enquête ou devant le jury; et ses réponses sont alors prises par le juge ou le protonotaire; et le juge peut proposer tous autres interrogatoires qu'il considère nécessaires et pertinentes. Si la partie refuse de répondre à ces interrogatoires, le juge les fait mettre par écrit au dossier et ils sont réputés avérés."

Or les réponses quoique prises cour tenante, n'ont pas été prises ni par le juge ni par le protonotaire; mais par un sténographe officiel. Il n'appert pas que le défendeur ait reconnu ces réponses ni devant le juge ni devant le protonotaire.

Mais le sténographe n'a pas pouvoir de recevoir seul ainsi les réponses. Tout au plus pourrait-il agir sous la dictée du juge ou du protonotaire lesquels du moins devraient faire reconnaître les réponses par le parti qui les donne.

Il n'en est pas de même pour les enquêtes. Car alors la loi art. 263 C. P. C. si c'est devant le juge, et l'article 288 si c'est au long, permet au protonotaire de faire prendre les dépositions par des clercs et le statut 46 Vic., c. 26 permet aux sténographes de prendre le témoignage et leur dicte la manière de les prendre.

Mais quant aux réponses sur faits et articles le législateur n'a donné à aucun autre qu'au juge, au protonotaire le pouvoir de les recevoir. Et ce n'est pas étonnant que la loi entoure la procédure sur faits et articles de beaucoup de formalités, puisque ces réponses sont beaucoup plus importantes que les réponses d'un témoin et entraînent à de bien plus graves conséquences.

Les réponses aux interrogatoires ont donc dans cette cause été prises irrégulièrement.

Or, il a été jugé maintes fois et particulièrement dans les causes suivantes: Regina v. Gibson, 7 R. L. 574; Regina v. Martin, L. C. J. 156 et 7 R. L. 572, qu'il n'y a pas parjure dans une déposition prise irrégulièrement.

Je ne vois pas qu'il y ait lieu de faire subir un procès à l'accusé pour parjure quand il n'y a pas eu un serment régulièrement prêté.

Le défendeur fut déchargé.

(J. J. B.)

*RECENT DECISIONS AT QUEBEC.**

Aveu Judiciaire. — Jugé: — 1. Qu'en règle générale l'aveu judiciaire est indivisible; — C. C. 1243.

2. Que l'espèce actuelle ne tombe pas sous les exceptions de l'art. 231 du C. P. C.

3. Qu'il n'y a pas, dans l'espèce actuelle, un commencement de preuve par écrit suffisant, même en divisant l'aveu, et que la preuve faite, fut-elle légale, n'établit pas suffisamment le second prêt. Tessier, J., résume les faits comme suit: "Le demandeur Morin poursuivit le défendeur Fournier pour $688, balance de deux prêts, le premier de $500 fait en mars 1877, le second de $300 le 20 mai 1882. Le défendeur produisit une défense en fait, une exception de délai pour le premier prêt, et de prescription. Avec son exception, le défendeur produisit un billet promissoire de $500 du 31 mars, 1877, que le demandeur lui avait remis en disant que ce billet étant prescrit par cinq ans, ne servait plus, et que le défendeur avait consenti à cela en disant "qu'il n'y a pas de prescription entre des honnêtes gens." Le demandeur n'ayant pas de preuve écrite pour prouver le deuxième prêt, interrogea le défendeur sur

* 11 Q. L. R.

faits et articles et il continua de l'interroger comme témoin sur les mêmes points. Les réponses du défendeur se résument à admettre le premier prêt et à nier le second, en ajoutant qu'il avait remis au prêteur $175 sur le premier prêt, et que celui-ci les lui avait rapportées en disant de les garder à cinq par cent comme formant partie du premier prêt. * * * Le débiteur prouve sa bonne foi; il consent à reprendre le billet de $500, après qu'il est prescrit; il n'essaie pas de s'en servir pour alléguer un paiement que la remise du billet au débiteur fait présumer en certains cas; il fait offrir par protêt notarié avant l'action le montant du premier prêt $500, avec les intérêts. Au contraire, le créancier semble ne pas avoir une bonne mémoire des choses. Il allègue le premier prêt comme étant de 1878; il a amendé sa demande en substituant 1877 après l'aveu du defendeur; le créancier allègue le second prêt de $300. Il est admis même de son côté qu'il n'était que de $200, et que sur les $300, il y avait $100 qui avait été remis sur le premier prêt. Cela semble corroborer les prétentions du débiteur."—*Fournier* v. *Morin.* (En appel).

Procédure—Opposition—Contestation.—Jugé: —1. Que l'omission, par le créancier hypothécaire, de contester l'opposition afin de charge de la donatrice (Françoise Mathieu) en temps utile, le foreclot du droit de la contester après le jugement sur cette opposition et le décret, au moyen d'une requête civile ou tierce-opposition, à moins qu'il n'y ait preuve de dol, fraude, artifice ou informalité essentielle.

2. Que dans l'espèce actuelle, il n'y a pas de preuve de dol, fraude, artifice ou informalité essentielle.

3. Que le droit de la donatrice à sa rente viagère, participant du privilége de bailleur de fonds avec droit résolutoire. est fondé en équité et en loi, malgré l'omission du renouvellement de l'inscription de la donation, vis-à-vis d'un créancier postérieur qui a renouvelé l'inscription de son hypothèque, eu égard aux circonstances particulières de cette cause.—*Mathieu & Vachon et al.* (En appel).

Action pétitoire — Chemin de fer. — Jugé: Qu'un propriétaire a un recours direct, par action pétitoire, contre une compagnie de chemin de fer qui se serait mise en possession d'un terrain pour sa voie ferrée, sans le consentement du propriétaire et sans lui faire d'offre préalable pour le terrain ainsi occupé. —*La Compagnie du Chemin de Fer Central & Legendre.* (En appel).

Procedure—Preliminary exception—C. C. P. 132.—*Held*, that the words "if he succeeds," in Art. 132 C. C. P., mean, if he succeeds in defeating the action, and that when the preliminary plea is a dilatory exception which has been maintained after the defendant has been forced, under Art. 131, to plead to the merits, and the defendant has not availed himself of his right to amend his pleas to the merits or plead anew, and the plaintiff succeeds upon the merits of the action as contested, the defendant cannot claim to be paid the costs of his contestation under Art. 132, but may on the contrary be condemned to pay them.—*La Banque Nationale* v. *Ross et al.* (In Review).

Hypothecary Action—Misdescription—Cadastral number.—Where the mortgaged property was described in the deed as being in Ste. Cécile, but was really in St. Fabien, and was so declared to be by the plaintiffs, *held*, that the action must be dismissed. *Held*, also, that the absence of a cadastral number in the notice of renewal of a mortgage, is fatal, and the correction of the notice, after the expiration of the delay for filing it, cannot be made retroactive.—*Rioux et al.* v. *Ouellet et al.* (In Review).

Cotisations d'Ecole — Action hypothécaire — Autorisation—Garantie—Tiers détenteur—Améliorations.—Jugé: 1. Que la stipulation qu'un prix de vente est la première hypothèque sur la propriété vendue n'est que la garantie qu'il prime les privilèges et les hypothèques enregistrés.

2. Que le tiers-détenteur, poursuivi hypothécairement, ne peut exiger que le poursuivant lui donne caution pour le paiement de ses impenses; ses droits se bornent à demander que le délaissement ne soit ordonné qu'à la charge de son privilège pour son paiement.

3. Les commissaires d'école peuvent, après l'expiration des délais indiqués par la loi, autoriser la confection des rôles de cotisation,

et ces rôles entrent en vigueur, sans autre formalité, 30 jours après l'avis de leur dépôt.

4. La copie d'une autorisation où la date et la composition de l'assemblée qui l'a donnée occupent le haut d'une feuille de papier à laquelle est annexé par un de ses coins, un petit morceau de papier portant une résolution certifiée *vraie copie*, autorisant la poursuite du défendeur pour ses cotisations, est une preuve suffisante de l'autorisation d'une poursuite hypothécaire pour cotisations d'école contre le défendeur.—*Commissaires d'école de St. Norbert* v. *Crépeau.* (En Révision).

Consul general — Declinatory exception — Chargé d'affaires.—Held, that a consul general does not enjoy exemption from liability to the civil jurisdiction of the Courts of the country.

Semble, that if he is charged with some special mission in which he represents his government, and, as such, holds his *exequatur*, he enjoys such exemption.—*Leonard* v. *Premio-Real.*

Procedure—Seizure—Advertisement.—Held, 1. Where the sale, under a writ of *fieri facias de bonis et de terris*, has not taken place on account of an appeal to the Supreme Court, followed by the giving of security and by the judge's order to stay proceedings, the plaintiff is not entitled to a *venditioni exponas*, but must proceed by means of an *alias* writ of *fieri facias.*

2. That under a writ of *fieri facias de bonis et de terris*, the sheriff ought to advertise the sale of the immoveables seized only after the moveables have been discussed.

3. That advertising the sale of the immoveables is proceeding to their sale within the meaning of the prohibition clause of Art. 554 of the Code of Civil Procedure.—*Union Bank of Lower Canada* v. *Dawson*, and *Dawson*, opposant. (In Review).

Servitudes—Rivières—Exploitation.—Jugé:—Que celui, dont la propriété borde une eau courante ne faisant pas partie du domaine public, peut utiliser et exploiter cette eau en y construisant une chaussée d'une hauteur suffisante pour faire marcher le moulin qu'il a construit sur sa propriété; que le propriétaire d'un moulin supérieur, auquel ces travaux nuisent en y faisant refluer les eaux, ne peut demander qu'une indemnité et n'a droit à la démolition des travaux qu'à défaut du paiement de l'indemnité.—*Demers* v. *Germain.* (En Révision).

Chemin—Procès-verbal—Annulation—Action. —Jugé, 1. Que l'omission, dans une résolution nommant un surintendant spécial pour l'ouverture d'un chemin, de la date où le surintendant fera son rapport, n'est pas fatale.

2. Qu'une résolution du conseil, faisant un changement au procès-verbal préparé par le surintendant, est une homologation suffisante de ce procès-verbal.

3. Que les avis peuvent être publiés dans une seule langue dans les municipalités où, avant le Code Municipal, un ordre du Gouverneur en Conseil l'autorisait.

4. Que l'homologation, lundi, le 3 septembre, d'un procès-verbal pour l'ouverture d'un chemin, quand les avis publics informaient les intéressés qu'il serait pris en considération, lundi, le 6 septembre, est nulle;—et qu'elle est également nulle lorsque sept jours ne se sont pas écoulés entre l'avis public et la réunion du conseil où il a été homologué.

5. Que les procès-verbaux n'entrant en vigueur que 15 jours après l'avis public de leur homologation, le défaut de cet avis ne permet pas leur mise à exécution.

6. Que la promesse, par un intéressé, de faire sa partie d'un chemin ordonné par un procès-verbal dont l'homologation n'a pas été publiée, ne l'empêche pas d'invoquer la nullité de ce procès-verbal.

7. Que l'annulation d'un procès-verbal peut être poursuivie par action directe.—*O'Shaughnessey* v. *La Corporation de Ste. Clothilde de Horton.* (En Révision).

Qualité — Condamnation.— Jugé, que pour pouvoir prétendre qu'une partie qui a repris l'instance en qualité d'héritier bénéficiaire, a été condamnée *personnellement* au paiement des frais, il faudrait que la cour l'eut dit spécialement. Que si le mot "*personnellement*" ne se trouve pas dans le dispositif du jugement, le jugement devra être interprété comme ayant été rendu contre la partie en la qualité spéciale qu'elle a assumée en reprenant l'instance.—*Ogden & Dawson.* (En appel).

RECENT UNITED STATES DECISIONS.

Bailment—Implied contract on part of auctioneer to keep property insured.—The plaintiff left goods with an auctioneer to be sold, and, being assured by the auctioneer that sufficient insurance was carried to cover the goods deposited, did not insure them. The auction store and contents were burned; the insurance was enough to cover the plaintiff's loss, but not all the loss occasioned by the fire. *Held*, that the plaintiff could recover from the auctioneer the value of the goods destroyed.—*Thomas* v. *Cumisky*, Sup. Ct. Pa.

Bank—Certification of check by employee.—Where a bank either expressly or tacitly permits an employee to certify checks drawn upon it, it will be liable for the amount of a check so certified in the hands of a *bona fide* holder. Where the bank has limited the authority of the employee to certify checks to cases in which the drawer has funds in bank, and the employee negligently or fraudulently certifies a check when the funds called for by it do not exist, the bank, and not the innocent *bona fide* holder of the check, must bear the loss.—*Hill* v. *Nation Trust Co.*, Sup. Ct. Pa.

Fire Insurance.—Where the agent of an insurance company erroneously describes the property in an application for a policy of insurance prepared by him aad signed by the insured, the company cannot in case of loss defend by reason of the misdescription. Where prompt notice of a total loss is given by the insured, the company cannot avoid payment on the ground of insufficient proofs of loss, unless it has pointed out to the insured the defects in the proofs furnished, and called for more specific proofs.—*Susquehanna Mut. Fire Ins. Co.* v. *Cusick*, Sup. Ct. Pa.

Municipal Corporation.—A municipal corporation is not liable for the acts or negligence of the board of health, authorized to make and enforce sanitary regulations, and constituted a separate body by the city charter.—*Bryant* v. *City of St. Paul*, Sup. Ct. Minn.

THE TESTS OF INSANITY.

In the course of summing up in the case of *Neave* v. *Hatherley*, an action brought by Miss A. A. Neave, to recover damages from the defendant, a medical man, for alleged negligence in signing a certificate in July, 1881, that she had then been a person of unsound mind, Lord Coleridge said that it was important to notice how the plaintiff shaped her case. It came to this—that she said that she had always been of sound mind, that the defendant had certified to the contrary, and that in consequence she had suffered damage. No doubt if a medical man took upon himself the execution of a duty and did not bring to it reasonable care and skill he was liable for the consequences. If the plaintiff had in July, 1881, been of unsound mind, the conduct of the defendant would be immaterial, but, if not, the question would be whether his conduct in signing the certificate had been marked by a want of such reasonable care and skill. It would be lamentable if medical men were in such cases to be made responsible for honest mistakes, for the consequence must be that those who were in the higher ranks of that profession would refuse to sign certificates in lunacy cases, and alleged lunatics would be at the mercy of men in the lowest ranks of the profession. In a certain sense the examination by a medical man as to the mental condition of a person supposed to be of unsound mind must be a judicial inquiry, and he must act with a due sense of the responsibility which he incurs in the matter, and bring the best of his faculties to bear on the examination. He (the learned judge) had had quite recently occasion to consider very carefully what the character of such an examination ought to be, and in giving judgment in the case of *Regina* v. *Whitfield*, L. R. 15 Q. B. Div., he used words which he thought he had better now read to the jury. They were: "I will own that the experience I have had of the flimsy stuff on which perfectly sane men are sometimes incarcerated in lunatic asylums makes me, perhaps, a severe critic; but I am not content to consider this sort of thing an examination under the statute. It seems to me the merest travesty of an examination, and the elaborate system of protection and careful inquiry prescribed by the statute, if this is a legal compliance with it, is, to use an old phrase, "a mockery, a delusion, and a snare." Far better, in my judgment, to have

no provision for protection at all than provisions of which the proceedings in this case are to be held legally to satisfy. . . . If a negligent examination is actionable in the case of a medical man, it appears to me that a negligent examination is not an exercise of statutory jurisdiction in the case of justices. The case of *Hall* v. *Semple*, 3 F. & F. 350, with which I absolutely agree, shows to my mind that the statute requires that there should be a real inquiry, a real weighing and sifting of evidence, a real examination, a real, serious, and solemn exercise of judgment." The learned judge had only to say that he had there attempted to express his opinion deliberately as to what such an examination ought to be. Did the plaintiff come within the definition in the statute of "a lunatic, idiot, or person of unsound mind, and a proper person to be taken charge of and detained under treatment"? It was not suggested that she had been a lunatic or idiotic, but that she had been of unsound mind. The question whether or not a person was of unsound mind was one of the most difficult and abstruse problems into which the human mind could enter. It was a question on which certain practical tests had been laid down in books of authority—tests which were not, indeed, exhaustive, but the presence of which must be taken to be indications of unsoundness of mind. The learned judge said that the principal test as to unsoundness of mind was whether a person had delusions in the nature of a belief in things as realities which, in fact, had no existence. He emphatically dissented from the Attorney-General that unless every other means had first been exhausted, a person ought not to be placed in an asylum. The abuse of a thing was no proof that it had not a use, and early treatment in cases of unsoundness of mind was of the very greatest importance People living in small houses had no power of making provision for such early treatment of relations who might be unsound in mind, while relegation at an early stage to a well-appointed asylum was calculated to have the best results. As to the delusions of the plaintiff, one was that a Jesuit conspiracy had existed in her mother's house. She believed that no evil existed or ever had existed in which the Jesuits had not had a finger. If she had confined herself to saying that she believed Jesuits to be the allies of Satan and to be for ever seeking to sap the foundations of morality, that would be one thing, but it was quite another for her to have been possessed with a delusion that every servant in her mother's house was an emissary of the Jesuits. He (his lordship) was no judge in the matter of what people might be inclined to believe against the Jesuits, as one who was nearest and dearest to him was a member of the Society of Jesus. But it would be for the jury to say whether or not the plaintiff had been liable to delusions on the subject of Jesuit emissaries having been in her mother's house, of impropriety of conduct between her brother and the cook, and of poison having been administered to her as part of a Jesuit conspiracy. Were these or were they not ideas which a reasonable person could not have entertained? The plaintiff had made a charge against her nephew's nurse of having drugged him, and accused her of having done something to him at Whitby which had brought on a fit of partial paralysis, though it was clear that there had not been the slightest ground for any such imputations. She had believed that her mother's mind had been weakened by the sulphuric ether prescribed for her by the defendant. Mr. Hatherley had prescribed doses of a sixth of a drachm of sulphuric ether, and had stated that if Mrs. Neave had taken the whole drachm at one time it would not have affected her brain in any way. Then there was the fact that the plaintiff—not a girl, as the Attorney-General had called her, but a woman of mature age—had knocked at her mother's door at night violently for a long time, and, when it was not opened to her, had gone down stairs and unravelled the stocking which Mrs. Neave had knitted. Her explanation of this was that at the time her mother's mind had become so affected by sulphuric ether that she thought the unravelling of the stocking would bring her to book; but had the act been that of a rational person? Such an act as that of hissing at the nurse on the return of the latter to Mrs. Neave's house, had at any rate exposed the plaintiff to the suggestion that her mind had

been unhinged. She had admitted that she had thought of putting her mother into an asylum, but had been deterred from taking any steps in the matter because she thought it would be cruel. This was just before Mrs. Neave had written those letters to the plaintiff when she had been at the asylum which had been read during the course of the case — letters which were clearly those of a well-bred intelligent lady, written with a view of soothing and pleasing her daughter. Had she believed that her mother's mind had been affected by the sulphuric ether? The learned judge hoped that she had, or otherwise it would have been a monstrous thing for her to have entertained the idea of sending her mother to an asylum. But he would assume that she had believed it, though there had not been the very slightest foundation for it. He approached another matter with great reluctance—that was, the very severe attack which the Attorney-General had thought fit to make upon Mrs. Neave, and also by implication upon Major Neave. They might possibly have been mistaken in the cause to which they had attributed the intolerable misery which the plaintiff had brought upon those living in her mother's house, as this might have been due only to her violent temper and ill-regulated disposition. But what interest could they have had in sending her to an asylum except to do her good? It was clear that her brother had let her go there most unwillingly, and had taken her away from it at the earliest possible moment. It was not suggested that Major Neave could not have induced his mother to have foreborne sending the plaintiff to the asylum at all, and therefore by implication he had been attacked as severely as his mother. Before the jury could condemn them, as the Attorney-General had invited them to do, they ought to consider what they would have done under the circumstances. Nor could it be fairly said that the authorities of the asylum had evinced any desire whatever to retain the plaintiff there for the purpose of getting gain from it. His lordship then called the attention of the jury more especially to the evidence given by Mr. Phillips, who, as he said, could have no possible interest in the case. He had satisfied himself that the plaintiff, both when at the asylum and in November, 1881, when she had gone to him at Whitehall, had been full of delusions. He had taken notes of what she had said to him on the second occasion, which he had produced, and his evidence was worthy of the gravest consideration at the hands of the jury. His lordship then dealt with the question as to whether or not the defendant had been guilty of negligence, and on this point read passages from the judgment of Mr. Justice Crompton in the case of *Hall* v. *Semple* (3 F. and F. 356); among others this one: 'On the one hand it is of great importance that medical men should very carefully sign certificates of this kind, and that personal liberty should not be interfered with improperly by any abuse of the power which the law has intrusted to them; and, on the other hand, it is very important to the medical profession that if a person acts really *bona fide* under the authority of the Act by which these duties are assigned to him, he should not be made responsible for a mere error in judgment or mistake of facts. It is also very important in the interests of the public that persons who are really lunatics should be immediately taken care of. Very often it is a difficult and delicate matter to be decided upon, and we all know what lamentable mischief sometimes arises through lunatics not being put under restraint at the proper time. Again and again we see in the criminal courts what lamentable consequences ensue from even a few hours' delay. If the plaintiff's case was well founded, no doubt it would be a sad thing if there were no redress. And, on the other hand, it would be lamentable if, were no blame really attached to the medical man, he was to be ruined merely for having acted *bona fide* in the performance of the duty which the statute has imposed upon (or assigned to) him.' The simple question in the present case was whether or not the defendant had been guilty of culpable negligence in signing the certificate. If the jury were of opinion that there had been no proper examination by the defendant of the plaintiff's mental condition before he had signed it, the case would be clearly one for substantial damages. The questions for the jury would be—(1) Whether on July 12 and 13, 1881, the plaintiff had been of sound mind, and (2) whether, if she had been so, the defendant had been guilty of culpable negligence in certifying that she had not been. If they answered the first question in the negative, and the second in the affirmative, then they would have to assess the damages.—The foreman handed in the paper with the questions, from which it appeared that the jury answered both the questions in the negative.— Judgment was accordingly given for the defendant, but execution was stayed for fourteen days. If during that time the plaintiff lodged an appeal, then execution was further ordered to be stayed until that appeal had been disposed of by a Divisional Court.