SEPTEMBER, 1895.

The Barrister.

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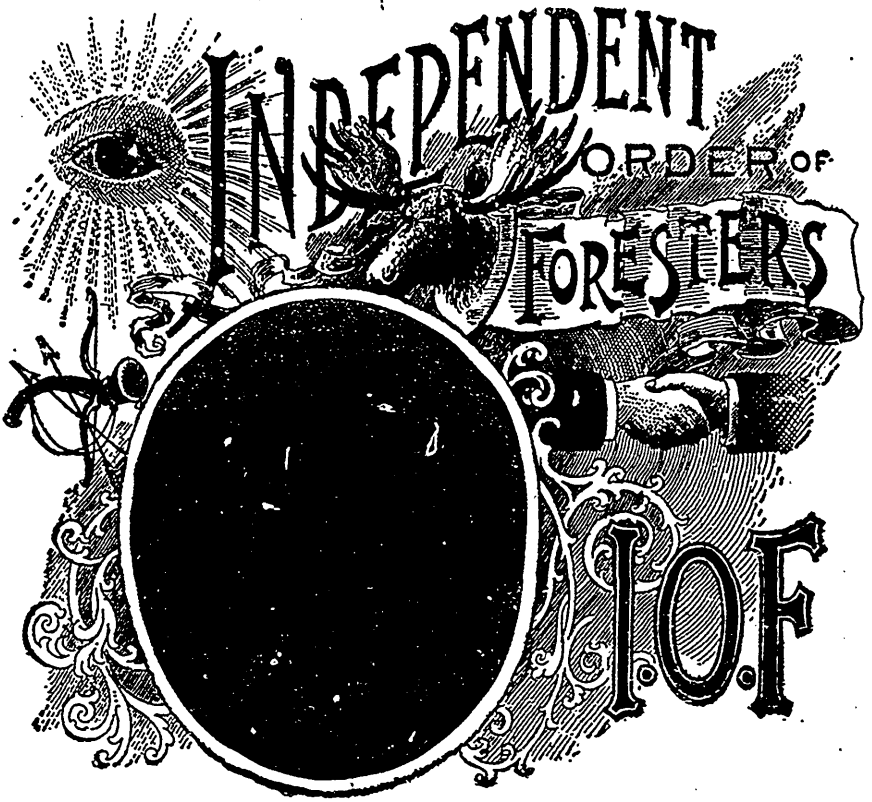

"ASSESSMENT SYSTEM."

EVERYBODY who knows anything about insurance acknowledges that the Independent Order of Foresters is far and away the **Best** Fraternal Benefit **society in the World.** It was founded in Newark, New Jersey, on the 17th June, 1874, and has spread all over the United States and Canada, and is rapidly spreading in Great Britain and elsewhere.

The Unexampled Progress and Prosperity of the Independent Order of Foresters is shown by the following figures:

	No. of Members.	Balance in Bank.		No. of Members.	Balance in Bank.		No. of Members.	Balance in Bank.
October, 1882	880	$ 1,145 07	January, 1888	7,811	$ 86,102 42	January, 1894	54,484	$853,857 89
January, 1883	1,134	2,769 58	January, 1889	11,618	117,599 88	February, "	55,149	875,860 06
January, 1884	2,216	13,070 85	January, 1890	17,026	183,130 86	March, "	56,559	876,230 08
January, 1885	2,558	20,992 30	January, 1891	24,466	283,967 20	April, "	58,339	911,520 93
January, 1886	3,648	31,082 52	January, 1892	32,303	408,798 18	May, "	59,607	928,707 04
January, 1887	5,804	60,825 02	January, 1893	43,024	580,597 55	June, "	61,000	951,571 62

Membership 1st July, 1894, about 61,000. Balance in Bank, $951,571.62.

The total number of applications considered by the Medical Board for the year ending 31st December, 1892, is 18,247, whom 17,028 were passed, and 1,219 rejected.

The cause of this unexampled prosperity and growth of the I. O. F. is due to the fact that its foundations have been laid on a **Solid Financial Basis,** and every department of the Order has been managed on business principles, thereby securing for all Foresters large and varied benefits at the lowest possible cost consistent with **Safety and Permanence.**

At date all Benefits have been paid within a few days of filing the claim papers, amounting in the aggregate to the princely sum of **Two Millions Two Hundred and Thirty-four Thousand Four Hundred and Twenty-four Dollars.** Notwithstanding the payment of this large sum, as well as all the management expenses, including large sums for planting the Order in New Territory, there remains the handsome cash balance in the treasury, as noted above, of the sum of **Nine Hundred and Fifty-one Thousand Five Hundred and Seventy-one Dollars and Sixty-two Cents.**

Look at this list of the Benefits which you may obtain for yourself by becoming a Forester:

FOR YOURSELF.—1. The fraternal and social privileges of the Order. 2. Free medical attendance. 3. Total and Permanent Disability of $500, $1,000, or $1,500. 4. A benefit for your old age of $100, $200, or $300 a year. 5. An Endowment Benefit, payable on reaching your expectation of life, of $1,000, $2,000, or $3,000. 6. Sick Benefits of $3 to $5 per week.

FOR YOUR FAMILY.—1. Funeral Benefit, $50. 2. Insurance Benefit of $1,000, $2,000, or $3,000.

The cost of admission to the Order in most Courts is only $7 to $9, according to the amount of insurance taken, besides medical examination fee, which is $1.50 if you are taking only $1,000 of insurance, and $2 if taking $2,000 or $3,000. **Agents wanted in Canada, the United States, and Great Britain and Ireland.**

For further information, apply to

ORONHYATEKHA, M.D., S.C.R., Toronto, Canada. HON. D. D. AITKEN, M.C., S.V.C.R., Flint, Mich. JOHN A. McGILLIVRAY, Q.C., S. Secretary, Toronto, Canada. JAMES MARSHALL, Gen. Manager, Great Britain, 172 Buchanan-street, Glasgow, Scotland, or to REV. W.J. McCAUGHAN, Gen. Manager, Belfast, Ireland.

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The Barrister.

VOL. I. TORONTO, SEPTEMBER, 1895. No. 10.

EDITORIAL.

EVERY lawyer in Canada should be a reader of the Barrister; it is furnished subscribers at the cost of publication—two dollars a year, and is therefore within the means of everyone.

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WE invite all who desire to discuss any topic of interest to the Profession to use the Barrister freely.

*

THE office of coroner is being discussed both here and in United States. Some are urging its abolition, others that it still be retained but that the coroner's jury be abolished. This office is one of the oldest known in the history of the Anglo Saxon race. It is no doubt "Moss grown and venerable," yet we would not urge its abolition but we would like to call the attention of the profession to a few reforms that might with great benefit to the public be inaugurated.

We believe there is not the slightest necessity for a jury. It is just as ridiculous as it would be to have a Police Magistrate investigate every case with a jury. The coroner should hear the evidence and take the full responsibility of making a finding himself.

We believe there is no valid reason why the office should be confined to the medical profession, as it is clearly one of a judicial character.

In cities at least the compensation of coroners should be changed from fees to a stated salary and each should have a certain defined district to preside over. At present under the fee system there are altogether too many, in fact it would almost appear that any doctor who has friends can be appointed coroner. The result is when a person dies under suspicious circumstances in the City of Toronto, within fifteen minutes after the breath has left the body of the deceased, half a dozen coroners are engaged in a ride for their life, each exerting himself to his utmost to get his warrant in first. Some of them running on foot, others driving a horse, and these in turn passed by a coroner on a bicycle. In fact a coroner is not in it now unless he has a bicycle and can go at full racing speed. We understand it is no uncommon thing for a coroner to rush into the police station ten minutes after a person has died, with a warrant to

hold an inquest, and have the sergeant in charge smile and say "you are too late, there are already three warrants in." And the poor coroner goes home cursing his luck, in that a waggon got in the way of his bicycle and thereby lost him ten seconds, and finally concludes that if he is going to stay in the coroner business he must get an electric battery attached to his bicycle. We feel sure that our readers will agree with us in considering that there should be some radical changes in the office of coroner if it is to remain a judicial office.

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We cannot help congratulating the American Bar Association upon the success of its eighteenth annual meeting in the city of Detroit on the 27th 28th and 29th of August. There is no body of men in United States who are striving to do more good for their country than the members of the American Bar Association. They travel great distances each year at their own expense to formulate and promulgate plans to further beneficial legislation and make it more and more uniform in each of the various states, and what is more they are succeeding in their grand work. The members of the American Bar Association are the brainiest and most patriotic citizens of the United States and that country should be proud of them. We wish the Association every success. In another place we quote in part the addresses of President James C. Carter and Justice Brewer of the U. S. Supreme Court, as they are well worthy of a most careful perusal and are as applicable to Canada as to the United States.

It has been suggested to us that the easiest way to bring about Provincial Bar Association is to extend the Western Bar Association to the whole Province and we think the idea is a good one. We would therefore strongly urge the officers of the Western Bar Association to invite the various county associations to send delegates to meet their association for the purpose of enlarging it until it takes in the whole Province, and subsequently a Dominion Bar Association can be formed to bring about uniformity of legislation in the various Provinces of the Dominion. We will be glad to hear suggestions from anyone on this most important subject.

*

The First Annual Convention of the International Deep Waterways Association is to be held at Cleveland, Ohio, on the 24th, 25th and 26th September. The progress of this Association should be watched with great interest by both the lawyers of Canada and United States on account of that plank in their platform which states "that as a preparation for the joint promotion of common interests it is desirable that a permanent court should be constituted for the decision by rules of law of all questions of an international character which may in any wise arise between the peoples and Governments of the British Empire and the United States." If this can be brought about it will be the greatest political move of the century, and we believe it is quite within the reign of possibility. Sir Frederick Pollock in his address before the Harvard Law School Association when speaking of the desirability of closer relations between the Courts of England and United States seems to have had in his mind's eye in the not distant future some

great international court between the two countries. This question is attracting the attention of the greatest legal minds of the day. We sincerely congratulate Mr. O. A. Howland, the President, in taking up this great question; he is a profound student and we will watch with great interest this address at Cleveland. We hope that a large number of delegates will attend from Canada.

*

Mr. Howland's review in the Canadian Magazine of J. Castell Hopkin's life of Sir John Thompson, has given rise in the newspapers to quite a discussion as to whether law fits a man for the duties of statesmanship. We think that history proves beyond a doubt that lawyers have ever shewn themselves among the foremost statesmen of the world, undoubtedly a number of great statesmen were not lawyers, but we believe they would have been still greater had they had a legal education. No doubt many great lawyers have failed when they entered parliament to take that rank that was naturally expected of them, but we know of no case where that has been so from their legal training, it invariably arises from the fact that they give more attention to their briefs than their parliamentary duties, in short they treat their political career as a side show and it becomes one. The Globe in reply to Mr. Howland tried to show that George Washington and Abraham Lincoln were greater statesmen than Webster. We are not aware that Washington was a great success as President and certainly the Constitution of the United States was drafted by lawyers. As to Lincoln, he was undoubtedly a great lawyer as well as a statesman.

*

In the Privy Council case of Le Mesurier v. Le Mesurier, which will be found in our case column, their lordships delivered an elaborate judgment, paying special attention to the question of jurisdiction in divorce, which they considered to be of great importance to Englishmen and to Europeans generally who might have to reside in the East. It was admitted that the appellant retained his English domicile, and after reviewing at great length the law as laid down by English and Scotch judges, they came to the conclusion that, according to international law, the domicile of the married pair affords the only true test of jurisdiction to dissolve marriage, and they agreed with Lord Penzance that "the only fair and satisfactory rule in this matter is to insist upon the parties in all cases referring their matrimonial disputes to the country in which they are domiciled." This is the natural and logical way of treating this subject, and we are naturally pleased to find their lordships adopting this rule.

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In another column will be found an article on an important Privy Council decision in the appeal of the Imperial Japanese Government v. P. and O. Steamship Co.—a decision on which all the daily and weekly papers of England have written articles.

*

Is a husband liable for the cost of making his wife's hair bronze? In other words, is bronze hair a necessity? To put it another way, is it necessary for a lady of position to keep in the fashion? This difficult question was what Judge Lumley Smith had to decide at Westminster last month. The hair-dresser deposed to supplying

"a twitch of hair," about nine inches long, which was fastened to the end of her own hair. His Honor: Put on to make it more attractive? Witness: Yes. His Honor: Well, it becomes a question whether it's necessary. Mr. Turner (quoting the items in the bill): "Application and shampooing." What's that? Witness: Shampooing with an application to make the hair grow. Mr. Turner: How long does it last? Witness: Three hours. His Honor: Do you mean to say any woman supports a shampooing for three hours? Witness: Yes; she has loose hair, and it takes longer. His Honor: Does it grow in the three hours? Witness: I put some stuff on it to make it grow. The husband said he knew nothing of this matter. He allowed his wife 600*l.* a year. He had forbidden her to pledge his credit. Cross-examined: Never saw the "twitch" or other things. He did, however, notice her hair was turning "a fashionable sort of golden bronze color," and told her he did not like it. His Honor: When did it last change color? Witness: Some time ago. His Honor: Has it come back to its proper color? Witness: It takes a long time to do that. After consideration, the Judge decided that a husband is not liable for the expense of dying his wife's hair; it is not a necessity.

*

THE case of Meux v. The Great Eastern Railway Co. (11 Times L. R. 315), has been to the Court of Appeal, with the result that the judgment of the Queen's Bench Division has been reversed. It will be remembered that Lady Meux sued to recover the value of certain liveries which were destroyed by the negligence of the company's servants, who dropped them on the line in front of the train. The original judgment came, in effect, to this: that Lady Meux could not recover because, though she had paid for the tickets, the company's contract was with her servants, and the liveries were being conveyed as their luggage, whilst the servants could not recover because the liveries were not their own property. In other words, the company were free from liability for loss or damage to any luggage which was not the personal property of the passenger for whom it was conveyed. The Court of Appeal has, however, held that though the plaintiff could not sue in contract, she might sue in *tort*. The act of the defendant's servants was a misfeasance, not a mere non-feasance. As to acts of omission, however, the judgment of the Queen's Bench Division would appear to stand.

*

OF all the fallacious methods of ascertaining the prosperity of a profession, probably the most unreliable is counting the fortunes left by its old members. A contemporary has devoted a lengthy article to "Lawyers' Fortunes," in which the wealth that was bequeathed is treated as the accumulated results of professional labors. Little value, as a matter of fact, can be attached to the figures, because it is impossible to tell to what extent inherited wealth is responsible for them. In the past six years the three English judges who left the largest fortunes were Sir Montague

Edward Smith (238,615*l.*), Sir James Bacon (135,647*l.*), and Sir Henry Manisty (122,815*l.*). The three wealthiest members of the Bar were Mr. Frederick Calvert, Q.C. (255,043*l*), Mr. Edward Kent Karslake, Q.C. (207,960*l.*), and Mr. G. S. Fereday Smith (172,920*l.*); while the three solicitors who possessed the largest estates were Mr. John Clayton, town clerk of Newcastle-on-Tyne (728,746*l.*) Mr. Joseph Maynard, of Crowder & Maynard (436,383*l.*), and Mr. Henry R. Freshfield, formerly solicitor to the Bank of England (338,630*l.*). With the exception of Sir Henry Manisty and Sir James Bacon, both of whom had exceptionally long careers on the Bench, all these rich lawyers derived the larger part of their wealth from sources other than their professional labors.

*

THE case of In *re* Farnham, decided this week, shows how, under our case law system, a point of law may remain for years unsettled, notwithstanding the constant occurrence of facts upon which it might arise. It was stated by Lord Justice Lindley in this case that whether a lunatic so found by inquisition can be adjudicated bankrupt is open now, as it was in the time of Lord Eldon.

*

THE accumulation of reported decisions in the United States may be judged from the fact that one law publishing house has issued a notice of a "National Case-law Warehouse," in which "reports of 150,000 late decisions by the highest state and federal courts" are kept stored. "If you want any of these, you can have it at a moment's notice."

*

AT the annual dinner of the Harvard Law School Association there were, as usual, some pithy and interesting sayings. Mr. Justice Holmes remarked: "Learning is a very good thing. I should be the last to undervalue it. But it is liable to lead us astray. The law so far as it depends on learning, is indeed, as it has been called, a government of the living by the dead. To a very considerable extent, no doubt, it is inevitable that the living should be so governed. The past gives us our vocabulary and fixes the limits of our imagination. We cannot get away from it. There is, too, a peculiar logical pleasure in showing, in making manifest, the continuity between what we are doing and what has been done before. But the present has a right to govern itself so far as it can; and it ought always to be remembered that historic continuity with the past is not a duty—it is only a necessity. I hope the time is coming when this thought will bear fruit."

*

DR. CHAFFEE, in an article in the *Medico-Legal Journal* (New York), is very severe upon trumped-up cases of damages against railway companies, and his remarks also apply to accident insurance companies. "When we read of solid through trains," he says, "being held up by masked men, we say that it requires a strong nerve; but when a nervous and hysterical woman, who has been shaken up a little and frightened in

a collision, combines with medical and legal quacks, and proceeds to hold up a corporation for from twenty to forty thousand dollars, for an alleged injury, we cannot think that her nervous system is so badly shattered as she would have us believe. She is a fit subject for the expert medical examiner, and objections on the score of exposure of person in her case would amount to about zero. It is not an over-estimate to place the losses of railways in damage cases by miscarriage of justice at millions of dollars." It may be remarked that by an amendment passed last year by the Legislature of New York, it is now law that "if the party to be examined shall be a female, she shall be entitled to have such examination before physicians or surgeons of her own sex,"—which opens a field for medical women.

*

THE Privy Council of England, in Forget v. Ostigny (1895), A. C. 318, has adopted the sound rule, that when a broker is employed to make purchases and sales of stock for a principal whose object is not investment but speculation, and these purchases and sales are actually completed by delivery to the holder, who obtains the money necessary to pay the advances required by hypothecating the stock, the transactions are not gambling contracts: for delivery to the broker is delivery to the principal.

*

In Sherras v. De Rutzen (1895), 1 Q. B. 918, the Queen's Bench Division has recently held that a statute (35 and 36 Vic. c. 94. sec. 16, sub-sec. 2) which provides that if any licensed person "supplies any liquor or refreshment whether by way of gift or sale, to any constable on duty, unless by authority of some superior officer of such constable," he shall be liable to a penalty, does not apply when the person *bona fide* believes that the constable is off duty; but that guilty knowledge is an essential element of the offence. In this case the constable had removed his armlet, which he was required to wear while on duty, before going into the house; and Wright J., in his opinion, very tersely says: "It is plain that if guilty knowledge is not necessary, no care on the part of the publican could save him from a conviction, . . . since it would be as easy for the constable to deny that he was on duty, when asked, or to procure a forged permission from his superior officer, as to remove his armlet before entering the public house." The same judge defines very clearly the three classes of cases in which the *mens rea* is not requisite, as (1) Those acts which are not criminal in any real sense, but are acts which in the public interest are prohibited under a penalty; (2) some, and perhaps all public nuisances; and (3) cases in which, although the proceedings may be criminal in form, it is really only a summary mode of enforcing a civil right. The learned gentlemen who would hold a liquor-seller liable in all cases for selling to a minor, in spite of any facts which would have led an ordinary man to believe him of full age, are respectfully referred to a *careful* perusal of this case.

*

WHAT is the value of a lawyer's services in the United States? As much as he can get. How much can he get? To infringe upon woman's vocabulary, that depends. Some light may, however, be gained upon this subject from the controversy that has been waging over the payment of the

claims of the attorneys who prosecuted the recent suit of the Fitzgerald-Mallory Company which resulted in a judgment of some $300,000 against the Missouri Pacific Railroad Company. The firm of attorneys in this case attempted to file an attorney's lien in the Supreme Court for $150,000 in payment of their services. The claim was referred to a special master for investigation and report. Before the special master each of the two parties were allowed six witnesses to give expert testimony as to the justness of the charge. The following are the sums at which the twelve legal experts valued the services which the plaintiff attorneys had rendered: J. W. Deweese, $150,000; J. M. Woolworth, $150,000; N. K. Griggs, $120,000 to $150,000; G. M. Lamberton, $100,000; L. C. Burr, $150,000; N. S. Harwood, $100,000 to $150,000; John M. Thurston, $30,000; G. W. Ambrose, $35,000 to $45,000; H. J. Davis, $40,000 to $45,000; W. F. Bechett, $35,000 to $40,000; S. J. Tuttle, $50,000. The doctors as usual disagreed, and the special master brought in an estimate of $120,000 as a fair price for the work of which the successful litigants had reaped the benefit.

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THE *Times*, in a recent article, points out that the success of the Commercial Court seems assured, for in the very short period in which it has existed—a small fraction of the legal year—399 summonses of various kinds had been heard, and most of them were the equivalents of several summonses in an action travelling by the ordinary judicial high road. Of the 399 applications, 150 resulted in orders to transfer to the commercial list, forty in refusals. The other 209 consisted of applications for directions, &c., in which the judge at an early stage got seisin of the matters in dispute, stated how things were to be put in train for trial, and took care that there was no futile nonsensical skirmishing before the decisive battle was fought. One hundred and thirty one cases have been appointed for trial, an amount which, in view of the very short time in which the Court has been at work, and the fact that the total number of defended actions, big and little, tried in London and Middlesex by all judges does not much exceed 1,200 to 1,400 a year, is considerable. Ninety-seven causes, some of them of great magnitude and of moment to many others than the plaintiff and defendant, had been tried, and twenty-six had been settled, for the most part through the intervention of the judge. It would be interesting to compare with these figures the entire business of the London Chamber of Arbitration, which was to supersede in commercial cases the ordinary tribunals of the country.

*

THE curious case of Rogers v. The State, Supreme Court of Arkansas (1894), 29 South Western Rep. 894, is mentioned in the *University Law Review*. On an indictment for murder, the prosecution, desiring to prove that the defendant had filed a motion for discontinuance at a former trial on account of the absence of material witnesses, called the trial judge presiding at the present trial, as witness against the prisoner, and he testified to these circumstances. Afterwards, being of opinion that the evidence was incompetent, he excluded the evidence which he had given as a witness. The Appellate Court held that, although no partiality or wrong intention was shown, this was an error, especially since, under the constitution of the State forbidding judges to charge on a question of fact, it amounted to an expression of opinion; and the error was fatal to the verdict.

PHYSICAL EXAMINATION OF PLAINTIFF IN PERSONAL INJURY CASES.

BY JAMES BAIRD, ESQ.

THE compulsory examination of the plaintiff in an action for damages sustained in a railway accident, or in any case where personal injuries have been sustained by reason of the alleged negligence of a railway or other corporation, through the acts or conduct of its employees, or of an individual, where the injuries are attributable to a common carrier's neglect, or that of his employe is exciting considerable interest among jurists as well as surgeons, corporations and others, who are defendants in this class of cases.

It would hardly be possible, in a short article to discuss the subject at length; but I have felt that it might serve a useful purpose to introduce the consideration of some of the questions involved by a cursory examination of the present state of the law in Ontario, England, and some of the States of the American Union.

In Reily vs. City of London, et al., 14 Ont. Pr. Rep. 171 the question was fully discussed.—This decision was made 7th March, 1891, on an appeal from the decision of a master in ordinary, refusing a motion for an order to compel the examination of a woman who had brought suit to recover damages for an injury in a negligence case.

Such an order had been made in Kerr vs. Town of Parkdale, but a similar order had been refused in Allen vs. Township of Yarmouth. (Not reported.)

The Master in Ordinary, Mr. Thomas Hodgins, Esq., Q.C., placed it upon the ground:—

"That by the common law any unlawful 'setting upon,' or interference with another's person, is an insult (*insultus*), and that the court had no right or power to order to be done by surgeons what the common law forbids,' and he held—

"If these defendants are entitled to this compulsory exhibition and examination of the person of this plaintiff, in such a way as their surgeons may determine, it must follow that they have also the right to have a similar exhibition and examination made by or before the jury, for a jury is entitled to see as well as to hear for themselves.

"And if one part of the person may be subjected to such an examination, so may every part; and thus judicial sanction might be given to a proceeding trenching upon another rule of law governing the exposure of the person.

"On no principle of law, that I am familiar with, can acts which involve what is forbidden by the criminal law be authorized by order of the court."

This decision of the master was affirmed on appeal. The opinion by Street, Justice, holding:—

"I am clearly of the opinion that the learned master was right in the result at which he arrived, and that his appeal should therefore be dismissed. The order asked for, if made would carry the law of discovery to a degree hitherto unknown to the English and Canadian law in cases of this nature. It is true that in certain exceptional cases parties have been compelled to submit to examinations such as that now asked, as for example in actions in the English Divorce Courts for annulling marriages upon grounds necessitating such examinations, in order that the court might not be imposed upon. But in actions of our courts the parties have certain limited rights of examination

and discovery which are defined by the rules, and judges as well as suitors are bound by them. There is no law which authorizes me to say that the plaintiff here must submit to a species of examination entirely unprovided for by any statute or rule of court; such an order must be founded upon some authority, either in the common law or the statutes, or it could not be enforced, and I find none.

"There are American decisions both for and against the granting of such orders. See Walsh vs. Sayre, 52 How. Pr. Rep. N. Y. 334 (1868); Roberts vs. Ogdensburgh, &c., R. R. Co., Hun. 154 (1883); White vs. Milwaukee City Ry. Co., 61 Wis. 536 (1884): Patterson's Railway Accident Law, sec. 367.

"There may, no doubt, be cases in which, upon the ground of plain and palpable fraud, a judge sitting at nisi prius might, in his discretion, postpone the trial of an action in which damages are claimed for any accident, unless the plaintiff should consent to an examination; but, as a rule, a party whose cause of action is matured, whose damage is ascertainable so far as it is ever likely to be, and who is not in default in obeying any order of the court, is entitled to have his case tried, unless a postponement is rendered necessary for any of the ordinary reasons."

On the 4th of May, 1891, succeeding this decision, the following act was passed in Ontario, 54 Vic., ch. 11 (O.), which is the present law of that province upon the subject:—

"In any action brought to recover damages or other compensation for or in respect of bodily injury sustained by any person, a judge of the court wherein the action is pending, or any person who by consent of parties, or otherwise, has power to fix the amount of such damages or compensation, may order that the person in respect of whose injury, damage or compensation is sought, shall submit to be examined by a duly qualified medical practitioner, who is not a witness on either side, and may make such order representing such examination, and the costs thereof, as he may think fit; provided always that the medical practitioner named in such an order shall be selected by the judge making the order, and provided, moreover, that such medical practitioner may afterwards be a witness, on the trial of any such action unless the judge before whom the action is tried shall otherwise direct."

Then follows the latest case, Clouse v. Coleman, 160 P. R., p. 541. Judgment delivered by the Court of Appeal, 25th June, 1895.

Osler, J.A.—"The action is for injuries sustained by the plaintiff in consequence of the alleged negligence of the defendant's servant. The Master in Chambers made an order that the plaintiff attend and be examined by the medical practitioner specified therein. The plaintiff attended, but refused to answer any questions. The Master then made a further order that the plaintiff attend and answer questions which might be put to him as to his past state of health and past symptoms. This order the Queen's Bench Division reversed, and the defendant now moves for leave to appeal from this order.

The act under which the original order of the Master in Chambers professed to be made, 54 Vic., ch. 11, O., was evidently passed in consequence of the decision in Reily v. City of London, 14 P. R., 171, and is in effect taken from the 26th section of the Regulation of Railways Act, 1868 (Imp.), though the latter is confined to injuries arising from accidents on a railway, while our Act is general in its application.

"The recommendation intended by the Act is, in my opinion, a physical examination by the medical practitioner by touch or sight, of the bodily injuries of the individual injured. The complainant is to be examined *by* not *before* the medical practitioner who is not required to report the result of the examination to the court. The examination is not one taken on oath or in writing, nor does it seem to have been intended that any record should be made or kept of it. If the object of the Act is regarded, a

moment's reflection will convince that a personal examination of the injuries complained of must have been intended and not an oral examination of the person injured. The word examination is used in the Act in the sense of inspecting, observing carefully, looking into the state of, as, *e.g.* to examine a building, a record, or a wound, and not in the sense of interrogating or examining a witness for the purpose of eliciting testimony. The jurisdiction is manifestly one to be exercised with great care and discretion, the more so as the examinant may be called as a witness at the trial by the party at whose instance he has been appointed."

The motion for leave to appeal is refused. Haggarty, C. J. C., Burton and Maclennan, J. J. A., concurred in dismissing the motion.

ENGLAND.

Formerly, upon appeal, in mayhem an inspection of the limb, organ or part, was often made by the court, with the aid of a surgeon: 2 Rolle v. Air., 578.

Under the writ "*de ventre inspiciendo*," taken from the Roman Law, such powers were exercised by the courts, and the jury was composed of matrons: Ex-Parte Aiscough, 2 P. Wms 591.

In cases of rape, both in England, America, and all countries, from the necessities of the case, an examination of the parts is usually made by order of the court, or under its direction. If it was refused by the complainant, it would result in an acquittal if the court should refuse to order it.

In actions for divorce, both in England and America, courts have exercised the power of ordering an inspection of the person by surgeons, in a certain class of cases, because of the peculiarities of proof in such cases where a personal inspection might determine the issue: Bishop on marriage and divorce, 245.

By the regulation of railways act of (1868) 31 and 32 Vic. Ch. 119, sec. 26, it is provided that in England :—

"An order may be made directing that a person injured by a railway accident be examined by a duly qualified medical practitioner, not being a witness on either side."

This, it will be noticed, is now a statute power and not a common law one.

In the following states the Supreme Court has held the power to be inherent in the court to order such an examination in furtherance of the ends of justice :—

Alabama.—Ala., &c., R. R. Co. v. Hill, 90 Ala. 71. McGuft v. State, 88 Ala. 147.

Arkansas.—Sibley v. Smith, 46 Ark. 295.

Illinois.—It was at first held in Parker v. Ensloe, 102 Ill. 272, that the court had no such power. Later the court has receded from that view, and the law of Ill. now appears to be that such an order may be granted in a proper case: Chicago, &c.. R. R. v. Holland, 12 Ill., 461. Joliet, &c., Ry. Co. v. Caul, 32, it E. Rip. 388.

Iowa.—Schroeder v. C., R, I. & P. R. R. 47 Iowa 375.

Kansas.—Atchinson, &c., R. R. Co. v. Thud., 29 Kan. 466.

Michigan.—Graves v. City of Battle Creek, 95 Mich. 266.

Missouri.—Lloyd v. R. R. Co., 53 Mo., 509. Side Kum. v. W., St. L. & P. R. R. Co., 93 Mo. 400. Owens v. Kansas City and R. R. Co., 95 Mo. 169. Shepard v. Mo. Pac. R. R. Co., 85 Mo. 629.

Nebraska.—Stuart v. Havens, 17 Neb. 221. Souix City and R. R. Co. v. Finlayson, 16 Neb. 578. Miami and T. Co. v. Bailey, 37 Ohio 104.

Texas.—I. & G. U. Ry. Co. v. Underwood, 64 Texas 463. Mo. & R. R. Co. v. Johnson, 72 Texas 95.

Wisconsin.—White v. Milwaukie & R. R. Co., 61 Wis. 536.

SEX.

The recent modification of the law in New York granting to women the right to have such examination before physicians or surgeons of their own sex, was made the subject of criticism in a very able paper read by George Chaffee, M.D., before the section on railway surgery of the Medico-Legal Society in November, 1894, especially as to localities where no female surgeons competent for such examination could be had, but the amendment to the act in New York in this regard will likely be construed to grant such a privilege to women plaintiffs, and in case they could find no competent women surgeons to act in such cases, it would only be imperative from the necessities of the case.

I fail to see how any injustice can be wrought in an action by having women physicians or surgeons appointed in such actions, when desired by women plaintiffs. The discretionary powers of the court would protect the corporation or defendants, in case competent women surgeons could not be found, by designating such surgeons as would be of conceded competency. And no doubt a similar amendment will be made to the Statute in this Province. (I am indebted to Mr. Clark Bell, of New York, for the American cases and other suggestions in the preparation of this paper.)

AMERICAN BAR ASSOCIATION.

The Eighteenth Annual Convention of the American Bar Association was called to order by its president, James C. Carter, of New York, at Detroit, on the 27th inst., with an attendance of about three hundred leading jurists and members of the bar from different States.

In his opening address Mr. Carter in reviewing the work in the several State legislatures at length and stating the most salient features of the new enactments, said in part:

"A society that has not the moral energy to enforce its will in any particular case should never embody that will in the form of a statute. I know of nothing more needed among us than a deepened conviction that the sphere of legislation, like that of other forms of human activity, has its proper limits, which can never be exceeded without mischief, and a sufficient knowledge of what these limits are.

"In urging the increased study by our profession of the science of legislation, I mean that science in its broadest extent. It should embrace, as I conceive, two principal branches: First, the just limits of the province of legislation; that is to say, what subjects are really fit for legislative action as distinguished from those that should be left to the disposition of courts or to the discipline that proceeds from the moral agencies of society.

"I am not aware of the extent of the field of enquiry thus embraced. It includes the fundamental elements of economic science and the principles upon which sociological inquiries are generally agreed. I do not mean that these sciences must be mastered in their details, but that the main features should be known so far as to enable the student to avail himself of their results and to employ their methods. The other important branch is the study of the proper manner in which subjects fit for legislative action should be treated; that is to say, the art of framing appropriate and effective laws. Our association takes much in bringing about a certain measure of uniformity in our laws.

"Our unwritten law is already substantially the same, and that I have always

regarded as an impressive reason from abstaining from any attempt to reduce it into written forms, which would at once tend to plunge it into adversity. Whatever can be done to secure this desired uniformity must be done by voluntary concerted action. The appointment made by several States during the last year of commissions designed to forward this effort affords us much encouragement."

The main address of the day was by Mr. Justice Brewer, of the U. S. Supreme Court, whose address bristled with practical suggestions and pregnant truths. In part he spoke as follows:

"The administration of justice would soon be considered a mockery if first impressions controlled every case. But greater expedition can be obtained without detracting from fullest examination and consideration. Shorten the time of process. Curtail the right of continuances. When once a case has been commenced deny to every other court the right to interfere, or take jurisdiction of any matter that can be brought by either party into the pending litigation. Limit the right of review. Terminate all review in one Appellate Court. Reverse the rule of decision in Appellate Courts, and instead of assuming that injury was done if error is shown, require the party complaining of a judgment or decree to show affirmatively not merely that some error was committed in the trial court, but also that if that error had not been committed the result must necessarily have been different. It may be said that this would make reversals very difficult to obtain.

"The end of litigation should be almost always in the trial court. Business men understand that it is best that the decisions of their committees of arbitration should be final and without any review. While some of our profession seem to think that justice is more likely to be secured if by repeated reviews in successive courts, even to the highest in the Nation, the fees of counsel can be made to equal, if not exceed, the amount in controversy between the clients. In criminal cases there should be no appeal. I say it with reluctance, but the truth is that you can trust a jury to do justice to the accused with more safety than you can an Appellate Court to secure protection to the public by the speedy punishment of a criminal. To guard against any possible wrong to an accused a board of review and pardons might be created with power to set aside a conviction or reduce the punishment, if on the full record it appears not that a technical error has been committed, but that the defendant is not guilty or has been excessively punished.

"The truth of it is, brethren, that in our desire to perfect a system of administration, one which shall finally extract from confused masses of facts and fictions the absolute and ultimate verities, we forget that tardy justice is often gross injustice. We are putting too heavy burdens on our clients, as well as exhausting the patience of the public. Better an occasional blunder on the part of a jury or a justice of the peace than the habit of protracted litigation.

"If our profession is to maintain its prominence, it is in going to continue the great profession, that which leads and directs the movements of society, a longer course of preparatory study must be required. A better education is the great need and the most important reform. The door of admission to the bar must swing on reluctant hinges and only he be permitted to pass through who has, by continued and patient study, fitted himself for the work of a safe counselor and the place of a leader.

"I know that mere education is not all sufficient. There must be a man to be educated. It is an old and true saying that you cannot make a silk purse out of the ear of female swine. No more will any amount of study and training pour legal lore into some craniums or give that rare and blessed gift, common sense. In each separate nation as it advances in civilization more and more are differences settled and rights adjusted by the lawyer and the judge rather than by the pistol and bowie-knife: so as the world advances in civilization will differences between nations be in like manner settled

"Arbitrations are growing in favor, and international courts will soon be a part of the common life of the world. I know the time may seem far distant when any such court shall come into existence. It will be witness to a great advance in civilization, and yet within the last fortnight I have seen it stated in the papers that the French Assembly has unanimously passed a resolution looking to the establishment of some tribunal of arbitration to settle all differences that may in the future arise between that nation and this country. The world is becoming familiar with international arbitrations and the settlement of disputes thereby; and every successful arbitration is but a harbinger of the day when all disputes between nations shall be settled in courts of peace and not by the roar of cannon and waste of blood."

The Lack of Uniformity in Divorce Laws.

THE unfortunate lack of uniformity in the divorce laws of the different States is a subject on which we have written considerably. The effect of this condition of the States' statutes is two-fold. First, divorce is made easy for the rich, and hard to secure for the poor; and, second, the judgment of the court of the State granting the divorce, loses all force and effect outside of the boundaries of the State.

The historical, philosophical and analytical schools differ greatly in conception as to how far moral law may influence the judicature of any locality, but is certain that public opininion will, in the end, frame legislative enactments in accordance with its ideas.

If similar divorce laws were enacted in every state, and if these statutes contain, first, a requirement that the person seeking divorce must have a residence of five years, and, second, that the divorced party would not marry within five years, it would seem that proper restrictions were placed upon parties, and that individuals would not in the present light and fickle fashion, seek marriage and again divorce.

The divorce laws of several states have been used as a sort of boom to populate growing sections, and the general cussedness of the thing is, that it not only temporarily increases the number of persons in those States, but afterwards depopulates them to the same extent.

If marriage is to be a relation which may be voluntarily ended at the volition of the parties, let us enact in the laws of the State of New York such provisions as exist in some of the statutes of the Western States—the more lenient the better.

If, however, some of the old-fashioned, good ideas of the sacredness of the relation and the indissolubility of the die yet remains in the public mind, let us endeavor to stop this booming of population in some states by enacting uniform statutes which will not allow the rich man greater privileges than his poorer brother.

The recent case of LeMesurier v. LeMesurier decided by the Privy Council in England does away with the theory which has existed in England since the decision of Jack v. Jack, of Matrimonial Domicile in Jurisdiction for Divorce. In Jack v. Jack, 24 D., 483, it was well recognized that the domicile of the party was mainly to be looked after in consider-

ing the competency of the court to decree divorce.

In that case the husband, a domiciled Scotchman had married a Scotswoman in Scotland, and had been wronged by her committing adultery there. He had gone to America without any idea of returning to Scotland, and the Scotch courts were much inclined to grant the decree, although the wife claimed that her residence was his, which was in America.

The new doctrine of matrimonial domicile was then most fully expounded by the late Lord President Inglis who argued that the true foundation of jurisdiction and divorce must have some actual relation to (1) the wrong to be redressed; (2) the remedy to be applied, and (3) the character of the union which it is the effect of the decree to dissolve, and that it was not therefore necessary that the husband should at the date of the action have such a domicile within the territory as would regulate his succession at death. In short, the court held that a man could have a matrimonial domicile separate and apart from any other. The decision of Jack v. Jack, however, was followed in many later cases and it has only been the decision of LeMesurier v. LeMesurier which has expounded the new doctrine.

The last-named decision has been followed by Dombrowizky v. Dombrowizky. These decisions and the evolution of the theory of domicile in England are perhaps mostly instructive because they show the tend of English decisions is to give more force to the permanent, actual, absolute domicil of the party seeking a divorce.

There should be no statutes allowing a six months' residence to entitle a person to have such a domicile as is necessary to sue for a divorce, and the power of the courts of many states should be greatly lessened and limited.

It is also worthy of comment to write as to the status of persons who have been divorced in England, that all prohibitions which could be placed in the statutes, should be enacted to prevent the divorced from marrying again.

It is a matter of history that in 1857, Mr. Gladstone was the leader of the party who endeavored to defeat the bill which gave to one tribunal the power to grant divorces instead of the cumbersome method which had before been necessary, namely, the common law action enjoined to an ecclesiastical decree and a bill in Parliament. The effect of this legislation was really to gain simplicity in procedure rather than any loosening of the rules of law to enable any persons to be divorced. Several sections were placed in the bill to appease Mr. Gladstone's party. The two which were thought most highly of were sections fifty-seven and fifty-eight which provided (1) that no clergyman shall be compelled to solemnize the marriage of any person whose former marriage may have been dissolved on the ground of his or her adultery, or shall be liable to any set penalty or censure for solemnizing or refusing to solemnize the marriage of any such person, and (2) that if the minister of any church shall refuse to perform the service for persons who, but for such refusal, would be entitled to have it performed in such church, he shall permit any other minister entitled to officiate within the diocese to perform the service in his church.

Lord Halifax's bill now pending in Parliament repeals section fifty-eight of the Act of 1857 and provides that no minister of any church or chapel of the Church of England wherever marriages may be lawfully solemnized, shall be liable to any set penalty or censure for refusing the marriage of any person whose former marriage shall have been dissolved on the ground of his or her adultery or crime, to be solemnized in such church or chapel, or for refusing to proclaim or permit the publication of the bans of marriage of any such persons in any such chapel or church.

The later amendment to this bill by Lord Grimthorpe's proposition provides that no marriage of a person found guilty of adultery shall be solemnized in any church or chapel in the Church of England within five years after such finding.

Can we not learn from our English brethren that a restriction on marriage when one of the parties has been divorced

will prevent many of the scandals which now grace the columns of the daily newspapers, some of which openly announce the intention of divorced parties to marry even before any proceedings has been begun for the dissolution of the marriage ties?—*Albany Law Journal.*

The Virginia Law Register has collected statistics on the number of yearly reported cases, and it is simply appalling. If we take it for the year 1893 (as nearly as court terms commencing at different dates will permit), we will find that the American included the following number of pages:

United States Supreme Court	2,875
Federal Reporter	5,118
National Reporter System 17,043 pp., each equal to 3 pp. United States Supreme Court	53,802
Total.....	61,795

Hence any American lawyer who wishes to keep up with it, if he is enough of a Christian to omit Sundays and enough of a patriot to omit legal holidays, thereby reducing his working days to about 300, would be obliged to read over 200 pages a day, excluding entirely his preparation for special cases and his study of earlier decisions. In fact, these judicial law factories are the only kind that hard times do not seem to affect. We might look upon an occasional strike among them as a blessing in disguise, but against them even dynamite and mobs are powerless. Unlike others, they never shut down or run on half time. Unlike others, they never continue for the mere purpose of working up crude material, for it is inexhaustible. Unlike others, they never restrict their output to the finest products. And the insatiable press hastens to shower upon us this immense production, printing everything—except the judicial joke. This applies with full force to Canada.

What is the remedy? It is beyond the reach of legislation. It is nothing else than the gradual education of the bench and bar to the formation of a public opinion which will reduce the business of reporting to rules as definite as those which govern any other science. Only discussion and interchange of views can develop the proper system, and that interchange of views is being inaugurated. This suggestion which we make must, therefore, be considered as merely tentative. They are far from exhaustive, some may be incorrect, but we believe that many will enter into the preparation of the future model report.

SHORT NOTES ON ENGLISH CASES.

HOUSE OF LORDS AND PRIVY COUNCIL.

If an action is brought in the British Consular Court in Japan by the Japanese Government for damage caused by a collision between one of their steamers and a steamer belonging to English shipowners, can the latter (that is, the defendants) maintain a counterclaim against the former (that is, the plaintiffs) for damage caused to their steamer by the said collision?

Imperial Japanese Government v. P. & O. Steam Navigation Co. (T. 498). No; but they must proceed by action in the Japanese Court to enforce their claim; the rule being that a Japanese subject suing a British subject in Japan must bring his action in a British Consular Court, and a British subject suing a Japanese must pursue his remedy in the Japanese Court. A counterclaim is in the nature of a cross-action, and though capable of being raised by the Rules of

Court when a British subject sues another in the British Court, yet these Rules cannot interfere with Treaty rights, and therefore cannot be construed to allow a counterclaim to be raised against a Japanese plaintiff.

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HAVE the Courts of Ceylon jurisdiction to dissolve a marriage between British spouses resident in that island?

Le Mesurier v. Le Mesurier (T. 481). The Judicial Committee of the Privy Council decided that they possessed no such jurisdiction: P. D. & A. 157.

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CAN a mortgagee who, having sold the mortgaged property, paid over the balance of the proceeds of sale to the wrong person, plead the Statute of Limitations as a defence to an action brought to recover such balance?

Thorne v. Heard (L. T. 211). Yes, since as to such balance he is a trustee within sect. 8 of the Trustee Act, 1888, and able to take advantage of that section. The facts were: A. B. and C. D. were first mortgagees of a property. E. F was second mortgagee. In 1878, A. B. and C. D. sold under their power of sale, and employed S., a solicitor, to conduct the sale for them. The proceeds of the sale were more than sufficient to satisfy both mortgages. S. received the purchase-money, and, after satisfying the debt of A. B. and C. D., the first mortgagees, retained the surplus for his own use, falsely pretending to A. B. and C. D. that he had authority from E. F. to receive it for him. He continued to pay interest to E. F. up to 1891, and E. F. was not aware that his security had ceased to exist. In 1892 S. became bankrupt, and the fraud was discovered. E. F. then brought this action against A. B. and C. D. for an account and payment of what was due to him. The House of Lords held (1) that the cause of action accrued at the time of sale, as the mortgagees, A. B. and C. D., were not responsible for the fraudulent concealment of their solicitor, S., acting in his own interest and outside the scope of his authority; (2) that A. B. and C. D. were protected from liability by the Statute of Limitations, which by virtue of sect. 8 of the Trustee Act, 1888, they were able to set up.

COURT OF APPEAL.

In re G. E. Brown, a lunatic—Court of Appeal. Lindsay, L.J., Lopes, L.J., Rigby, L.J., Aug. 5, 9. Lunatic resident out of the jurisdiction—Master in Lunacy of Victoria Appointed Guardian and Receiver—Transfer of stock—"Vested"—Lunacy Act, 1890 (53 Vict. c. 5), s. 134. Gertrude Emily Brown had been found a lunatic in the colony of Victoria, where she resided, and the master in lunacy of that colony had been appointed guardian of her person and receiver of her estate, and the care, protection and management of her property had been remitted to him. By the Colonial Lunacy Act the master was empowered to undertake the management of the estates of all lunatics, and to take possession of and administer their property; but the property was not vested in the master, nor did the Act provide for the appointment of a committee. This was a petition by the master, by his attorney in this country, for an order that English stocks belonging to the lunatic should be transferred and the dividends paid to him. Their Lordships made the order. They said that section 134 of the Lunacy Act, 1890, gave the Court a discretion, and that it applied to this case, although the stocks were not vested in the master in the strict legal sense.

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THE Midland Railway Company v. Gribble—Court of Appeal. Lindley, L.J., Lopes, L.J., Rigby, L.J.—Aug. 6, 7. Right of Way—Railway Company—Severance—Accommodation—Works—Level crossing—Sale of part of land by owner—Abandonment of right of way—Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), ss. 68, 74. Appeal from the decision of Wright, J., reported 66 Law J. Rep. Chanc. 541. The plaintiffs took, under compulsory powers, land which formed part of an estate belonging to one Raynsford. In 1855 level crossings were made, as a result of an arbitration under the Lands Clauses Act, to maintain the means of communication between the portions of the estate severed by the railway.

Raynsford, in 1885, sold the portion of the estate lying on the west side of the railway without reserving any right of way over it in favour of the portion on the east side, which he retained. The portion on the east side was afterwards sold to another purchaser, who sold it to the defendant. The defendant claimed a continued right to use the level crossing, which the plaintiffs denied; and the plaintiffs removed the gates, substituted fences and trenches, and took up the granite paving of the crossing. On the defendant threatening to break down the fences this action was brought for an injunction to restrain him from doing so. Wright, J., held that the defendant, having no present right to pass over the land on the west side of the railway, was not entitled to use the level crossing, and granted the injunction, but without prejudice to any right the defendant or his successors in title might have in case they should become entitled to pass over the land on the west side. The defendant appealed. Their Lordships were of opinion that Raynsford, by selling the land on the west side of the railway without any reservation of a right of way over it, had abandoned all right to use the level crossing. They therefore varied the order of Wright, J., by omitting the declaration that it was to be without prejudice to the defendant's right in the case above mentioned, and affirmed the order in all other respects.

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RUSSELL v. Russell—Court of Appeal. Lindley, L.J., Lopes, L.J., Rigby, L.J.—June 28, July 1, 2, Aug. 7. Restitution of conjugal rights—Judicial separation—Cruelty. Appeal from a decision of Pollock, B., sitting as a judge of the Probate, Divorce, and Admiralty Division. A note of the proceedings in the Court below will be found *ante*, p. 292. The Countess Russell, in 1890, commenced a suit against the earl for judicial separation, on the grounds of cruelty and sodomy. That suit was dismissed, but the countess continued to reiterate the charges of sodomy. This action was brought by her for restitution of conjugal rights. The earl, by counterclaim, asked for a decree of judicial separation on the ground of the countess's cruelty in making the above charges, well knowing them to be false; he also set up as a defence that the action was not brought *bona fide* with the desire of resuming cohabitation, but for the purpose of founding proceedings under the Matrimonial Causes Act, 1884 (47 & 48 Vict. c. 68), for alimony and judicial separation. Pollock, B., who heard the case with a special jury, left it to the jury to say whether the countess had been guilty of cruelty, and whether she had acted *bona fide*. The jury answered the former question in the affirmative, and the latter in the negative; and the learned baron dismissed the wife's petition and made a decree of judicial separation as asked by the counterclaim. Lady Russell appealed. Lindley, L.J., and Lopes, L.J., held that "there must be danger to life, limb, or health, bodily or mental, or a reasonable apprehension of it, to constitute legal cruelty," and that, no such danger having been proved, the earl's claim for judicial separation failed. They held, however, that since the passing of the Matrimonial Causes Act, 1884, the Court was not bound to decree restitution of conjugal rights in all cases at the instance of a party who had successfully resisted a claim for judicial separation, or *vice versa*, and that in the present case neither restitution of conjugal rights nor judicial separation ought to be ordered. Rigby, L.J., while agreeing with the other members of the Court in all other respects, differed from them in thinking that the countess had been guilty of legal cruelty entitling her husband to a decree for judicial separation. Appeal allowed in part, petition and counterclaim dismissed.

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BAYNES & Co. v. Lloyd and another (L.T. 367). The decision of Lord Russell, C. J., in this case has been confirmed in the main, so that a covenant for quiet enjoyment (limited apparently to the use of the lessor and those claiming through him, and only binding on the lessor as long as his interest in the premises lasts), at least, if proper words of letting are used, is implied, but no covenant for title, that is, no covenant that the lessor has power to let.

Bower & Co. v. Hett (L.T. 307). The facts of the case were somewhat complicated. It appears that an action was brought against the high bailiff of the Brigg County Court to recover 23*l.* 15*s.* 8*d.* The plaintiffs obtained judgment on September 20, 1894, in the Brigg County Court against one Denton for 23*l.* 15*s.* 8*d.*, and on September 29 a warrant of execution was delivered to the defendant, and on October 1 the defendant seized, but went out of possession the same day under an arrangement with Denton, whereby Denton acknowledged that the defendant was in possession, and allowed him to go in again when he pleased. Denton continued to carry on his business on the premises until October 2, when he absconded, and on October 3 his manager locked up the premises and handed the key to the defendant, and on the same day Denton's father promised the defendant to pay the amount of the debt if the defendant would give up to him the key of the premises. On October 4 the father paid the defendant the amount of the debt. On October 15 a bankruptcy petition was presented against Denton, on which he was adjudicated bankrupt. Notice of the bankrupt proceedings was given to the defendant, and on November 12 the defendant handed the money to the official receiver. The plaintiff brought this action to recover the money as money received by the defendant to the plaintiff's use. By sec. 11, sub-sec. 2, of the Bankruptcy Act, 1890, "where under an execution . . . . the goods of a debtor are sold, or money is paid to avoid a sale," the sheriff shall retain the proceeds of the sale, and if within fourteen days a bankruptcy petition is presented against the debtor on which a receiving order is made, then the sheriff shall pay the proceeds of the sale, less his costs, to the official receiver. The County Court judge gave judgment for the defendant. The Divisional Court held that the above section did not apply, and gave judgment for the plaintiff. The defendant then appealed to the Court of Appeal, and Esher, M.R., Kay and Smith, L.JJ., held that the money was not paid, and that, further, as there was no execution, it was not paid to avoid a sale. The words only applied to where the sheriff was in possession, and was proceeding to sell. The court therefore affirmed the decision of the Divisional Court.

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London and General Bank *In re* Theobald's case (T. 537). The decision in this case, to the effect that an auditor may be liable jointly with directors for misfeasance under sect. 10 of the Companies Act, 1890, has been confirmed on appeal. It is not, said Lindley, L.J., the duty of an auditor to give advice either to the directors or the shareholders, nor did his duty extend to guaranteeing the accuracy either of the balance sheet or of the books, provided he exercised reasonable care and skill; but it is his duty to ascertain and state to the shareholders the true financial position of the company; and if he fails in so doing and loss accrues to the company through payments of dividends out of capital, he may become liable with the directors to make good the loss.

ONTARIO CASES.

In *Re* McFarlane v. Nulter (the Divisional Court, May, 1895). Prohibition—Appeal — Time — Ditches and Watercourses Act, 57 Vic. c. 55, s. 22, s.-s. 6; R. S. O. c. 220, s. 11, s.-s. 5. On an application for prohibition to restrain proceedings on an appeal under The Ditches and Watercourses Act, 56 Vic. c. 55, on the ground that the appeal had not been heard and determined within two months under provisions of sec. 22, s.-s. 6. Held, that the provisions of that sub-section are merely directory, and not imperative. Held also, that there is no sufficient declaration in that statute of an intention to change the law from what it was,

apart from the declaration in R. S. O. c. 220, s. 11, s.-s. 5, and prohibition was refused. Decision of Robertson, J., affirmed. Ball, Q.C., for appeal; A. Bicknell, contra.

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JOHNSTON v. Allen. Elections—Ontario Election Act, 55 Vic., c. 3, s. 186—D. R. O.—Wilful malfeasance—Penalty. In an action against a Deputy-Returning Officer, by a person aggrieved, to recover a penalty under sec. 106 of 55 Vic. c. 3, for an alleged wilful refusal to allow the plaintiff to vote. Held, that the word wilful in the section means "perverse," or malicious; and although the plaintiff was deprived of his vote by the refusal of the defendant to allow him to deposit a "straight" ballot, and there was thereby a contravention of the Act, yet, as the defendant honestly believed the plaintiff was not qualified and believed in his own power to withhold the ballot. The action failed. Lewis v. G. W. R. Co.; 3 Q. B. D. 195 followed. Walton v. Ap. John, distinguished. F. H. Keefer, for plaintiff; Watson, Q.C., for defendant.

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REGINA v. Steele. (Meredith, C.J., and Rose, J.—July 13. Justice of the Peace—Summary conviction—Interest—Bias—Relationship to complainant—Costs. Where the convicting justice was the son of the complainant, and the latter was entitled to half of the penalty imposed, a summary conviction was quashed, on the ground that the justice had such an interest as made the existence of real bias likely, or gave ground for a reasonable apprehension of bias, although there was no conflict of testimony. The Queen v. Huggins (1895), 1 Q. B. 563, followed. Dictum in Regina v. Langford, 15 O. R. 42, approved. Costs of quashing conviction withheld from successful defendant, where he filed no affidavit denying his guilt or casting doubt upon the correctness of the magistrate's conclusion upon the facts. R. D. Gunn, for defendant; F. E. Hodgins, contra.

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IN *Re* Hobson v. Shannon. (Boyd, C.—June 8th, 1895.) Divisional Court—Garnishee proceedings—Judgment against garnishee—Motion for new trial after 14 days—R. S. O. c. 51, s.-ss. 173-199. Where a garnishee, more than two months after judgment obtained against him, was notified for the first time that the debt due from him to the primary debtor had been assigned by the latter to a third party prior to the garnishee proceedings. Held, that the judge in the Division Court, upon the motion for a new trial, had jurisdiction to open up the matter for further investigation, although after the lapse of 14 days. Raney, for primary debtor; W. C. Chisholm, for the garnishee.

THE LAW SCHOOL.

THE Law School, at Osgoode Hall, Toronto, re-opens on Monday, Sept. 23rd, at 9 p.m. The Principal, Mr. Newman W. Hoyles, Q.C., has returned from England, and we are glad to notice an improvement in his health. This year lectures will be given as follows:—

The Principal—First Year Contracts, Second Year Contracts, Torts, Practice and Criminal Law, Third Year Contracts, Torts, and Private International Law.

Mr. Marsh—First and Second Years, Equity and Practice.

Mr. Armour—Real Property in all the years, Third Year Const. Law and History.

Mr. King—Second Year, Evidence and Const. Law; Third Year, Evidence, Criminal Law and Construction of the Statutes.

Mr. Young—First Year, Common Law; Second Year, Personal Property; Third Year, Commercial Law.

The school fee of $25.00 must be paid to the Secretary, Mr. Macbeth, who will give a receipt to present to the Principal. Students must attend five-sixths of the aggregate number, and at least four-fifths of the number of lectures in each series delivered during the year. The examiners will be Messrs. A. C. Galt, M. H. Ludwig, M. D. Gwynne and J. H. Moss. A copy of this year's curriculum can be obtained from Mr. Macbeth or from the Principal.

OSGOODE HALL LEGAL AND LITERARY SOCIETY.

THE fall and winter session of this society opens with the Annual Meeting, on Saturday, October 4th.

Nomination days are fixed for Saturday, October 4th and 11th. Polling day, Saturday, October 18th, from 9 a.m. to 8 p.m. A keen election contest will, it is said, take place.

DANCING.

IT is but a step from poesy to dancing. It seems to this chair that the Supreme Court of Missouri does not put a correct estimate on dancing, when it holds that it is libelous to accuse an institution of learning, in print, of teaching the art of dancing. This is what that learned court has done in the case of St. James Military Academy v. Gaiser, 28 S. W. Rep. 851. It seems that a number of clergymen of Macon, Missouri, assembled themselves together and resolved that the academy in question, because it "fostered the practice of dancing, which is antagonistic to the teaching of our churches and homes," and "hurtful to the moral and spiritual well being of all engaging in it," and because the academy obstinately refused to discontinue it, although thereunto requested by said clergymen, was "harmful to the moral and religious interest of our community," and that they recommended "the members of our churches and all friends of religion and good morals that they absent themselves from and discourage and discountenance in every way all receptions and other gatherings at the academy as long as dancing is allowed in the building."

The court holds that this publication constituted a cause of action for libel, but leaves it to a jury to say whether it was justified on the ground that dancing was immoral. It seems to us that the charge is not libelous, because it does not accuse the academy of promoting anything immoral. Would it be libelous, for example, for the proprietors of the academy to publish that the churches presided over by these clergymen should be avoided, so long as the clergy thereof combed their hair behind their ears and sang through through their noses? Or suppose the clergy had denounced the academicians for teaching the lacivious angles of geometry, or unfolding the unholy mysteries of algebra, or encouraging the contemplation of the deleterious principles of geology, would that have been libelous?

Is not the one charge as ridiculous and manifestly baseless as the other? To justify the court's decision it must be

conceded that to accuse an academy of teaching, or permitting dancing has the natural tendency to bring it into odium, unpopularity, or contempt. This can hardly be true. The world has moved considerably since "The Waltz" was so vehemently denounced by the pious and saintly Lord Byron. It is now recalled that David danced before the Lord, that Hatton danced himself into the Lord Chancellorship before Queen Elizabeth, and that dancing is taught at the government's expense, or at all events publicly favored at West Point.—*The Green Bag.*

RECENT DEATHS.

Death of Mr. Justice Jackson.

Hon. Howell E. Jackson, Associate Justice of the Supreme Court of the United States, died at his home near Nashville, Tenn., on Thursday, August 9, aged 63 years. Justice Jackson had been critically ill for a week, but his condition was known only to members of his family and intimate friends, the first publication of that fact being made on the afternoon of his death. He had been failing in health for several years, but no alarm was felt as to his condition until about a year ago, when he took a trip to the Northwest, being absent several months. He spent the winter in Thomasville, Ga., but was little benefited. He was, however, well enough in May to come to this city and sit with the court on the occasion of the rehearing of the Income Tax Cases, and delivered an able and vigorous dissenting opinion.

Justice Jackson was born in Paris, Tennessee, April 8, 1832. He graduated from the West Tennessee College in 1848. He studied law two years at the University of Virginia, and in Jackson under his kinsmen, Judges A. W. O. Totten and Milton Brown; graduated from the Lebanon law school in 1856, in which year he located in Jackson and engaged in the practice of his profession; removed to Memphis in 1859, where he continued the practice of law; served on the Supreme Bench by appointment on two occasions, and was once a prominent candidate for Supreme Court Judge before the nominating convention; relocated in Jackson in 1876. He was elected to the House of Representatives in 1880, on the State credit platform and elected to the United States Senate as a Democrat in 1881, and served till April 12, 1886. He was appointed United States Circuit Judge by President Cleveland and nominated for Associate Justice of the Supreme Court by President Harrison. He was confirmed by the Senate February 18, 1893, and entered upon the duties of the office March 4, 1893.

Death of Ex-Justice Strong.

Ex-Associate Justice William Strong, of the United States Supreme Court, died at Lake Minnewaska, New York, on Monday afternoon, August 17th, 1895. His remains were removed to Reading, Pa., where the funeral took place on Wednesday, August 21st.

Justice Strong had been in failing health for some time, and his death had been expected for some days. He was

taken to Lake Minnewaska several weeks ago suffering from a catarrhal affection of long standing. His system was also greatly weakened by a fall down a flight of stairs at his home in Washington about two months ago. Since his arrival Judge Strong has lain in a semi-comatose state, from which he rallied only at intervals. Sunday he had a stroke of paralysis which affected the left side. He also suffered a recurrence of the catarrhal fever, and again became unconscious until death ensued.

Eighty-seven years ago William Strong was born in Somers, Conn. He was the eldest of eleven children of Rev. William L. Strong, and graduated at Yale in 1828. While pursuing the study of law he taught school, and at one time was in charge of a school in Burlington, N.J. He finished his legal studies by a six month's course in Yale law school, and was admitted to the bar of Pennsylvania in 1832, settling at Reading, Pa. His determination to make a success in his profession was early manifested, but as good an example as may be cited when it is stated that he mastered the German language, which was then much spoken in that region. He soon attained high rank as a lawyer, and in 1846 he became a candidate for Congress and was twice elected on the Democratic ticket, serving from 1847 to 1851. He declined a third nomination and retired from active politics.

He was elected in 1857 a justice of the Supreme Court of Pennsylvania, and served in that position eleven years. His opinions, as published in the state reports, exhibit great care in preparation, clearness of statement, precision and vigor of style and accurate knowledge In 1868 he resigned his seat on the bench and opened an office in Philadelphia, at once obtaining a large and lucrative practice.

In February, 1870, he was appointed a justice of the Supreme Court of the United States and served until December, 1880, when he retired. He continued to reside in this city. He was a member of the electoral commission in 1877, and in his opinions contended that Congress had no power to canvass a State election for presidential electors. He rendered eminent service during his term on the bench, and his knowledge of law, keen discrimination and sound judgment made him an invaluable associate in consultation.

A Chapter of "Don'ts."

Don't launch a motion without first having filed your material.

Don't move two motions in Chambers in succession, but wait for your second until you are reached again.

Don't attach exhibits to your affidavits for use on a motion, otherwise you will be obliged to file them.

Don't delay the business of Chambers by detaining the Master after eleven o'clock settling orders.

Don't fail to leave all necessary material with the Clerk in Chambers for the use of the Judge the day before your appeal is to be heard.

Don't use the expression, "information and belief," in an affidavit without stating the source of information and the grounds of belief.

Don't be later than one o'clock filing *præcipe* in accountant's office for cheques, if you expect to get same out next day.

Don't make application to a taxing officer for an appointment to tax a bill unless you have your bill with you, added, and attached thereto a copy of the judg-

ment or order under which you claim to be entitled to costs.

Don't *præcipe* papers to the Clerk of Records and Writs in case of appeals to a Judge in Chambers. They should be *præciped* to the Clerk in Chambers.

Dont't fail, however, to *præcipe* papers to the Clerk of Records and Writs where they are required for use in Single Court, no matter in what division the action may be.

Don't expect that Judge's Chambers are always held at 11 o'clock. A number of the Judges hold Chambers at 10.

Don't fail to enclose return postage when you *præcipe* papers to Toronto.

Don't offer the law stamp vendor American money, and don't ask him to accept your I.O.U.

Don't take books from the library without signing for them.

Don't attempt to interview a Judge without having the usher first announce your name to His Lordship.

Don't put in *præcipe* for cheque in Accountant's office, under order of the Master in Chambers or a local Judge, until you have first procured one of the Judges to initial the order.

EXCERPTS FROM EXCHANGES.

Sham Insanity is Actual Contempt.

A SAD blow at "journalistic enterprise" has been dealt by an unfeeling judge in California. An ambitious young reporter on the Los Angles *Herald*, who had wearied of ordinary assignments, conceived the idea of winning fame by getting up a sensation. So he feigned insanity, was brought before the court for examination, was pronounced a subject for the asylum, and was sent to the state institution at Highlands. After staying long enough to get material for a good "story," he wanted to get out, but in order to secure his release was obliged to tell the whole story of his deceit. The judge who had committed him cited him to appear to answer the charge of contempt of court, and sentenced him to pay a fine of $200 or serve 100 days in jail. The judge accepted the plea that no disrespect for him personally had been intended, but explained that contempt of court was not an offence against the person of the judge, but against the government, because it is an unlawful interference with the orderly administration of justice by the tribunals created for that purpose. In this case the reporter, by deceit, had caused the machinery of justice to be set in motion, involving considerable public expense, and when brought before the court acted in a disorderly and insolent manner to induce the court to make an improper and illegal order. The judge proceeded to express these views that the journalistic criminal ought to be treated more leniently than one not in "the profession."

"Possibly from the standpoint of a reporter, such conduct may seem right and proper. It is possible even that in some quarters an attempt to deceive a court of justice, and by deceit to procure an improper and illegal order—an order involving the expenditure of considerable public money, and resulting in sending a sane man to an asylum—may be looked upon as a legitimate journalistic enterprise. I hardly think, however, that, upon sober second thought, any citizen would so regard it. One who embarks upon such an enterprise—an enterprise which involves a violation of law, an enterprise which involves the commission of a public offence—must abide the consequence." —New York *Evening Post.*

Great Young Men.

Charles James Fox was in Parliament at nineteen.

The great Cromwell left the University at Cambridge at eighteen.

John Bright was never at any school a day after he was 15 years old.

Gladstone was in Parliament at 22, and at 24 he was Lord of the Treasury.

Lord Bacon graduated at Cambridge at 16 and was called to the bar at 21.

Peel was in Parliament at 21, and Palmerston was Lord of the Admiralty at 23.

Henry Clay was in the Senate of the United States, contrary to the Constitution, at 29.

Morris of Saxony died at 32, conceded to have been one of the profoundest statesmen and one of the best generals which Christendom has seen.

Martin Luther had become largely distinguished at 24, and at 56 had reached the topmost round of his world-wide fame.

Webster was in college at 15, gave evidence of his great future before he was 25, and at 30 he was peer of the ablest man in Congress.

Washington was a distinguished colonel in the army at 22, early in public affairs, commander of the forces at 42, and President at 57.

Napoleon at 25 commanded the army of Italy. At 30 he was not only one of the most illustrious generals of the time, but one of the greatest lawgivers of the world. At 46 he saw Waterloo.

The great Louis X was Pope at 38. Having finished his academic training, he took the office of Cardinal at 18—only twelve months younger than Charles Fox when he entered Parliament.

Judge Story was at Harvard at 15, in Congress at 29, and Judge of the Supreme Court of the United States at 32.

Wm. Pitt entered the ministry at 14, was Chancellor of the Exchequer at 22, Prime Minister at 24, and so continued for twenty years, and when 35 was the most powerful uncrowned head in Europe.

Prescription.

TRANSLATED FROM THE GERMAN BY J. H. BEALE, JR.

That learned lawyer, Lucius Gray,
Studied his Bracton night and day;
Sometimes in Brooke his mind did soak,
Then boiled his intellect on Coke.
His wife as lovely as a dream,
Sat all alone and sewed a seam,
Or with her female gossips three
Imbibed at eve the cheerless tea;
While on his study night and day,
Glued to his book sat Lucius Gray.
One day at last on Washburn's page
About Prescription learned the sage,
A right unused for certain years
Is gone forever it appears.
A sudden thought inspired the man,
Straight to his lovely spouse he ran;
He kissed her on her lips so soft,
And in his arms embraced her oft.
Full sweetly smiled his wife at this;
Eve years and more she lacked a kiss.
Consumed with curiosity,
"My darling husband," queried she,
"Why, after long, long years, my own,
Have you at last so loving grown?"
"Why?" answered he with wit profuse,
"To break the chain of adverse use.
Six years' neglect of osculation
Destroys the right by limitation:
Now times begins to run anew;
Safe for six years my right in you."
He spoke and to his books returned,
And many other marvels learned.

—*The Green Bag*

Humor of the Canadian Bar.

B. B. O——, Q.C., is minutely describing to the Court of Appeal the method in which a certain house was lifted from its position and was found elsewhere. The Chief Justice with his usual desire to master details plied the Q.C., with questions: And now Mr. O. on what do you say he raised it? Mr. O.—On four jacks my lord. One scintillating flash of intelligence passed between the counsel and the Chief justice, but the rest of the court failed to fathom the metaphor.

*

Mr. Sh—y, Q.C., was pressing with his usual force and earnestness for the discharge of his client (a woman) from custody. He pointed out that the unfortunate lady was not primarily liable, that her son was the principal debtor, and that his client's misfortunes were due to the son's unfilial conduct. Mr. O—— remarks, *sotto voce*, to Mr. Sh—y, "This poor woman was confined on a previous occasion for a period of nine months on account of this same boy." Mr. Sh—y jumps at the chance for a powerful climax to his address, and goes on, "And my lords, my learned friend, Mr. O——, informs me, knowing the parties very well as he does, that this poor woman was confined on a previous occasion for a period of nine months on account of this same boy." Tableau!

*

H. C. J.—Motion for judgment on action for construction of will and administration bequest "to the Sisters of Charity of Hamilton." Counsel against bequest argued that inasmuch as there is no such incorporation or association as the Sisters of Charity the bequest is void. Hamilton counsel endeavoring to support bequest, argues that it may be good as a bequest to individuals in Hamilton answering the description of Sisters of Charity. Toronto counsel opposing the bequest, said: "So far as I am aware charity only had originally two sisters, viz., faith and hope, and these ladies ceased to reside in Hamilton many years ago."

*

Mr. O——, Q.C., is gently worming information out of a well known Toronto money lender with regard to a certain mortgage and its rate of interest. Q. "Six per cent., I suppose, M——?" A. "No, not six." Q. "Was it seven then?" A. "No." Q. "Surely not eight, Mr. ——?" A. "No, not eight per cent." Q. "Well, Mr. ——, you surprise me—what was the rate?" A. "Two per cent. a month." Pause. Mr. O——, "Do you think it possible that by some singular misadventure you happened to be circumcised in your youth?"

*

BARRIE ASSIZE.—Pat had just given his evidence in chief, Mr. Mc——, Q.C., was about to open his fires of cross-examination upon Pat. The learned and not a little dreaded Q.C. was slowly advancing towards the box, arranging his gown and clearing his throat. The witness, realizing what was in store for him and overcome with apprehension, turned to the judge and flung out the following: "Yer Honor, every word I have been sayin' is the God's truth, and if I say anything else when Mr. Mc—— is talking to me it'll be a bloody lie."

*

Can Photographs Lie?

IT seems from the following note in the *Chicago Legal News*, signed by the initials of our learned friend Judge Bradwell, that this question must be

answered in the affirmative. It will be recalled that Judge Bradwell, in addition to his learning as a lawyer, and his ability and aptitude as an editor, is a skilful photographer and half-tone engraver:—

The law as to how far photographs may be used in evidence is not settled. It is sometimes asked, "can the camera lie, and are photographs reliable?" This depends upon circumstances. A short time since, in connection with another artist, we focused two cameras upon a court of three judges, and used for a flash light blitz pulver, which lasts only the hundred part of a second. When one of the plates was developed it was found that the eyes of the chief justice were closed as if in sleep, while in the other they were wide open. If the question had been to prove whether the chief justice was asleep at the fraction of a moment of the taking, all that would be necessary to do, would be to introduce a print from one of the negatives; if to prove that he was wide awake and attending to business, to produce a print from the other negative, or in other words "look on this picture and then on that." The difference in these negatives is easily explained by those who took them, but not by the ordinary judge or lawyer.

A Rule as to Negligence.

A PERSON who is charged with an act of negligence which has caused an injury cannot protect himself by showing that similar acts were customary in the community where he lived. If an act is careless in itself the personal responsibility for the carelessness is not mitigated by the fact that others are alike careless. But when the question is whether a structure is properly made, or work, which from its nature involves danger, is properly carried on, it is competent for the party who has the burden of proving negligence to show that the other abandoned the usual precaution which universal experience had shown to be necessary. While it is true that the question of the inherent negligence of an act which has produced an injury does not depend upon the fact that similar acts have been common without injury, yet, when general experience has shown that in the construction of buildings or machinery certain precautions must be taken to avoid calamity, it is evidence tending to prove negligence that these precautions were deliberately omitted.

The statement of the legal rule concerning personal responsibility for injuries resulting from one's act is embodied in the decision of the United States Circuit Court of Appeals in the case of Flynt Building and Construction Company v. Brown, 67 Fed. Rep. 68, which will repay a careful perusal.

The authorities are a unit upon the point that a master's duty to his servant requires of him the exercise of reasonable care and skill in furnishing suitable machinery and appliance for carrying on business in which he employs the servant and in keeping such machinery and appliance in proper repair, including the duty of making inspections and tests at proper intervals. Almost as unanimous are they in the proposition that if the master selects an agent to perform this duty for him, and the agent fails to exercise reasonable care and skill in its performance, the master is responsible for the fault.

Discrepancies, however, have arisen in the application of the latter rule because of another rule, firmly established, that the master is not responsible to his

servant for the negligence of a fellow servant engaged in a common employment. In determining whether an employee, through whose negligence defects in the machinery have failed of discovery and repair, is a representative of the master in the discharge of the master's duty to the servant, or is a fellow servant of the latter engaged in the common employment, many incongruous decisions have been rendered. On this topic a rational distinction would seem to be that if the employee's duty to inspect or repair the apparatus is incidental to his duty to use the apparatus in the common employment, that he is not intrusted with the master's duty to his fellow servant, and the master is not responsible to his fellow servant for his fault; but that if the master has imposed the duty of inspection or repair upon an employee who is not engaged in using the apparatus in a common employment with his fellow servant, then that employee in that duty represents the master, and the master is chargable with his default.

This distinction is thus drawn, and the principle adducible therefrom is applied by the Court of Errors and Appeals of New Jersey in the case of Ingebregtsen v. Nord Deutcher Lloyd Steamship Company, 31 Atl. Rep. 619, and the court further determined that, in the absence of notice to the contrary, a servant is entitled to assume that his master has exercised due care and skill in furnishing proper appliances for the work and in keeping them safe. — *The American Lawyer.*

A WELL known barrister relates the following story with great gusto. Some time ago he had under cross examination a youth from the country who rejoiced in the name of Samson, and whose replies were provocative of much laughter in the court.

"And so," questioned the barrister, "you wish the Court to believe that you are a peacefully disposed and inoffensive kind of person?"

"Yes."

"And that you have no desire to follow in the steps of your illustrious namesake and smite the Philistines?"

"No, I've not," answered the witness. "And if I had the desire I ain't got the power at present."

"Then you think you would be able to cope successfully with a thousand enemies and utterly route them with the jawbone of an ass?"

"Well," answered the ruffled Samson, "I might have a try when you have done with the weapon."

*

LORD CHIEF BARON POLLOCK, when age began to invade his body, was wont to have a nap pretty regularly about the middle of the sitting. His waking was often comical: when he would start, and seizing his pen, say to the counsel, "What was your last citation?" and some of his friends thought he ought to resign. One of these expressly waited on Sir Frederick Pollock and hinted at resignation. "Oh! you think me too old, eh?" he said, "come waltz with me;" and then seizing his interlocutor by the waist, began capering with him about the private chambers. Next he put himself into boxing attitudes and fairly boxed the other to the door. On another occasion he said, "If every man were to take advantage of every tempting occasion 'to have the law' of his neighbor, life would not be long enough for the litigations which would result, for all flesh and blood would be turned into plaintiffs and defendants."

A CASE was not long ago tried in a provincial court, and in due course the judge summed up dead against the prisoner. The jury retired to consider their verdict, and were an unheard of time under the circumstances, making up their minds. The judge's usual dinner hour came and went, and still the jury agreed not; whereupon his lordship made inquiry, and found that one obstinate fellow was holding out hard and fast against the other eleven. This was intolerable, in the face of so distinct a charge; so my lord ordered the jury to be brought before him. Then, with ponderous solemnity, he told them that in his summing up he had stated the facts and the law so plainly that their verdict ought to be both prompt and cordially unanimous, and that the man who persisted in setting his individual opinion against those of eleven thoughtful and sensible men was unfit to discharge the lofty duties of a juryman. At the termination of the judge's forcible remarks a squeaky voice from the jury box asked: "Will your lordship allow me to say a word?" The judge having given permission, the still small voice was raised again to the following effect: "May it please your lordship, I am the only man on your lordship's side. Tableau.

*

WASHINGTON never made a speech. In the zenith of his fame he once attempted it, failed, and gave it up confused and abashed. In framing the Constitution of the United States the labor was almost wholly performed in committee of the whole, of which George Washington was day after day chairman, and he made but two speeches during the convention, of a very few words each, something like one of Grant's speeches. The convention, however, acknowledged the master spirit, and historians affirm that had it not been for his personal popularity and the thirty words of his first speech, pronouncing it the best that could be united upon, the Constitution would have been rejected by the people. Thomas Jefferson never made a speech. He couldn't do it. Napoleon, whose executive ability is almost without a parallel, said that his greatest difficulty was finding men of deeds rather than words. When asked how he maintained his influence upon his superiors in age and experience when commander-in-chief of an army in Italy, he said, by reserve. The greatness of a man is not measured by the length of his speeches or their number.

*

A CURIOUS point arose lately in Tennessee. In that State a number of Seventh-day Adventists have been sentenced to terms of imprisonment and to labor in the chain-gang for working on Sunday. Seventh-day Adventists, it may be stated, are a Christian sect, who observe Saturday, or the seventh day of the week, as their Sabbath, and claim the right of working on Sunday, contrary to the laws of the State. For persisting in this disregard of Sunday laws, several of their members have been fined or imprisoned in different parts of the country. The Adventists in the chain-gang in Rhea County, Tenn., refused to work on Saturday, on the ground that their religion required them to keep the day holy as their Sabbath. The constitution of the State provides that no person shall, in time of peace, be required to perform any service for the public on any day set apart by his religion as a day of rest. The Rhea County authorities have given the convicted Adventists the benefit of this provision.

BEFORE a Western judge a lawyer was pleading a case, and was making a regular red-fire-and-slow-curtain speech, which stirred the jury to its profoundest depths. In the course of his peroration he said:—

"And, gentlemen of the jury, as I stand at this bar to-day in behalf of a prisoner whose health is such that at any moment he may be called before a greater Judge than the judge of this court, I—"

The judge on the bench rapped sharply on the desk, and the lawyer stopped suddenly and looked at him questioningly.

"The gentleman," said the Court, with dignity, "will please confine himself to the case before the jury and not permit himself to indulge in invidious comparisons."

It almost took the attorney's breath away, but he managed to pull himself together and finish in pretty fair shape.

*

THE new Recorder of the City of New York, on the first day of his beginning his term, was reported as having reproved a young lawyer for indulging in extraneous pleasantry. He might be reminded of Lord Chief Justice Earle—in office in England thirty years ago—who said to a counsel who apologized for a sally of wit that disturbed the court-room with laughter: "The Court is very much obliged to any learned gentleman who beguiles the tedium of a legal argument with a little honest hilarity."

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OTTAWA, ONT.

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Barrister, Solicitor, etc.

19 Elgin Street.

Ottawa, Ont.

O'CONNOR & HOGG,

Barristers, etc.

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Molson's Bank Chambers, Ottawa.

M. O'Gara, Q.C. D. B. MacTavish, Q.C.
R. E. Gemmell.

BROCKVILLE, ONT.

P. O. Box 707. Telephone 170

W. J. WRIGHT,

Barrister-at-Law, Notary Public, etc.

Law Lecturer in Brockville Business College

Commissioner of Deeds for New York State, and for taking Affidavits in the Provinces, U.S., and England.

Cable Address: "Writz, Brockville." *Brockville, Ont., Canada.*

BELLEVILLE, ONT.

W. C. MIKEL,

Barrister, etc.

Belleville, Ontario.

Office—Carman Block, Bridge St.

MONTREAL, QUE.

ATWATER & MACKIE,

Barristers, Solicitors, etc.

151 James Street, Montreal.

Cable Address, 'Atwater," Montreal.

Albert W. Atwater. John F. MacKie.