THE

LEGAL NEWS.

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CURRENT TOPICS AND CASES.

The case of "*Canada Revue*" v. *Fabre*, Q. R., 6 S. C. 436, is an interesting and important addition to the jurisprudence on the subject of religious denominations in this province. It is hardly necessary, as regards the majority of our readers, to say that the action was brought by a newspaper against the Roman Catholic archbishop of the diocese of Montreal, for the recovery of damages caused by the issue of a circular, forbidding the members of the Church to read or support the plaintiff's newspaper, under pain of deprivation of the sacraments. Mr. Justice Doherty's treatment of the question is extremely able, and, applying but one, though not an unimportant, test to the judgment, it may be said that there is not a single position taken by the learned judge, in laying down the principles of law which serve as the basis of the decision, to which an enlightened member of any religious denomination, be he Roman Catholic or Anglican, Presbyterian or Methodist, Congregationalist or Jew, can reasonably take exception. The absolute equality before the law, of all religious denominations in this province, is clearly recognized throughout the judgment, and their right to maintain discipline among their members, who expressly or by implication have assented to their rules, is distinctly asserted. The limitations are that the rules

must be consistent with the law of the land, and secondly, that the tribunal or duly constituted authority of the body, must not act in an unfair or malicious manner. The Court did not find it necessary to rest its judgment to any extent upon the pretension that the circular in question, that is to say, the *mandement* issued by the archbishop, was a privileged communication, or that any privilege whatever is enjoyed by the defendant by virtue of his office. The judgment rests entirely upon the broad grounds that the circular complained of was not in itself libellous; that religious bodies in this province have the right to manage their affairs according to their own laws and rules—always assuming that the latter are not inconsistent with the laws of the land; and that the courts will not interfere with their internal government so long as there is no unfairness or malice, and the burden of proof is on the complainant to show that there has been unfairness or malice. In the present case it was held that the publication of the circular, to the members of the Catholic Church, was proved to have been made in the exercise of a right, and as it contained nothing which had been shown to be unfair or malicious, the injury thereby caused to the plaintiff's business did not give rise to an action of damages. In this view of the case it was unnecessary for the Court to decide whether the *appel comme d'abus*, which existed before the Cession, could now be entertained by the Superior Court, but his Honour held on this point that the appeal as it formerly existed had been absolutely extinguished when the country was ceded to Great Britain. It may be added that the authorities cited by the Court are extremely apposite, and show that the decision is in harmony with English jurisprudence.

In *Kittson* v. *Duncan*, Dec. 17, 1894, Mr. Justice Archibald held that the provision of law which authorizes notaries to make evidence in their own behalf establish-

ing their employment as notaries, extends only to such employment as specially appertains to the functions of a notary, and not to such services as may be performed by a notary acting as an ordinary agent.

In a note published in the *Strand Magazine*, for January, the true history of Lord Brougham's plaid trousers, which used to be figured in *Punch* as an enormous check, is given as follows by Mr. William Lincolne:—"Among his lordship's enthusiastic admirers was a Huddersfield manufacturer, who, having turned out a remarkably good shepherd's plaid trousering, sent him a piece with compliments. He had a pair of trousers made from it, and when these were worn out, having the cloth still by him, he just had another pair made, and so on to the end of his days. My informant was a Huddersfield man, and what may be still more to the purpose, I saw his lordship wearing a pair during what must have been his last public appearance on a platform at Newcastle some time in the sixties. He was then a mild-mannered, genial old gentleman, and as I listened to his old man's saws, it was hard to believe he could ever have been the fiery advocate of Queen Caroline, the indomitable Henry Brougham! *Sed quantum mutatus ab illo.*"

SUPREME COURT OF CANADA.

OTTAWA, 15 January, 1895.

Quebec.]

FERRIER v. TREPANNIER.

Building—Want of repair—Damages—Art. 1055, *C. C.—Trustees, Personal liability of—Executors—Arts.* 921, 981*a*, *C. C.*

Decisions of provincial courts resting upon mere questions of procedure will not be interfered with on an appeal to the Supreme Court of Canada, except under special circumstances.

Where parties are before the court *quâ* executors and the same parties should also be summoned *quâ* trustees, an amendment to that effect is sufficient without the issue of a new writ.

Dame A. T. sued J. F. and M. W. F. personally as well as in their quality of testamentary executors and trustees of the will of the late J. F. claiming $4,000 damages for the death of her husband who was killed by a window falling on him from the third story of a building, which formed part of the general estate of the late J. F., but which had been specifically bequeathed to one C. F. and his children for whom the said J. F. and M. W. F. were also trustees. The judgment of the courts below held the appellants liable personally as well as in their capacity of executors for the general estate.

On appeal to the Supreme Court:

Held, affirming the judgment below, that the appellants were responsible for the damages resulting from their negligence in not keeping the building in repair, as well personally as in their quality of trustees (*d'héritiers fiduciaires*) for the benefit of C. F.'s children, (Art. 1055, C. C.), but were not liable as executors of the general estate.

Appeal dismissed without costs.

Taylor for appellants.

Saint-Pierre, Q.C., for respondent.

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15 January, 1895.

Quebec.]

CALDWELL v. ACCIDENT INSURANCE CO.

Partnership—Registered declaration—Art. 1835, *C. C.—Cons. Stats. L. C., ch.* 1, *ch.* 65*—Oral Evidence—Life Policy.*

In an action upon a life policy to recover amount payable to the surviving partners upon the death of one of the partners, a notarial dissolution of the partnership duly registered, as well as a declaration of a new partnership, of which the deceased was not a member, and duly registered as provided by art. 1834, C. C., was set up as a defence to the action, and evidence was tendered to show that the deceased had continued to be a member up to the time of his death.

Held, affirming the judgment of the court below, that oral evidence to contradict such declaration was inadmissible, and that the action was properly dismissed.

Appeal dismissed with costs.

Abbott, Q.C., and *Geoffrion, Q.C.*, for appellant.

Cross, Q.C., for respondents.

15 January, 1895.

Quebec.]

ANGUS v. THE UNION GAS AND OIL STOVE CO.

Patent of invention—Business agreement to manufacture under—Letter of guarantee—Failure of scheme—Liability of guarantor.

The chief object of an agreement between A. and B. was the profitable manufacture and sale of wares under a patent of invention issued to A., and in consideration of advances by B. to the amount of $6,600, C. by a letter of guarantee "agreed to become a surety to B. for the repayment of the $6,000 if within 12 months from the date of the agreement it should transpire that (if) for the reasons incorporated in said agreement, it should not be carried out." On an action brought by B. against C. for $6,000 it was proved at the trial that the manufacturing scheme broke down through defects of the invention.

Held, affirming the judgment of the Court below, that C. was liable for the amount guaranteed by his letter.

Appeal dismissed with costs.

Martin & Gilman for appellants.

Greenshields, Q.C., for respondent.

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15 January, 1895.

Quebec.]

WEBSTER v. CORPORATION OF SHERBROOKE.

Quebec License Laws—55 & 56 Vic. ch. 11, sec. 26—City of Sherbrooke Charter—55-56 Vic. ch. 51, sec. 55—Powers of taxation.

By virtue of the first clause of a by-law passed under 55-56 Vic., ch. 51, an act consolidating the charter of the City of Sherbrooke, the appellant was taxed five cents on the dollar on the annual value of the premises in which he carried on his occupation as a dealer in spirituous liquors and in addition thereto, under clause three of the same by-law, was taxed a special tax of $200 also for the same occupation. The act 55-56 Vic., ch. 51, provides at the end of subsection "*g*" enumerating the kinds of taxes authorized to be imposed: "the whole, however, subject to the provisions of the Quebec License Act." The Quebec License Act, Art. 297 R. S. Q. limits the powers of taxation for any municipal council of a city to $200 upon holders of licenses.

Held, affirming the judgment of the Court below, (Q. R., 3 Q.

B. 559) that the power granted by 55-56 Vic., ch. 51, to impose the several taxes was independent and cumulative, and as the special tax did not exceed the sum of $200, the by-law was *intra vires*, the proviso at the end of sub-sec. "*g*" not applying to the whole section, Taschereau and Gwynne, JJ., dissenting.

Appeal dismissed with costs.

Panneton, Q. C., for appellants.

Brown, Q. C., for respondents.

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1 March, 1895.

Quebec.]

ARPIN v. MERCHANTS BANK.

Appeal in matter of procedure—Art. 188 C. C. P.

A judgment of the Court of Queen's Bench for Lower Canada (appeal side) held that a *venditioni exponas* issued by the Superior Court of Montreal, to which Court the record in a contestation of an opposition had been removed from the Superior Court of the district of Iberville, under art. 188 C. C. P., was regular.

On an appeal to the Supreme Court of Canada:

Held, that on a question of practice such as this, the court would not interfere, following the course of the Privy Council as laid down in the *Mayor of Montreal* v. *Brown* (2 App. Cas. 184.)

Appeal dismissed with costs.

Lajoie, for appellant.

Campbell, for respondent.

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15 January, 1895.

Quebec.]

HUNT v. TAPLIN.

Contract of sale—Contre lettre—Principal and agent—Construction of contract.

The sale of property in this case was controlled by a writing in the nature of a *contre lettre*, by which it was agreed as follows: "The vendor in consideration of the sum of $2,940 makes and executes this day a clear and valid deed in favour of the purchaser of certain property (therein described), and the purchaser for the term of three years is to let the vendor have control of the said deeded property, to manage as well, safely and properly as he would if the said property was his own, and bargain and sell the said property for the best price that can be had

for the same, and pay the rent, interest and purchase money when sold, and all the avails of the said property to the purchaser to the amount of $2,940, and interest at the rate of eight per cent. per annum from the date of these presents, and then the said purchaser shall re-deed to the vendor any part of the said property that may remain unsold after receiving the aforesaid amount and interest."

The vendor was at the time indebted to the purchaser in the sum of $2,941. The two documents were registered. The vendor had other properties and gave the purchaser a power of attorney to convey all his real estate in the same locality. The term of three years mentioned in the *contre lettre* was continued by mutual consent The vendor subsequently paid amounts on account of his general indebtedness to the purchaser. It was only after the purchaser's death that the vendor claimed from the heirs of the purchaser the balance above mentioned, of $1,470, as owing to him for the management of his properties.

Held, reversing the judgment of the Court of Queen's Bench, and restoring the judgment of the Superior Court, that the proper construction of the contract was to be gathered from both documents and dealings of the parties, and that the property having been deeded merely as security it was not an absolute sale, and that plaintiff was not M.S.'s agent in respect of this property.

Held also, that the only action plaintiff had was the *actio mandata contraria* with a tender of his *reddition de compte.*

Appeal allowed with costs.

Geoffrion, Q.C., and *Buchan* for appellants.

H. B. Brown, Q.C., for respondent.

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9 October, 1894.

Quebec.]

HEREFORD RAILWAY CO v. THE QUEEN.

51 & 52 *Vic. ch.* 91, *secs.* 9, 14 (P.Q.)—*Interpretation Act, secs.* 19, *R.S.Q.*— *Railway subsidy—Discretionary power of Lieutenant-Governor-in-Council—Petition of right—Misappropriation of subsidy monies by order-in-council.*

Where money is granted by the Legislature and its application is prescribed in such a way as to confer a discretion upon the Crown, no trust is imposed enforceable against the Crown by petition of right.

The appellant railway company alleged by petition of right that by virtue of 51 & 52 Vic. ch. 91, the Lieutenant-Governor-in-Council was authorized to grant 4,000 acres of land per mile for 30 miles of the Hereford Railway; that by an Order-in-Council dated 6th August, 1888, the land subsidy was converted into a money subsidy, the 9th section of said ch. 91, 51 & 52 Vic., enacting that "it shall be lawful," etc., to convert; that the company completed the construction of their line of railway, relying upon the said subsidy and Order-in-Council, and built the railway in accordance with the act 51 & 52 Vic. ch. 91, and the provisions of the Railway Act of Canada, 51 Vic. ch. 29, and they claimed to be entitled to the sum of $49,000, balance due on said subsidy. The Crown demurred on the ground that the statute was permissive only, and by exception pleaded *inter alia*, that the money had been paid by Order-in-Couucil to the sub-contractors for work necessary for the construction of the road; that the president had by letter agreed to accept an additional subsidy on an extension of their line of railway to settle difficulties, and signed a receipt for the balance of $6,500 due on account of the first subsidy. The petition of right was dismissed.

Held, that the statute and documents relied on did not create a liability on the part of the Crown to pay the money voted to the appellant company enforceable by petition of right, Taschereau and Sedgewick, JJ., dissenting; but, assuming it did, the letter and receipt signed by the president of the company did not discharge the Crown from such obligation to pay the subsidy, and payment by the Crown of the sub-contractor's claim out of the subsidy money, without the consent of the company, was a mis-appropriation of the subsidy.

Appeal dismissed with costs.

Brown, Q.C., and *Stuart, Q.C.*, for appellants.

Drouin, Q.C., for respondent.

Exchequer Court.] 15 January, 1895.

DEKUYPER v. VANDULKEN.

VANDULKEN v. DEKUYPER.

Trade mark—Jurisdiction of court to restrain infringement—Effect of—Rectification of register.

In the certificate of registration the plaintiffs' trade mark was

described as consisting of "the representation of an anchor with the letters 'J. D. K. & Z.' or the words 'John DeKuyper & Son, Rotterdam, & Co.' as per the annexed drawings and application." In the application the trade mark was claimed to consist of a device or representation of an anchor inclined from right to left in combination with the letters 'J. D. K. & Z.' or the words 'John DeKuyper, &c. Rotterdam,' which, it was stated, might be branded or stamped upon barrels, kegs, cases, boxes, capsules, casks, labels and other packages containing Geneva sold by plaintiff. It was also stated in the application that on bottles was to be affixed a printed label, a copy or fac simile of which was attached to the application, but there was no express claim of the label itself as a trade mark. This label was white and in the shape of a heart, with an ornamental border of the same shape, and on the label was printed the device or representation of the anchor with the letters 'J. D. K. & Z.' and the words 'John DeKuyper & Son, Rotterdam,' and also the words 'Genuine Hollands Geneva' which it was admitted were common to the trade.

The defendants' trade mark was, in the certificate of registration, described as consisting of an eagle having at the feet 'V. D. W. & Co.,' above the eagle being written the words 'Finest Hollands Geneva;' on each side are the two faces of a medal, underneath on a scroll the name of the firm 'Van Dulken, Weiland & Co.' and the word 'Schiedam,' and lastly at the bottom the two faces of a third medal, the whole on a label in the shape of a heart (le tout sur une étiquette en forme de cœur). The colour of the label was white.

Held, affirming the judgment of the Exchequer Court, that the label did not form an essential feature of the plaintiffs' trade mark as registered but that, in view of the plaintiffs' prior use of the white heart-shaped label in Canada, the defendants had no exclusive right to the use of the said label, and that the entry of registration of their trade mark should be so rectified as to make it clear that the heart-shaped label formed no part of such trade mark. Taschereau and Gwynne, JJ., dissenting on the ground that the white heart-shaped label with the scroll and its constituents was the trade mark which was protected by registration, and that the defendants' trade mark was an infringement of such trade mark.

Appeal dismissed with costs.

Abbott, *Q. C.*, and *Campbell*, for appellants.

Ferguson, *Q. C.*, and *Merrill*, for respondents.

15 January, 1895.

Nova Scotia.]

REID v. CREIGHTON.

Chattel mortgage—Affidavit of bona fides—Compliance with statutory forms—Change of possession—Levy under execution—Abandonment.

N. executed a chattel mortgage of his effects and shortly afterwards made an assignment to one of the mortgagees in trust for the benefit of his creditors. The assignee took possession under the assignment.

Held, affirming the decision of the Supreme Court of Nova Scotia, that there was no delivery to the mortgagees under the mortgage which transferred to them the possession of the goods.

The Bills of Sale Act, Nova Scotia, R.S.N.S. 5th ser. ch. 92, by s. 4 requires a mortgage given to secure an existing indebtedness to be accompanied by an affidavit in the form prescribed in a schedule to the act, and by s. 5, if the mortgage is to secure a debt not matured the affidavit must follow another form. By s. 11 either affidavit must be "as nearly as may be" in the forms prescribed. A mortgage was given to secure both a present and future indebtedness, and was accompanied by a single affidavit combining the main features of both forms.

Held, affirming the decision of the Court below, Gwynne, J., dissenting, that this affidavit was not "as nearly as may be" in the forms prescribed, that there would have been no difficulty in complying strictly with the requirements of the act; and though the legal effect might have been the same, the mortgage was void for want of such compliance.

Appeal dismissed with costs.

Russell, Q.C., for appellant.

Bordon, Q.C., & Roscoe. for respondent.

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15 January, 1895.

Nova Scotia.]

DOYLE v. MCPHEE.

Deed—Description of land—Extent—Terminal point—Number of rods—Railway company.

A deed conveyed a lot of land and also "a strip of land

twenty-five links wide running from the eastern side of the aforesaid lot along the northern side of the railway station about twelve rods unto the western end of the railway station ground, the said lot and strip together containing one acre more or less."

Held, reversing the decision of the Supreme Court of Nova Scotia, Taschereau, J., dissenting, that the strip conveyed was not limited to twelve rods in length, but extended to the western end of the station which was more than twelve rods from the starting point.

Appeal allowed with costs.

Ross, Q. C., for appellant.
McInnes for respondents.

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15 January, 1895.

Ontario.]

CRAIG v. SAMUEL.

Promissory note—Consideration—Transfer of patent right—Bills of Exchange Act, 53 Vict. (C.) *c.* 33, *s.* 30, *s.s.* 4.

C. and F. were partners in the manufacture of certain articles under a patent owned by F. A creditor of F. for a debt due prior to the partnership induced C. to purchase a half interest in the patent for $700 and join with F. in a promissory note for $1,000 in favour of said creditor, who, also as an inducement to F. to sell the half interest, gave the latter $200 for his personal use. In an action against C. on this note,

Held, reversing the decision of the Court of Appeal, Taschereau, J., dissenting, that the note was given by C. in purchase of the interest in the patent, and not having the words "given for a patent right" printed across its face, it was void under the Bills of Exchange Act., 53 Vict. (C.) c. 33, s. 30, s.s. 4.

Appeal allowed with costs.

Moss, Q.C., and *Thompson* for appellant.
Watson, Q.C., and *Parkes* for respondents.

THE SUPREME COURT—CITATION OF AUTHORITIES.

To the Editor of the LEGAL NEWS:

Sir,—On this head—one of much importance to the public as well as to the Bar of the Dominion—a new rule seems to have been laid, by the Bench, which calls for some notice. The

announcement of it appears, thus, in a local press report, of the 19th inst.

SCENE IN A COURT.

An interesting episode occurred in the Supreme Court on Saturday morning. It was during the trial of the case of *Lewis* v. *Alexander*, and Mr. McCarthy commenced to read from some authority the definition of a drain. The extract was a short one, in fact being only seven lines in length, but the Chief Justice did not allow Mr. McCarthy to get started before he interrupted him and reminded him of the rule (instituted eighteen months ago) that no reading from text or other books would be allowed.

Mr. McCarthy replied that it was very short and it would be impossible for him to make the point without bringing in his definition. His Lordship was obdurate however, saying the rule had been made.

Mr. McCarthy replied that possibly it had been made, but it could not be enforced.

The chief said that it was a rule that was enforced in every court where the English language was spoken.

Mr. McCarthy returned in emphatic tones:—"My Lord, I think that by this time I have had some experience with courts where the English language is spoken, and I say that such a rule is not enforced, except possibly in this court."

His Lordship said that while he could not prevent counsel speaking, he could and would adjourn the court.

Mr. McCarthy's reply to this was that he was there to protect the interests of his clients, and if he could not be heard in that court he would have to seek redress elsewhere.

His Lordship evidently took this to mean that if the rule were enforced Mr. McCarthy would bring the matter before parliament, for he replied that he didn't intend to be threatened.

The matter then dropped, but when it came to his reply, Mr. McCarthy read several extracts without any interference from the bench.

As to the question, which of the two is right, as to the rule, *ad hoc*, in other courts, I undertake not to say. To me, so far as my own experience and reading go, it seems exceptional; and I must confess my inability to see or even conceive, subjectively, any good reason for it. The relative status of Bench and Bar—I have always regarded—requires, necessarily, citation, textual, of law, and even of authoritative fact from books in proper argument *ad rem*. The duty of the Bar is to array law and fact before the Bench. *Quære*, How is that to be done save by appropriate citation, book in hand, with due exhibition to Bench and Counsel on the other? How enlighten ("*éclaircir*") the judicial mind to an intelligent apprehension of a case?

Moreover, as to the Supreme Court in question, constituted as it is of six judges, only two of whom are of the Province of Quebec, and conversant with French law there governing, it strikes me as necessary that *quoad* the other four, there must, by competent counsel, *arguendo*, not only be a reading of actual text, but an intelligent translation of it. Some counsel of the Quebec Bar, *inter alios*, even with acceptance, amongst them the late Mr. Laflamme (a leading practitioner at that Bar) were in the habit of reading in English from the French. No *factum*, as made by rule, can supply such *desiderata*. Practically, under the rule in question, a Quebec case, based on French law, is denied hearing; and so, in fact, as to all cases, wherein the Court may enforce its rule.

I state this with all due respect to the Court; but the anomaly—grievance, I may say—is too grave to be left unnoticed. With the constitution and working of this highest court of our Dominion, it behooves Government to act in the best interests of the people in general concerned. If evil it be, the remedy rests somewhere.

ONLOOKER.

A VETERAN REPORTER.

The *Law Journal* (London), in announcing the decease of Mr. Finlason, well-known to the legal profession all over the world as one of the authors of Foster & Finlason's Reports, says:—

It is with regret that we announce the death, at the age of seventy-six, of Mr. William Francis Finlason, which took place on Monday, March 11, at his residence, 12 Campden Hill Road, after a brief but severe attack of asthma. By his death the common law courts have been deprived of a most familiar figure, and the profession has lost one of its most popular members. As head of the staff of law reporters for the *Times* in the Queen's Bench Division, he was brought into constant contact with members of the Bench and the Bar, all of whom held him in great esteem. A few months ago Mr. Justice Cave had occasion to refer to a report from his pen, and availed himself of the opportunity to pay a handsome tribute to the manner in which he had always discharged his duties. Mr. Finlason was without a rival in the ease with which he wrote his report in long hand while the trial was proceeding. Though written with striking rapidity,

his reports, however complicated the facts with which they dealt, could always bear the test of investigation by the counsel engaged in the cases. During the fifty years he acted as chief legal reporter to the *London Times* he witnessed a vast number of interesting changes in the administration of the law and in the *personnel* of the Bench; and he acquired an enormous store of anecdotes, which he was wont to relate with considerable skill. His comparatively sudden death is all the more regrettable on account of the unfinished state of the volume of reminiscences on which he was known to be engaged. During his long career at the Bar he made a large number of contributions to legal literature, among which we may mention 'A Selection of Leading Cases on Pleading and Parties to Actions (1600-1844), with Practical Notes,' published in 1847; 'A Few Words on the Law with Special Reference to County Court Suits and Actions at Law' (1850); 'Report of the Trial and Preliminary Proceedings in the Case of *The Queen on the Prosecution of G. Achilli* v. *Dr. Newman*, with Notes, particularly on the Practice of the Court of Inquisition' (1852); 'Commentaries on Martial Law, with Comments upon the Charge of the Lord Chief Justice (Cockburn) in the *Jamaica Case*' (1867); 'Report of the Case of *The Queen* v. *John Eyre &c.*,' (1868); 'Justice to a Colonial Governor; or, Some Considerations on the case of Mr. Eyre' (1868); 'A Review of the Authorities as to the Repression of Riot or Rebellion' (1868); 'Dissertation on the History of Hereditary Dignities, Particularly as to their Course of Descent and their Forfeiture by Attainder, with Special Reference to the Case of the Earldom of Willes;' 'Report of the Case of *The Queen* v. *Gurney and others* in the Court of Queen's Bench, with an Introduction containing a History of the Case' (1870); 'Report of the Case of *Twycross* v. *Grant* in the Court of Common Pleas and Court of Appeal, with Introductory Notes' (1877); 'Judgment of the Judicial Committee in the Folkestone Ritual Case (*Ridsdale* v. *Clifton*)' 1877; 'An Exposition of our Judicial System as Reconstructed under the Judicature Acts.' Mr. Finlason was joint author of 'Foster and Finlason's Reports of Cases.' He was also editor of 'Reeves's History of the English Law.' Mr. Finlason was called to the Bar at the Middle Temple in 1851, but his legal career began some ten years earlier. He entered as a student in 1841, and for some years practised as a special pleader under the Bar. It was during these years that he

acquired his first experience of reporting, a considerable part of the time being spent in the gallery of the House of Commons. He was elected a Bencher of the Middle Temple a few years ago. Mr. Finlason carried into private life the qualities of geniality and courtesy which distinguished him in the Courts, and was never known to say the word that wounds.

Sir Henry James writes to the *Times*: 'I have to-day received communications from members of the Bar desiring that some expression of the opinion entertained by our profession of the late Mr. W. F. Finlason should be made public. I have no claim to speak on behalf of the Bar, but I hope I shall be forgiven if, being probably Mr. Finlason's oldest friend now in active practice, I usurp the privilege of recording the high estimation in which my old friend was held. Although possessing many gifts and much learning, Mr. Finlason's uncontentious disposition caused him to turn away from the struggles of advocacy. But he loved the study of the law, and so profited by it that a great store of legal lore was his; and, pleasantly drawing from it, he with open hand gave knowledge to others who oftentimes by his aid were enabled to win honours from arguments which in truth belonged to him. Mr. Finlason was more than a lawyer. He was deeply versed in every phase of our constitutional history; and so a politician could seldom meet with a more pleasant or instructive companion than he. Literature, too, he loved, and with men of letters he had mingled much. Charles Dickens was his earliest friend, and together, before "Pickwick" was written, they had strolled through the streets of Ipswich fixing upon localities now made familiar throughout the world. With such knowledge and experiences were mingled great power of expression and the highest sense of humour. And so, for a long time past, men have regarded it as a privilege to gather around and listen to the pleasant talk of him who is gone. And so to day in our Courts there is a great blank, and long will it be before the loss of this gifted man and true friend will cease to be mourned by all who knew him.'

CRIMINAL LUNATICS.

Attention has been again drawn by several recent cases to the law as to criminal lunatics. A man named Sandilands, released from an asylum on November 24, after eighteen months' detention, was on December 15 brought before a magistrate on a charge of obtaining jewellery by fraud. In this case the prisoner's father arranged to remove him without delay to an asylum, and the magistrate, if correctly reported, took the somewhat novel course of binding the father to bring up the son for judgment if called on. As the case was not one which could be summarily dealt with the legality of this order is doubtful, but no harm is likely to result from the course adopted, as the insanity did not involve any attacks on human life. In a second case an aged man, charged with acts of indecency and committed for trial, has

been sent to an asylum without arraignment, but the Common Serjeant has not yet decided what ought to be done about enlarging or discharging the recognisances of the prosecutor and the witnesses. But the most important cases, from the public point of view, are those of lunatics who kill their fellow-citizens. In the case of the Kensington murder it has been suggested that if the accused is insane he should at once be sent off to an asylum by an order of the Home Secretary; and in the case of Matthews, charged with a murder at Bethnal Green, such an order has actually been made. It was a novelty and puzzled the magistrate, who ultimately marked the charge-sheet, 'Removed to a lunatic asylum by order of a Secretary of State.' But the proceeding was perfectly legal, though we shall have something to say about its policy.

The law as to criminal lunatics stands now thus:—

1. If it is proposed to discontinue a prosecution on indictment against a man on the ground of his insanity at the time when the act charged was done, a jury may be impannelled to decide whether the accused was or is a lunatic (39 & 40 Geo. III. c. 94, s. 2).

2. If a question arises whether an accused person is sufficiently sane to plead to an indictment, a preliminary issue as to his sanity is usually tried by a jury (39 & 40 Geo. III. c 94, s. 2).

3. Upon the trial the jury could acquit for insanity (39 & 40 Geo. III. c. 94, s. 2). This power is not in terms abrogated, and we have known cases in which a quarter sessions jury has successfully been invited by the defendant's counsel to acquit on this ground; but the regular procedure is now to find the accused guilty, but insane, under the Trial of Lunatics Act, 1883 (46 & 47 Vict. c. 38, s. 2). In each case the verdict of a jury is obtained, and in each case it is followed with the same result—detention in a lunatic asylum during Her Majesty's pleasure.

4. But the Criminal Lunatics Act, 1884 (47 & 48 Vict. c. 64), appears to introduce a fourth mode of disposing of the accused. By section 16 of that Act 'prisoner' is defined as any person committed to a prison or place of confinement to which a person may be committed, *whether on remand or for trial*, and section 2 empowers a Secretary of State to send to a criminal lunatic asylum any prisoner (not under sentence of death) who is certified as insane by two medical practitioners called in at the instance of the visiting justices of the prison.

On the wording of this enactment the certificate and order of detention may precede and be substituted for the verdict of a jury at the trial. But it is somewhat dangerous to adopt such a method. On the one side, in the case of well-to-do criminals it would seem to avoid the scandal of the trial; on the other, it deprives the accused of the verdict of a jury as to his sanity, to which he has hitherto been entitled, and to which, if not a prisoner, he would be entitled under the Lunacy Act, 1890.—*London Law Journal.*