THE

LEGAL NEWS.

VOL. XVIII. FEBRUARY 1, 1895. No. 3.

CURRENT TOPICS AND CASES.

The case of *Jeannotte & Couillard*, R. J. Q., 3 B. R. 461, was very fully and carefully argued, and every precedent and authority was brought to the notice of the Court. The judgment also was very fully considered. It may be doubted whether a court in England would have expended so much time upon a question which had been already determined by the highest tribunal. The principal question discussed on the appeal in *Jeannotte & Couillard* was whether Dr. Jeannotte, who had caused the death of a child by a mere slip of the pen in writing a prescription, was responsible for more than the actual pecuniary damage caused to the father, and which the Court below had assessed at fifty dollars. In other words, is there any action at law for mental anguish or suffering in a case where no malice has been established? This question was positively decided in the negative, in 1887, by the Supreme Court of Canada in *Canadian Pacific R. Co.* v. *Robinson*, 14 Can. S. C. R. 105, the judgment of the Court below being reversed upon this point alone, and the case sent back for re-trial because the trial judge had directed the jury that they might take into consideration the mental anguish of the plaintiff caused by the death of her husband. Although the decision in *Jeannotte & Couillard* was by a

court composed of only four judges, one of whom entered a dissent, yet as it follows the ruling of the Supreme Court it may be considered as settling the point, unless the same question be raised in a case susceptible of appeal to the Judicial Committee of the Privy Council.

Re-trial, with increase of damages, had a curious illustration in an incident related of Lord Blackburn's judicial career. Soon after his appointment to the bench he was trying a case in which the plaintiff claimed damages for an injury which destroyed the sight of one eye. The plaintiff's counsel was expatiating with much force on the serious nature of the injury, as blighting the whole future life of his client, when the judge interposed with the observation, "I have lost the sight of an eye, Mr. B., and it has not blighted my career, as you see." The jury seemed to be much impressed by the remark, and the amount of damages awarded was inconsiderable. Mr. Justice Blackburn, who was one of the most conscientious of men, seems to have been filled with apprehension that the jury had been influenced by his remark to an extent which he had not intended or desired, and after he had thought it over the result was that the next day he sent the plaintiff a cheque for fifty pounds.

The initial numbers of four new legal publications have been issued,—one at Toronto, and three at Montreal. As a statement recently published showed that during the year 1894 only about eighty firms or individuals in Montreal were concerned in summonses or appearances to the number of twenty, and as Montreal constitutes the big half of the province so far as the law is concerned, it is evident that the profession will hardly have to complain of a deficiency of legal literature, considering the extent of the constituency. It may be observed also that much more space is given by the daily journals to legal subjects than formerly.

Criticism of judicial opinions is carried much further at the present day than in the olden time. Communities are larger now, and the wider the community the freer the comment. The *National Corporation Reporter* has been soliciting communications from the judges themselves on this subject, the questions put to them being, "Are the members of the American judiciary averse to a fair and just criticism of their judicial labors?" "When, where or how is this criticism to be conveyed to the court?" Ex-Chief Justice Bleckley, of Georgia, answers:—"I do not think any judge, anywhere, would object to being criticised fairly and temperately by any competent body, or even by any competent individual. But it is easy to understand that almost any judge, anywhere, would resent angry or ill-natured criticism, and would be more or less irritated by the feeble or foolish strictures of a critical quack. Your question, by its terms, relates only to fair and just criticism, and, so understanding it, I answer that in my opinion the American judiciary are not averse to it. They should court it, and not only accept it gracefully, but gratefully." And ex-Chief Justice Campbell, of Mississippi, speaks even more strongly:—"I have ceased to be a judge, but after nearly twenty-five years of judicial life, my opinion is that a judge who would object to fair criticism of his judicial acts is a fool, and unfit to be judge. Abuse is not criticism, and while the one is not justifiable, the other is, and I think I may say advisedly is so regarded by the sensible judges." Mr. Justice Pryor, of the Supreme Court of Kentucky, says:—"I can see no objection to a candid criticism of any judicial opinion, whether in the argument by counsel upon a like case, or when presented as an authority, establishing the proposition contended for, or in some of our leading law journals a fair criticism would be read with eagerness by the judge delivering the opinion." And Mr. Justice Head, of the Supreme Court of Texas, writes:—"I do not think the members of the American judiciary are at all

averse to a fair and just criticism of their official work, when made in a proper spirit and for a proper purpose. They do not, however, specially relish articles written and published by attorneys in particular lines of employment, for the purpose of throwing discredit upon a decision which they fear may be adopted as a precedent to their injury individually. In other words, a criticism from one who writes in the interest of the profession at large is desired, but a criticism from one who writes in the interest of his own client is deplored. A proper criticism should be conveyed to the court through suitable law periodicals."

Although the January term of the Court of Appeal opened somewhat inauspiciously, no case being ready for hearing on the first day of the term, yet very fair progress was made subsequently, and 28 of the 66 cases on the list were heard. As the usefulness of the "list for the day" is evidently gone, the Court has decided to dispense with it in future, and counsel must be prepared to proceed with any case on the roll whenever it is reached.

EXCHEQUER COURT OF CANADA.

MONTREAL, 20 December, 1894.

Coram DAVIDSON, J., *ad hoc.*

The QUEEN, on the information of the Attorney General for the Dominion of Canada v. THE MISSISSIPPI & DOMINION STEAMSHIP Co., Limited.

Wreck—Cost of removal—Responsibility of owner.

HELD:—*The owner of a wrecked vessel is not responsible, either at common law or under the statutes* 37 *Vict.* (*D*) *ch.* 29 *and* 43 *Vict.* (*D*) *ch.* 30, *to the Crown for the cost of lighting and removing the wreck, where it was declared to be an obstruction to navigation and the expenditure was made long after he had sold the same and ceased to have any property therein.*

DAVIDSON, J. :—

On the 21st of November, 1880, defendants' steamship "Ottawa" was wrecked and sunk at Cap à la Roche in the River St. Lawrence. The vessel, having been condemned, was, on the 6th of July, 1881, sold by the defendants. An order-in-council, dated the 13th of January, 1886, authorized the removal of the wreck which is, by the information, charged to have been an obstruction to navigation and a source of danger to vessels plying on the river. By this and a second order-in-council a sum of $13,000 was granted and afterwards paid to P. Fradette & Co. for the taking away of the wreck. It is alleged that until this removal Her Majesty's Minister of Marine and Fisheries caused a light to be placed near the wreck as a warning to passing vessels, and thereby incurred expense to the amount of $5,158.29. Disbursements of $48.83 for advertising for tenders and of $15.60 for an examination of the wreck are also charged.

Nothing was realized from the wreck. By virtue of the Canadian Statute 37 Vict., ch. 29, as amended by 43 Vic., ch. 30, judgment is sought against the defendants for the several sums so expended, amounting to $18,223.72, with interest from the 28th November, 1889.

Issues of law and of fact have been joined. It is upon the former that I have now to adjudge.

The demurrer prays that the information be held insufficient in law for these reasons :—

That as well at common law as under the statutes cited, owners are only liable when they, or those in whose position they stand, occasioned the obstruction by their negligence or default, and neither is charged ;

That the wreck appears to have been declared an obstruction long after the defendants had ceased to have any property therein or control thereof, and it is not disclosed that the Crown had any rights prior to the sale of the 6th of July, 1881;

That the statutes cited have been repealed; that the defendants were not liable by any law existing during their ownership, to maintain, or be charged with the maintenance of, a light on the vessel.

It is obvious that all the facts invokable by the Crown are stated in the information.

Were they to be fully admitted, would they suffice to justify the condemnation sought for ?

An examination of the statutes is our first duty. It is enacted by 37 Vict. (1874), ch. 29, as follows:—

"Whenever, in the opinion of the Minister of Marine and Fisheries, the navigation of any river, lake, bay, creek, harbor, or other navigable water over which the jurisdiction of the Parliament of Canada extends, is obstructed, impeded or rendered more difficult or dangerous by reason of the wreck, sinking or lying ashore or grounding of any vessel or craft whatever, or of any part thereof, or other thing, and whether the cause of such obstruction occurred before or after the passing of this act, then if such obstruction continues for more than twenty-four hours, the said minister may, under the authority of an order of the Governor-in-council, cause the same to be removed or destroyed in such manner and by such means as he may think fit, including the use of gunpowder or other explosive substance if he deems it advisable, and may cause such vessel, craft, or its cargo, or the material or thing causing or forming part of such obstruction, to be conveyed to such place as he may think proper, and to be there sold by auction or otherwise as he may deem most advisable, and may apply the proceeds of such sale to make good the expenses incurred for the purposes aforesaid, paying over any surplus of such proceeds to the owner or owners of the things sold, or other parties entitled to such proceeds or any part thereof, respectively."

This section neither created a statutory liability on the part of the owner nor affected his responsibility at common law. It simply enabled the Minister of Marine and Fisheries, under the authority of an order-in-council, to keep the channels of navigable waters clear of obstructions. To make these expenses specifically chargeable against not only the wreck but its owner, an amendment in the following terms was enacted by 43 Vic., (May, 1880), ch. 30, sec. 1:—

"Whenever under the provisions of the act cited in the preamble, (37 Vict., ch. 29) the Minister of Marine and Fisheries has, under the authority of an order of the Governor-in-council, caused any obstruction or impediment to the navigation of any navigable river, by the wreck, sinking or lying ashore, or grounding of any vessel, craft, or part thereof, or other thing, to be removed or destroyed, and the cost of removing and destroying the same has been defrayed out of the public moneys of the Dominion, then if the net proceeds of the sale under the said act,

of such vessel, the craft or its cargo or the material or thing which caused or formed part of such obstruction, are not sufficient to make good the expenses incurred for the purposes aforesaid and the costs of sale, the amount by which such proceeds fall short of the expenses so defrayed as aforesaid, and costs of sale, or the whole amount of such expenses, if there is nothing to be sold as aforesaid, shall be recoverable with costs by the Crown from the owner or owners of the vessel, craft or other thing which caused such obstruction or impediment—and the sum so recovered shall form part of the consolidated revenue fund of Canada."

Does this amendment make the defendants statutorily liable upon the statement of facts set forth in the declaration? What, too, is their position in regard to a common law liability?

Non-allegation of negligence.

The imperial "Harbors, Docks and Piers Clauses Act, 1847," being 10 and 11 Victoria, ch. 27, by its 74th section, enacts that the owner of any vessel or float of timber shall be answerable to the undertakers for any damage done by such vessel, or by any person employed about the same, to the harbor, dock or pier, or the quays or works connected therewith.

It was held in *Dennis* v. *Tovell*, L. R., 8 Q. B. 10, that the owner of a vessel driven against a pier by stress of weather, was liable, whether the loss was caused by negligence or by inevitable accident. This case was overruled by the *River Wear Commissioners* v. *Adamson*. (1 Q. B. D. 546; 2 App. Cas. 743.) In this case the defendant's vessel was driven ashore in a storm. A rising tide dashed her against plaintiff's pier, causing the damage complained of. The Court of Appeal held the owners not liable, and the House of Lords affirmed the decision.

Lord Cairns, L. C., considered section 74 to relate to procedure only, and to be solely intended to give an action against the owner of a ship whenever damage was caused by it, owing to the fault of the persons in charge, whether these were his servants or not; saving his recourse against the persons really to blame.

Lords Hatherly and Blackburn were of opinion that the section covered even damages caused by the act of God, or inevitable accident, but considered the case one of such extraordinary hardship as to justify a secondary interpretation.

Lord O'Hagan agreed with the Court of Appeal that the wording of the section excluded damages for the act of God.

Lord Gordon dissented.

In the presence of such scattered opinions it is not easy to fix the precise value of this case, overruling, though it did, *Dennis* v. *Tovell.*

Another section (56) of the Harbors, Docks and Piers Clauses Act has greater pertinence. It reads as follows:

"The harbor master may remove any wreck or other obstruction to the harbor, dock or pier, or the approaches to the same, and also any floating timber which impedes the navigation thereof, and the expense of removing any such wreck, obstruction, or floating timber shall be repaid by the owner of the same, and the harbor master may detain any such wreck or floating timber for securing the expenses, and on non-payment of such expenses on demand, may sell such wreck or floating timber, and out of the proceeds of such sale pay such expenses, rendering the overplus, if any, to the owner, on demand."

By our Act, 43 Vic., cap. 30, the expense "shall be recoverable with costs by the Crown from the owner or owners of the vessel, craft or other thing which caused such obstruction or impediment."

Interpreting this section by the Imperial Act, the Court of Appeal held in *Lord Eglington* v. *Norman*, 42 L. J. Ex. 557 (1877), that the "owner referred to was the owner at the time the thing became an obstruction."

This ruling was followed in "*The Edith*" (11 L. R. Ireland, 272), but both cases were, on the 2nd of June, 1894, overruled by the House of Lords in *The Arrow Shipping Co.* v. *Tyne Improvement Commissioners.* Respondents had obtained judgment both in the Admiralty Division and in the Court of Appeal. The vessel "Crystal," belonging to the appellants, sank at the mouth of the River Tyne, as the result of a collision. There was no evidence how this was caused, or that any blame was attributed to the owners or their servants. The wreck was abandoned as a derelict on the high seas. The Commissioners gave notice that they purposed to remove it, and in the meanwhile would buoy and light it. Action was brought to recover the difference between the expenses incurred and the amount produced by the sale of the materials. The Lord Chancellor first distinguished *The River Wear Commissioners* v. *Adamson* as resting on another sec-

tion, and, in the course of his judgment, spoke as well on the extent of the responsibility which the statute created, as of the persons on whom the responsibility fell. On the first point he said: "Although I am of opinion that, in the present case, there being no evidence that the disaster was due to the negligence either of the appellants or their servants, they would be under no liability at common law for damage caused by the obstruction or for the expense incurred in removing it, yet I am unable to find any valid ground on which the operation of section 56, which casts upon the owner the liability to pay the expenses of removing the obstruction, can be limited to cases in which such liability would exist at common law. I am fully alive to the force of the argument, and feel much impressed by it, that the obstruction is removed for the benefit of the public at large, and that where the owner of the vessel which has met with a disaster has not been to blame, it is hard that the loss of his vessel should entail on him the further burden of bearing expenses incurred not for his benefit but for that of the public. But a sense of the possible injustice of legislation ought not to induce your lordships to do violence to well-settled rules of construction, though it may possibly lead to the selection of one rather than the other of two possible interpretations of the enactment. In the present case, however, I am unable to see that there are two alternative constructions." Lord Ashburne showed strong reluctance, indeed refused, to make the owner responsible under every conceivable cause of accident. He approved *The River Wear Commissioners* v. *Adamson*, and considered it in point.

These cases, founded on Imperial statutes of somewhat like tenor to our own, disclose serious diversities of judicial opinion, and an unusual expression of hesitancy and doubt as to the true construction of the sections referred to. In the domain of common law all difficulty disappears.

In *Rex* v. *Watts*, 2 Esp. 675 (1798) an indictment was preferred against the defendant for that he, "being the owner of a certain ship which had been sunk in the River Thames, suffered and permitted the said ship to remain and continue there to the obstruction of navigation," etc.

Lord Kenyon was of the opinion that the offence charged was not of a description to support an indictment, as it is not asserted that there was any default or wilful misconduct on the part of the accused. In *Brown* v. *Mallett*, 5 C. B. 616, Mr. Justice Maule

said: "No such wrong being alleged, none is to be presumed."

See also *White* v. *Crisp*, 10 Ex. 312; "The Columbus," 3 W. Rob. 158; "The Swan," 3 Blatch. Cir. Ct. Rep. at 288; "The Franconia," 16 Fed. Rep. 149; Coulson and Forbes' Law on Waters, 438; Gould on Waters, sec. 98.

From these analyses of enactment and precedent, must it be held that an allegation of negligence or default in connection with the disaster ought to appear?

The common law does not reach defendant, indeed, it is not seriously disputed on the part of the Crown that he must be held under our statute, if at all.

The rule is that if a vessel is sunk by accident, and without any default of the owner or his servant, no duty is ordinarily cast upon him to remove it or use any precaution by placing a buoy or light to prevent other vessels from striking against it, except for so long as he remains in possession and control of it. The liability ceases when the control ceases.

I regard the statute as superseding the common law to the extent expressed in its provisions, or fairly implied in them, in order to give them full operation. Endlich, section 127. It makes no exception as to the acts of God, or *vis major*, and I cannot, therefore, see why either should be alleged. I am not called upon to decide if these would be lawful grounds of defence, but it may be said that the House of Lords in the *Arrow Shipping company* case adopted a rigid and far-reaching interpretation to the effect that they would not. I have, therefore, to hold that under the statute it is not necessary to allege more than its provisions call for, and that the information did not need to affirm wrong-doing on the part of the owner or his servants.

Ownership.

With reference to the question of ownership, his lordship said:—"My lords, when I examine the language of the section, it appears to me to point, not to ownership at the time the obstruction is created, but to ownership at the time the expense of removing it is incurred."

Lord Watson said:—"I agree with the Lord Chancellor in thinking that their abandonment of a sunken ship in the open sea, *sine animo recuperandi*, had divested the appellants of all proprietary interest in the wreck, before the respondent commenced operations, with a view to its removal. It is clear to my mind,

that *prima facie*, the owner of the wreck must be the person to whom the wreck belongs, during the time when the harbor master chooses to exercise his statutory powers."

Lord Ashbourne said :—"I agree with my noble and learned friends who have preceded me, that the owner referred to in the section is the owner at the time the harbor master incurred the expense, and concurring as I do generally in the arguments they have expressed in support of this conclusion, I see no good purpose in repeating or attempting to add to them."

Contrasting the sections of the Imperial with those of the Canadian statute, we find that the former by its section 74 provides that "the owner of any vessel..... shall be answerable," and by its section 56, that the "expense of removing any such wreck..... shall be repaid..... by the owner of the same," while the Canadian act provides for responsibility on the part of "the owners of the vessel, craft or other thing which caused such obstruction or impediment." It is argued on behalf of the Crown that the difference between the words "wreck" and "vessel" emphasizes the purpose of our statute to make the original owner liable. I am unable to hold with this contention. There had to be a sale of the salvage. Its proceeds went in deduction of the amount for which the owner was liable. This cannot mean that the owner at the time of the disaster was to benefit by the net value of what he had sold to another, nor could the pretension prevail that he would be entitled to a surplus if surplus there were. It must refer to the person whose wreck was disposed of and removed. Moreover, the dates set forth in the information are of striking importance. The "Ottawa" foundered in November, 1880, and was condemned and sold in July, 1881, while the order in-council relied upon was only passed in January, 1886. Now, under the English statutes, an immediate right accrues to the harbor master, and an equally immediate obligation is imposed upon the owner. In this respect our statute offers a marked contrast. The mere existence and continuance of an obstruction or impediment to navigation does not of itself vest the Crown with the right to remove it, or impose upon the owner a correlative obligation to pay the net expenses. The opinion of the Minister of Marine and Fisheries needs executive expression in an order-in-council before either the one or the other exists. If then, under the Imperial Harbor and Piers statutes it can be held that only the actual owner at the time of removal may be

charged, by much more is the present defendant free from responsibility, for it is an undeniable rule of construction that a statute has perspective operation only, unless the intention to have it operate retroactively is expressed in precise terms.

Lighting.

As regards the legal sufficiency of the charge for lighting the wreck, defendant occupies an even stronger position. It was only by 49 Vict., ch. 36, that authority was given to maintain a light and charge its maintenance to the owner. This statute repealed 37 Vict., ch. 29 (except section 4), as amended by 43 Vict., ch. 30, and re-enacting the sections in question, put the expense of maintaining lights on the same footing as that of removing the wreck.

The repeal in itself did not affect any right which may have accrued to plaintiff during the existence of the previous statute. R. S. C., ch. 1, sec. 2, sub-secs. 49, 50, 51, 52, 53.

But the new law only covered such expense as might be incurred "under the provisions of this act," and the reasons already given in connection with the question of ownership apply to this issue, with the added fact of law that at the time defendants admittedly sold their vessel, 49 Vict. was not yet in existence.

I think, therefore, that judgment on the demurrer ought to be entered for the defendant, and that costs ought to follow.

Judgment for defendant with costs.

RECENT ONTARIO DECISIONS.

Municipal corporations—Sewers—Damages.

Where a sewer, built without any structural defect, is of sufficient capacity to answer all ordinary needs, the corporation is not liable for damages caused, as a result of an extraordinary rainfall, by water backing into the cellar of a person compelled by by-law to use the sewer for drainage purposes. (Judgment of the Queen's Bench Division reversed.)—*Garfield* v. *City of Toronto*, Court of Appeal, 15th January, 1895.

Water and watercourses — Surface water — Diversion of watercourse — Railways — Arbitration and award — Damages — Continuing damage.

If water precipitated from the clouds, in the form of rain or

snow, forms for itself a visible course or channel, and is of sufficient volume to be serviceable to the persons through or along whose lands it flows, it is a watercourse, and for its diversion an action will lie.

Where such a watercourse has been diverted by a railway company in constructing their line, without filing maps or giving notice, the landowner injuriously affected has a right of action, and is not limited to an arbitration. For such diversion the landowner, in the absence of an undertaking by the company to restore the watercourse to its original condition, is entitled to have the damages assessed as for a permanent injury. (Judgment of the Queen's Bench Division, 25 O. R. 37, affirmed.)—*Arthur* v. *Grand Trunk Railway Co.*, Court of Appeal, 15th January, 1895.

Negligence—Municipal corporations—Public park—Licensee—Knowledge.

A municipal corporation, owner of a public park and building therein, is not liable to a mere licensee for personal injuries sustained owing to want of repair of the building, at all events where knowledge of the want of repair is not shown.—*Schmidt* v. *Town of Berlin*, Queen's Bench Division, 19th December, 1894.

Indians—Capacity to make a will—Indian Act, R. S. C., c. 43, s. 20—Superintendent-General.

Held, that an Indian, male or female, may make a will, and may by such will dispose of any lands or goods or chattels, except as far as such rights may be interfered with by the Indian Act or other statute.

Held, further, that in the case of the will of an Indian widow, where the property bequeathed was personal property, there being nothing in the Indian Act to restrict or interfere with her right to dispose of the same either by act *inter vivos* or by will, the will was valid and sufficient to pass the property named in it.

Quære, however, whether the last part of sec. 20 of the Indian Act does not leave all questions arising in reference to the distribution of the property of a deceased Indian, male or female, to the Superintendent-General, so that his decision, and not that of the Court, should determine such questions.—*Johnson* v. *Jones and Tobicoe*, Chancery Division, Rose, J., 10th January, 1895.

GENERAL NOTES.

PATENTS IN 1894.—Patent litigation has been rather brisk during the past year, and some stubborn fights have taken place in all three parts of the United Kingdom. In Ireland the Court of Appeal was occupied two whole weeks over the case of *Pirrie* v. *The York Street Flax Spinning Company* (*Lim.*). The invention in this case was for improvements in wet spinning for flax or like yarns, and consisted in combining a well-known apparatus in cotton and wool spinning with existing machinery in flax spinning. The Court upheld the patent, and declared that an infringement had been committed.—*Law Journal* (London).

AN UNUSUAL VISITOR IN CHAMBERS.—A singular sight was witnessed in the chambers of the Courts of Law, where the Vacation judge sits to hear private applications. The Lord Chief Justice was the Vacation judge, and immediately he took his seat in a room of somewhat small dimensions, Colonel Mitchell appeared in full military dress. The sitting in chambers is always supposed to be strictly private. The gallant colonel at once applied to Lord Russell to allow him to remain during the morning to watch the course of procedure, so as to enable him in future to know how to proceed in chambers as to a motion in person with regard to money withheld from him by the War Office. The Lord Chief Justice acceded to the request, and Colonel Mitchell sat in chambers throughout the morning while the Lord Chief Justice disposed of the cases.—*London Standard.*

RECIPROCITY AND THE AUSTRALIAN BAR.—A deadlock in reciprocity has occurred in connection with the legal profession. No longer can a member of the Bar removing from one colony to another insure the ready acceptance of his position, but he is compelled to undergo the humiliating and harassing regulation of further examination. This objection applies equally in Victoria, and, indeed, we are inclined to believe that the difficulty found its origin here, and that our neighbours are simply expressing a sentiment of retaliatory resentment. However this may be, Victorian barristers are beginning to experience the inconvenience. Some of the enterprising juniors who can find no opening for their talents here have been tempted to try West Australia as a more promising field, only to discover that in the absence of reciprocity they cannot obtain admission within

the closely-guarded circle of the local Bar. An appeal has been made to the Attorney-General to devise some remedy, and it has been suggested that there should be reciprocity over all parts of the British Empire. Mr. Isaacs acknowledges the magic in the word 'federation,' but he is not prepared to allow that practitioners from abroad should be admitted here under less qualifications than those we impose upon our own students. Equality or qualification he considers essential to reciprocity.—*Melbourne Leader.*

A PROBLEM.—It is well known (says the *Realm*) that Sir Horace Davey was as successful at the Bar as he was unpopular on the political platform. Some years ago he addressed a political meeting in Fifeshire, and, as his manner was, spoke over the heads of his audience. Among those who listened with pained wonderment at his 'puir appearance' (as they termed it) were two ploughmen; and one turning to his neighbour, with a pitying shake of the head, said, 'Hoo in a' the warld does the crater mak' a livin'?'

THE COMMON JURYMAN.—Mrs. Lynn Lynton writes as follows in the *St. James's Gazette* of the characteristics of this class: "The common juryman is by no means a precious creature. He knows nothing of the spiritual pride to be had from remembrance of his former incarnations; Bunthorne and Mrs. Ponsonby de Tomkyns have no charm for him as friends; the New Literature, when not a sealed book, reads to him like rubbish compacted with filth; the New Art is incomprehensible as art, and the mere apotheosis of ugliness; while the New Woman, who vilifies men and disdains babies, would be denied his hospitality and forbidden his wife's society. A commonplace, straightforward, hard-headed kind of person, he needs proof before he believes what he hears; is incredulous on all that transcends experience; inclines to a scientific explanation rather than to a mystical rendering of the unusual; and lays aside, as something to be dealt with cautiously, all stories affecting the honour of individuals or the ordinary laws of nature as we know them from day to day. In all probability he is a good father, a faithful husband, an upright citizen, and exact in his religious duties; but he belongs to no extreme section, high or low, and he thinks deeds the test of faith. To the æsthetes a Philistine, to the mystics an earthworm, to the nation at large he is the

backbone which raises it above the ranks of the political jelly-fish; and in his own circle he is considered a safe man in counsel and a wise leader to follow."

MR JUSTICE GRANTHAM'S AUTOGRAPH BOOK.— Mr. Justice Grantham is known among his friends to be a diligent and indefatigable collector of autographs. His collection is a valuable one and exceptionally interesting, and includes among others the autograph of the Shah of Persia. He may accidentally forget some weighty tome on the law, but he never omits to bring on circuit his book of autographs, which he of course had ready in his private room when W. G. Grace, the great cricketer, presented himself in the witness box on the last day of the assize to certify as a medical man as to the unavoidable absence of a witness. W. G. was only in the box three minutes, but the judge was deeply interested in the appearance of the giant king of cricket, who had not left the witness box many minutes when he had a polite request to step into the judge's private room and contribute his autograph to the collection of Mr. Justice Grantham. W. G. must have written his autograph for thousands of young cricketers and admirers of the national game, and willingly complying, he bowled into the room, looked at the state of the judge's autograph score, and rapidly notched his own name in the interesting record.—*Bristol Mercury.*

ILLNESS OF JUDGES.—Lord Justice Kay, of the English bench, has been seriously ill. Sir Edward Kay has been thirteen years on the bench. Mr. Justice Barnes has also been ill for several months.

APPOINTMENTS.—Jan. 22, 1895. Mr. Thomas Deacon, Q.C., of Pembroke, Ont., to be junior judge of the County Court of the County of Renfrew. Mr. James G. Forbes, Q. C., to be judge of the County Court of the City and County of St. John, N. B.

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.—Their lordships resumed their sittings on January 22 after the vacation. The list of causes contains fourteen colonial and Indian appeals for hearing—viz. from New South Wales four, Bengal two, Lower Canada two, and Queensland, Constantinople, Mauritius, North-Western Provinces, Madras, and Oude one each. There are also nine judgments to be delivered in cases argued before the vacation.