THE

LEGAL NEWS.

VOL. XX. DECEMBER 1, 1897. No. 23.

CURRENT TOPICS.

The acceptance by Sir Oliver Mowat, Minister of Justice of Canada, of the office of lieutenant-governor of Ontario, probably brings to a close the active connection of Sir Oliver with the legal profession. His resignation of a seat on the superior bench of Ontario—that of vice-chancellor—was a proceeding not usual in this country, nor in England, though there have been several instances in England of county court judges resigning in order to take other positions. For example, Mr. Kenelm Digby, who has pleaded many Canadian cases before the Judicial Committee of the Privy Council, not long ago resigned his position as judge of a county court, to take an important permanent position in the Department of the Secretary of State. Sir Oliver Mowat held office as judge of the Chancery Division from 14th November, 1864, to 26th October, 1872, when he resigned. His subsequent career as premier of the province fully justified the step, and there can be little doubt that in this position he has been at least as useful to the profession of Ontario and to the public as if he had retained his seat on the bench.

The November term of the Court of Appeal at Montreal was almost a surprise in the amount of work disposed of. Out of 44 cases on the list 32 were heard within eight

days, or, deducting half a day occupied by the delivery of judgments, within seven and one half days. Making due allowance for the time consumed in hearing motions, etc., about one appeal per hour was argued during the term. This rate could hardly be exceeded with proper regard to the interest of the parties, and it is certainly far in advance of the average progress in this Court during the last thirty years. The list of judgments rendered exhibits the unusual fact that there were ten reversals and but one confirmation—a result which is calculated to infuse considerable activity into the business of the Court.

The death of Baron Pollock occurred rather suddenly on November 21st,—the result of a cold by which he was attacked while on the South Eastern Circuit. Sir Charles E. Pollock was born in 1823. He was the fourth son of the late Chief Baron Pollock. He was called to the Bar in 1847, and made a Q. C., in 1866. On the resignation of Baron Channell, in 1873, he was raised to the Bench. He had thus completed twenty-four years' service at the time of his death, and was the senior in length of service after the retirement of Lord Esher. Baron Pollock was "the last of the Barons," and the English Bench now, for the first time in six hundred years, is without an occupant bearing this ancient title. He was also one of the six surviving sergeants-at-law.

A correspondent of the London *Times* directs attention to an important change in United States patent law. By the law relating to grant of patents which has been in force for the last quarter of a century, inventors were permitted to obtain patents at any time during the life of their home or foreign patent provided the invention had not been in public use in the United States for more than two years before their application for patent. A new law, however, will come into force on January 1st, 1898, according to which an inventor is debarred from obtaining a United States patent if he has applied for a patent for

the same invention in any other country more than seven months before he applies for a patent in the United States. Many thousands of patentees have still the right of protecting their inventions in the United States, but they will lose this right when the new law comes into operation.

The long vacation in England is now seriously threatened. A good many persons are for doing away with it altogether, and now the Incorporated Law Society has declared in favour of reducing it to two months, beginning on the first Monday in August, and ending on the last Saturday in September. This change would make it very nearly correspond with the legal vacation in Canada.

QUEEN'S BENCH DIVISION.

LONDON, 27 October, 1897.

Before WRIGHT and KENNEDY, JJ.

DAVIS v. REILLY (32 L.J.)

Promissory note—Delivery of note on account of debt—Note in hands of third party—Action for original debt.

Appeal from the Westminster County Court.

The plaintiff, as trustee in bankruptcy of one Burnley, sued the defendant for goods sold and delivered to the amount of 25*l.* Burnley had supplied the goods to the defendant on the security of a bill for 20*l.*, dated October 4, 1896, drawn by him on the defendant, the acceptor, at three months, and subsequently indorsed by Burnley to one Bullock. On January 4, 1897, the bill became due, but was dishonoured. Bullock, as indorsee for value, sued Burnley on the bill, and on January 21 Burnley sued Reilly for the price of the goods. Burnley filed a petition, and a receiving order was made against him on January 30. Bullock proved against Burnley in the bankruptcy on the note, and then handed over the bill to Davis, the trustee, who was appointed trustee on February 22, and who on April 2 applied for a summons for leave to be added as plaintiff in the action of *Burnley* v. *Reilly*, which leave was granted. The judge gave judgment for

the plaintiff for 25*l*. Against this judgment the defendant appealed.

The Court (Wright, J., and Kennedy, J.) held that it was a good defence at common law to a claim on the original debt to plead that the negotiable instrument given in payment or part payment of that debt was outstanding in the hands of a third party at the commencement of the action, and that there was no rule entitling the plaintiff to amend this defect in the course of the action; but the defect could be cured here by Davis bringing a fresh action, and there was in any case no defence as to 5*l*.

Appeal withdrawn on terms.

LONDON, 3 July, 1897.

Before WRIGHT, J.

HUNT v. HUNT (32 L.J.)

Husband and wife—Separation deed—Molestation—Covenant against — Vexatious proceedings.

Before Wright, J., at Nisi Prius without a jury.

In 1880 the plaintiff had executed a deed of separation with her husband, the defendant, by which they had agreed to live apart, with mutual covenants against molestation by either. In 1896 the defendant went to Texas, and shortly afterwards commenced proceedings for a divorce in the District Court of El Paso on the ground of desertion by his wife previous to the date of the execution of the deed. In pursuance of these proceedings he caused a notice to be served on the plaintiff in England of his statement and of his intention to apply for a commission from the District Court to take the depositions of witnesses in England. The plaintiff brought this action for damages for breach of his covenant against molestation by the defendant, and for an injunction against him or his agents taking any steps in England to carry on the proceedings in the District Court of El Paso.

Wright, J., held that in the case of British subjects who had been married under English law, and subsequently separated under a deed, it was *prima facie* unjustifiable for one party without good cause shown to take proceedings for a divorce in a foreign country, and that under the circumstances here disclosed the defendant's conduct was vexatious, and amounted to a breach of his covenant against molestation.

Judgment for the plaintiff and for an injunction.

COURT OF APPEAL.

LONDON, 24 May, 1897.

Before LORD ESHER, M.R., SMITH, L.J., CHITTY, L.J.

MACAULAY v. POLLEY (32 L.J.)

Solicitor and client—Authority of solicitor to compromise claim—Action not commenced.

Appeal from an order of Grantham, J., at chambers, refusing to stay the action.

The action was brought to recover compensation for personal injuries.

It appeared that the plaintiff, who had sustained personal injuries in respect of which he alleged the defendant was liable to him in damages, whilst lying in a hospital was visited by the clerk to a solicitor. The plaintiff gave the clerk particulars of the accident, and instructed him to act on his behalf in the matter of his injuries. Before any action was commenced, the solicitor agreed with the solicitors to the defendant to take a sum of fifteen guineas in settlement of the plaintiff's claim. This amount, together with a sum of two guineas for costs, was accordingly paid to the solicitor. The plaintiff was not informed of the compromise, and never received any part of the money paid to the solicitor. The plaintiff subsequently commenced the present action.

The defendant applied at chambers for a stay of proceedings upon the ground that the plaintiff's claim had been satisfied. Grantham, J., refused to make the order.

The defendant appealed.

Stephen Lynch, for the defendant, referred to *Chown* v. *Parratt*, 32 Law J. Rep. C. P. 197, and *Fray* v. *Vowles*, 28 Law J. Rep. Q.B. 232.

C. E. Jones, for the plaintiff, was not called upon.

Their Lordships, following the decision of Willes, J., in *Duffy* v. *Hanson*, 16 L.T. (N.S.) 332, held that the solicitor before action brought had no implied authority to compromise the plaintiff's claim, and that, inasmuch as the plaintiff had not in fact authorized the compromise or assented to it, he was not bound by it, and they accordingly dismissed the appeal.

COSTS IN FOREIGN COUNTRIES.

The Society of Comparative Legislation has published an exceptionally interesting contribution to our knowledge of the legal profession outside this country. A commonly received opinion prevails that costs are excessively high in England, and that if actions are carefully and satisfactorily heard, they are more expensive here than abroad. The society has caused detailed inquiries to be made in the principal countries of the world, and the second number of its magazine contains the results of them. Speaking generally, the main result is to show that English practice is not at all widely divided from that of other civilized States. While there is elsewhere nothing so detailed, or, we might add, so ridiculously provocative to the client, as our "bill of costs," except in Germany, where there is a fixed scale of costs depending on the sum recovered, the principles on which legal remuneration is awarded are much the same as here. In summing up the answers received to his inquiries Master Macdonell writes as follows: "On the whole, one is struck by the similarity of the systems of costs described in these reports. The same problems have been considered by foreign courts as by ours; independently, much the same solutions have been adopted; and the same devices have been resorted to to protect clients. The rules as to taxation of costs laid down in French, Italian, Dutch, and Spanish manuals of procedure appear to be substantially the same as those recognized in England. In some form or other the distinction between party and party and solicitor and client costs is recognized in all countries in which costs are allowed to a successful litigant. In most of our colonies the systems of remuneration are much the same as here." It has been found very difficult to compare costs in litigation abroad with those incurred in parallel cases in England, because the procedure is often so different. Roughly, however, litigation involving small sums seems to be dearer here than in France, while for large sums it is cheaper. In the United States lawyers are paid at an altogether higher rate for litigious work, and they often have no other to do. Indeed, from our own experience, we doubt whether Mr. Davies, of the New York Bar, has not under-estimated the usual charges of the most popular of his learned friends. He puts them at about 50*l.* a day, the practice being to charge in that manner. In Germany you can go to law, it seems, for very little. A speci-

men bill in an action for 30*l.* is given. The statement of claim extended to fourteen pages, but it cost only 1*s.* 5*d.* A subsequent "pleading" cost 5*d.*, and another 6½*d.* The total sum was 10*l.* 13*s.*, from which the taxing-master struck off 6*s.*, and this total included and was in great measure made up by the Court fees. Some striking differences from our own practice are disclosed, which at least deserve the attention of legal reformers. The most noticeable is the fact that payment contingent on results is almost universally legal abroad. A change in this direction might abolish much of the uncertainty as to the cost, which makes many men of moderate means dread litigation as the plague.—*Law Journal* (*London*).

JOHN WILKES AND THE LIBERTY OF THE PRESS —THE WILKES CUP.

In the year 1772, on the 24th of January, the Court of Common Council of the City of London voted a silver cup to the celebrated patriot, John Wilkes, for his defence of the freedom of the press, and left the design to his own direction. The death of Cæsar in the Roman Senate House was the subject of his choice, being, he said, one of the greatest sacrifices to public liberty recorded in history. The dagger being in the first quarter of the city arms, furnished the hint of

"The *dagger* wont to pierce the tyrant's breast."—POPE.

Julius Cæsar is represented on the cup as he is described by historians at that important moment, *i.e.*, gracefully covering himself with his toga and falling at the base of the pedestal which supports the statue of Pompey. Brutus, Cassius and other Romans who conspired on behalf of their country, form a circle around the body of Cæsar. Every eye is fixed on Brutus, who is in the attitude of congratulating Cicero on the recovery of the public liberty, and pointing to the prostrate and expiring man. At the bottom of the cup is the following inscription, encircled with myrtle and oak leaves:

"* * * May every tyrant feel
The keen deep searchings of a patriot's steel!"
—CHURCHILL.

On the reverse of the cup is the inscription: "The gift of the City of London to Alderman Wilkes, 1772."

The facts which occasioned the presentation of this cup are very interesting, and were as follows: On the meeting of Parlia-

ment in 1769, some occasional sketches of the proceedings of the House of Commons were printed in the *London Evening Post*, other newspapers in a short time followed the example. On the 12th of February, 1771, Colonel George Onslow, at the instigation of the cabinet, complained that six printers of newspapers had printed parliamentary debates and proceedings. All these persons were ordered to attend the House. Some obeyed the summons, but Miller, the printer of the *London Evening Post*, did not comply with the order. Colonel Onslow having previously declared that he intended to bring before the House every printer who had printed any of the debates or proceedings of Parliament, in order that they might receive the punishment of their contumacy, it was concerted between Wilkes and Mr. Almon, the proprietor of the *London Evening Post*, that if Miller, the printer of that journal, should be sought for, a serious, a bold and a strong resistance should be made. The plan was this: The printer should pay no regard to the order to attend the House of Commons, but if the House sent a messenger to apprehend him Miller was to have a city constable in readiness to take the messenger into custody, that then they were to proceed to the Mansion House, where Mr. Alderman Wilkes, the Lord Mayor (Brass Crossby), and Mr. Alderman Oliver would attend as magistrates. Circumstances happened exactly as had been foreseen. The printer having neglected to attend to the order of the House of Commons, on the 15th of March a messenger of the House came to take him into custody. The printer thereupon gave the messenger in charge to the city constable for an assault, and they all proceeded to the Mansion House. The messenger attempted to justify the arrest of the printer by virtue of the speaker's warrant, but on it being shown that the messenger was not a peace officer, and moreover that the warrant was not backed by a city magistrate, the court, after hearing the case, discharged the printer from the custody of the messenger. The printer in his turn now charged the messenger with a breach of the peace, and was thereupon bound over to prosecute the messenger, who was desired to find bail for his offence. This the messenger refused to do; he was therefore committed to prison (Wood street counter). By this time the deputy serjeant-at-arms arrived from the House and gave the required bail for the prisoner. The ministry and their party in the House of Commons were enraged at this violent resistance to their power. The Lord Mayor and Mr. Alderman Oliver were ordered to attend the House. The clerk to the Lord Mayor was

also ordered to attend with the book containing the entry of the bail found by the messenger.

The Lord Mayor and Mr. Alderman Oliver were committed to the Tower, where they were visited by all the lords and members of the House of Commons, who were in opposition to the ministry, as well as by great numbers of private gentlemen. They also received addresses containing expressions of the highest approbation and of the warmest thanks from every ward in the city of London. The clerk to the Lord Mayor duly attended the House and was ordered to immediately expunge the entry from his book. Wilkes was left alone, for the House feared to arrest him; they had, however, recourse to a prudent subterfuge. They ordered him to attend on the 8th of April, and then moved the adjournment for the Easter vacation until the 9th. The Lord Mayor and Mr. Alderman Oliver were liberated on the 8th of May, the day of the prorogation of Parliament. The city was illuminated in their honor, and every mark of rejoicing was displayed. The corporation of the city of London presented each of the above magistrates with a silver cup, in commemoration of their valuable services in defence of the freedom of the press. The design of the cup which was presented to Mr. Alderman Wilkes, by order of the common council, was as above mentioned.

The struggle between Parliament and the press concerning the printing of debates was not repeated. Parliament seems to have acknowledged that constituents have a right to know the Parliamentary proceedings of their representatives. From that time to the present the debates in both Houses have been constantly printed in all newspapers, and Parliament, as well as the public, has profited by the facility given to the press, and obtained by the city of London in the manner above explained.—*Law Magazine & Review (London).*

PEERS IN THE COURT OF APPEAL.—The statement made that Lord Ludlow is the only peer (not a Master of the Rolls) who has sat in the Court of Appeal since it has been constituted in its present shape, is quite erroneous. The Lord Chancellor and the late Lord Coleridge, as well as Lord Russell, have frequently presided over the tribunal, and since ex-Lord Chancellors were made *ex-officio* members of it, Lord Herschell has sat in the Court.—*Law Journal.*

DE FACTO CORPORATIONS.

The Supreme Court of Wisconsin has recently rendered a decision (*Bergeron* v. *Hobbs*, 71 N.W.R., 1056) which raises anew for discussion the question of the sufficiency of technically irregular incorporation as a defence to an action against the would-be incorporators as partners. It appeared that a provision of the Wisconsin statutes, under which the defendants essayed to incorporate the Bayfield Agricultural Association, required the filing of the certificate of organization, with other papers, in the office of a register of deeds. It was held—the court, as it seems to us, adopting a narrow and technical spirit of construction—that a deposit of the papers with the proper register, with instructions to record and return them, was not a sufficient filing to enable the proposed corporation to come into being, and that the defendants were therefore personally liable for claims for labor in improving grounds, and otherwise forwarding the intended corporate enterprise.

It would seem that this decision is contrary to the weight of authority throughout the Union. Judge Marshall, of the Supreme Court of Wisconsin, filed an elaborate and well considered dissenting opinion. The learned dissenting judge formulates as "the true doctrine," "that it is sufficient to constitute a corporation *de facto*, as against one who has recognized its corporate existence, that there be a law under which it might exist *de jure*, an attempt in good faith to organize under said law, and a subsequent user of the assumed corporate powers." We understand this statement to be substantially expressive of the general law governing the subject.

A recent case in our own state is *Demarest* v. *Flack*, 16 Daly, 337; 123 N.Y. 205. The discussion by the New York Court of Appeals in this case was principally directed to the determining that the procuring of incorporation by citizens of this State, under the laws of a sister State, for the purpose of doing business here, is not, as matter of law, "a fraud and an evasion of our own laws and hence in conflict or inconsistent with our domestic policy."

The conclusion was reached that such a foreign corporation is entitled to recognition in our own tribunals. In the opinion of the General Term of the Court of Common Pleas in the same case the general question of the sufficiency of defective technical organization, so far as outsiders dealing with the intended cor-

poration are concerned, was more specially discussed, with a review of various authorities, State and Federal. In the opinion of the Court of Common Pleas it is remarked:

"There is an overwhelming current of authority throughout the United States on the point that where a corporation has once come into actual existence through the due observance of the original formalities required for that purpose, subsequent omissions or irregularities in the completion of its organization or the prosecution of its business shall not be available as a defence in matters of contract, either to the corporation itself or to its directors or stockholders, and cannot be taken advantage of by outsiders who have had business dealings with it."

The case before the Wisconsin court would seem to be slightly different from *Demarest* v. *Flack*, because there was a defect in complying with the original formalities. Nevertheless the following language from the dissenting opinion in the Wisconsin case seems to express the substantially just and common-sense position to be taken, fortified, as the court shows, by the authority of many adjudicated cases:

"The very meaning of the term "*de facto*" indicates that nothing more is necessary to the existence of a *de facto* corporation than the exercise of corporate powers in good faith. Corporation *de facto*—that is, a corporation from the fact that it is acting as such under color of right in good faith. The existence of the law, and some attempt to comply with it, are essential, because without them there can be no assumption of the right to corporate existence in good faith. Persons cannot be said to honestly obtain the right to corporate existence, in the absence of any law authorizing the organization, or in the absence of some honest attempt to comply with such law.

The law and such attempt, or user of the franchise, whatever mistakes may be made in so doing—such as the filing of articles of organization when they are required to be recorded, or the recording of articles when they are required to be filed, or the filing of such articles in the wrong office, or any other of the numerous mistakes that might be made—make a corporation good everywhere, in all courts and places, till successfully challenged by the State. There is hardly any end of authority, all in harmony on this subject, but we content ourselves by referring to the following additional cases: *Haas* v. *Bank*, 41 Neb. 754, 60 N.W. 85; *Lake Church* v. *Froislie*, 37 Minn. 447, 35 N. W. 260; *Snider's Sons' Co.* v. *Troy*, 91 Ala. 224, 8 South. 658;

Stout v. *Zulick*, 48 N. J. Law, 601, 7. Atl. 362; *McCarthy* v. *Lavasche*, 89 Ill. 270; *Hudson* v. *Seminary Corp.*, 113 Ill. 618; *City of St. Louis* v. *Shields*, 62 Mo. 247; *Central A. & M. Association* v. *Alabama Gold L. Ins. Co.*, 70 Ala. 120; *Palmer* v. *Lawrence*, 3 Sandf. 161; *North* v. *State*, 107 Ind. 356, 8 N.E. 159."—*N. Y. Law Journal.*

MR. JUSTICE CHANNELL.

Mr. Arthur Moseley Channell, Q.C., has been appointed to be one of the Justices of the High Court in the place of Mr. Justice Vaughan Williams, appointed a Lord Justice of Appeal. Mr. Channell, who was born in London in 1838, is the only surviving son of the late Baron Channell, who was a distinguished member of the Court of Exchequer. His scholastic career was scarcely less successful than his professional career has been. He was educated at Harrow, where Sir Francis Jeune, Sir George Trevelyan, and Mr. Kenelm Digby were among his contemporaries. He defeated Sir George Trevelyan in the race for the position of "top" of the school, and, gaining a foundation scholarship, proceeded to Trinity College, Cambridge, where he graduated as twenty-sixth wrangler and was placed in the second class in the classical tripos of 1861. His reputation at the university was based quite as much upon his prowess as an oarsman as upon his success as a scholar. He won the Colquhoun Sculls in 1860, and the University Pairs in 1861, and rowed in the first Trinity boat which won the Grand Challenge Cup and the Ladies' Plate at Henley in 1861. He was called to the Bar at the Inner Temple in 1863, and read with Pownall, a well-known conveyancer, and Edward Bullen, the famous special pleader. In the early part of his career, until the practice he acquired in London and on the South-Eastern Circuit justified him in abandoning the favourite method of acquiring experience in forensic work, he devilled for Chief Justice Bovill, Mr. Justice Day, and Mr. Murphy, Q.C. He was made a Queen's Counsel in 1885, and three years later was appointed Recorder of Rochester. During the past two years he has occupied the position of vice-chairman of the Council of the Bar—a fact which affords ample evidence of the esteem in which he is held by the profession. He has never taken any active part in politics, and this is certainly not the least welcome feature of his appointment to the Bench. His leisure is devoted to yachting.—*Law Journal* (*London*).

GENERAL NOTES.

AUTHORITY OF REPORTS.—Considering how largely English law rests on the authority of decided cases, it is rather surprising how little trouble is taken to appraise the value of the different series of our vast range of reports. When Mr. Preston cited a case from the "Chancery Cases of Barnardiston," Lord Lyndhurst exclaimed, "Barnardiston, Mr. Preston! I fear that is a book of no great authority. I recollect in my younger days it was said of Barnardiston that he was accustomed to slumber over his note-book, and the wags in the rear took the opportunity of scribbling nonsense in it." So when Espinasse was cited to the late Chief Baron Pollock, that learned judge is reported to have said, "Espinasse! let me see; wasn't that the deaf old reporter who heard one half the case and reported the other?" "Fitzgibbon's Reports" (1728-33) came in for some scathing remarks from Lord Raymond. That learned judge described them as a libel upon the Bar and the Bench, and said that they had made the judges, and particularly himself, talk nonsense by wholesale. "See the inconvenience of these reports! They will make us appear to posterity for a parcel of blockheads." Yet these, and many others of indifferent authority, are cited indiscriminately, under stress of argument, in our Courts every day. Why does not the Bar Council publish a canonical list of books, reports, and text books sanctioned by the judges? In old days, many of the series of reports were licensed by the judges. It is only fair to say, however, *apropos* of Lord Raymond's strictures on "Fitzgibbon's Reports," that Sir James Burrows observes: "I have examined all the King's Bench cases in them very carefully, and have compared them with my own notes, and find him to have made the judges talk almost verbatim what I took down myself from their own mouths." But is not this quite compatible with Lord Raymond's wrath? Could even a Solomon stand being reported verbatim?—*Law Journal* (*London*).

INFLUENCE OF THE OATH.—People know little of human nature who think that the solemnity of an oath might be dispensed with on the part of witnesses in a Court of justice—that the conscientious man may be trusted to tell the truth because "right is right," and that for the unconscientious an oath is an idle form. These theorists do not reckon with the superstitious beliefs which thousands of years have wrought into the very soul of man, into the weft and warp of his consciousness; dor-

mant but quickly awakening into vivid life—beliefs which recognize in the oath a real appeal to Heaven and darkly dread a swift-avenging Nemesis on the forsworn. The system of ordeal on which for 200 years our law rested for its sanction is a marvellous testimony to the living, unabated force of such superstition—strong because it is the shadow of a truth. The particular forms of oath which will appeal to such superstitious sentiment are, as we know, various. The Chinaman prays that if he forswears himself his soul may be cracked as the saucer which is broken in Court is cracked. Quite recently a Buddhist was sworn, and the form which the interpreter informed the Court he respected was the extinguishing of a candle—a wax vesta, it seems, would not do—and he prayed that if he did not speak the truth "his soul might be blown away in the same way as was the light." This is interesting not only to the lawyer, but to the philosopher, and for this reason: Buddhists are usually credited with aspiring to Nirvana in the next world—a state of ecstatic annihilation. The soul is supposed to be absorbed into the infinite as a drop of water melts into the ocean. The above form of oath is at variance with such a view. It points to a belief in the individuality of the soul after death.—*Ib.*

THE MEDIÆVAL MARKET.—In reading the history of English law, one of the things which strike us most is the continuity of legal ideas, of legal institutions. Market overt, for instance, still invests a contract for the sale of goods with a special sanctity. In Professor Maitland's "Domesday Book and Beyond" we see the germ idea of this, get a glimpse of the growth of the mediæval market. Early law, it must be remembered, does not allow men to buy and sell everywhere. It would simplify too much the disposal of stolen goods—of cattle, for instance, by the cattle-lifter. The law establishes a market, and a person who buys elsewhere runs a risk of being treated as a thief if he happens to buy stolen goods. But where does the market establish itself? The answer is, in the king's burh—the fortified hilltop, the nucleus of the later borough—because a special peace spreads around it for a space specified with curious minuteness of "3 miles, 3 furlongs, 3 acrebreadths, 9 feet, 9 handbreadths, 9 barleycorns." Anyone who broke the king's burh or was guilty of unlawful violence within the king's peace must pay a heavy fine; he might lose his hand if he drew a sword. Here, then, was the sanctuary of trade, an oasis of industrialism where men

might come and go safe under royal protection. On market days this "peace" was intensified. But the "peace" was not altogether a royal bounty. The king took care to get his tolls, and a very profitable source of revenue this became as trade prospered. The disputes of the market-place also furnished abundant litigation for the borough Court, and here, again, the king made his profits. —*Law Journal* (*London*).

CHRISTIANITY AND THE LAW.—Christianity, we have often heard, is part of the common law of England, but Chief Justice Best was committing himself to a very bold proposition when he said in *Bird* v. *Holbrook* that there is no act which Christianity forbids that the law will not reach. True it is that neither the law nor Christianity will allow shipwrecked mariners, for instance, to eat a boy companion in order to save their lives; but the law does allow one shipwrecked mariner who is clinging to a spar to push another off if the spar will not suffice to support both, which certainly Christianity does not. The law, in fact, allows what, for want of a better word, we may call legitimate selfishness. It commends the higher standard of Christianity, but does not exact it. The particular instance which Chief Justice Best had in his mind was the inhumanity of setting spring guns without notice. And it is one which very well illustrates the Christian attitude of our law. The law allows a man to be vigorous in the protection of his property, but not vindictive. He could (at one time) set spring guns in his grounds with due warning, as he still may at night in his dwelling-house; saying, in effect, to trespassers, "If you come here, take the consequences." Then the trespasser coming to the danger is the author of his own wrong. This is logical. But he must not set a secret and fatal snare, as the defendant in *Bird* v. *Holbrook* did. A trespasser is not to pay for his trespass with his life unless he chooses to run the risk. If he does, 'volenti non fit injuria.'—*Ib.*

RAILWAY PUNCTUALITY.—Questions are continually raised as to whether persons aggrieved by the failure of railway companies to run their trains punctually according to the advertised times have any legal remedy. The conditions of the contract of carriage incorporated by reference on tickets to the published time-tables &c. of the company, where ambiguous, will be read against the company. In the earlier decisions on the subject the Courts were disposed to treat the conditions as creating a contract to insure punctuality as far as practicable, and *Le Blanche* v. *The*

London and North-Western Railway Company, L.R. 1 C. P. Div. 286, 313, held that a person who was delayed by unpunctuality was entitled to take a special train and charge the cost as damages. But the companies can refuse to guarantee punctuality and their present conditions are to this effect, with the result that the passenger is really without remedy (*Lockyer* v. *The International Sleeping Car Company*, 61 Law J. Rep. Q.B. 501; *McCartan* v. *The North-Eastern Railway Company*, 54 Law J. Rep. Q.B. 441). The result of these decisions appears to be that the tables are a mere representation as to the time *before* which a train will not start from or arrive at a particular station, but that there is no promise or contract to start or arrive *at* the times specified.—*Law Journal (London)*.

AN ENGLISH Q.C. CALLED TO THE IRISH BAR.—The London *Times* says:—"Amongst the calls to the Bar at Dublin was one of exceptional interest—namely, that of Sir Alexander Edward Miller, Q.C., of Lincoln's Inn, who appeared in a stuff gown, wearing on his left breast the medal of a Companion of the Order of the Star of India. His presence recalled the circumstances of the eventful contest for the representation of the University of Dublin, in which he came forward as the accredited candidate of the Conservative Government in 1875, and was opposed by Mr. Edward Gibson, Q.C., the Lord Chancellor, before whom he appeared seeking admission to the Irish Bar. It is the first instance of the kind which has ever occurred. Sir A. Miller has close ties of family and property with the North of Ireland and was for years an active member of the general synod of the Church of Ireland. He is a graduate of the University of Dublin, an LL.D., and member of the Senate. He was proposed by the Lord Chief Baron."

COUNTY COURT BUSINESS IN ENGLAND.—The character of the present work of the County Courts does not warrant any very great change in their constitution. Of 1,081,867 plaints entered in 1895, no fewer than 1,068,908 were for amounts not exceeding 20*l*. These figures show that the County Court, though possessing higher powers, continues to have for its chief business the collection of small debts.

JUDICIAL ANGLERS.—Three of the present Lords Justices—Lords Justices Smith, Rigby, and Collins—are all distinguished Cambridge men. All three are also anglers, and find the chief pleasure of their vacations in the catching of salmon.