The Legal News.

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Baron Huddleston, at Chelmsford, July 29, in the course of some remarks upon the circuit system of England, criticized the establishment of additional courts of appeal. His lordship observed: "A new Court of Appeal was constituted instead of the old Court of Error in the Exchequer Chamber, and appeals were greatly increased. Whether this was desirable or not, the Legislature so considered. If I were to express my own opinion I should say that it was not favorable to the interests of public justice. It appears to me that to give undue facilities for appeals from Court to Court tends to nurture the spirit of litigation, and to lead to a sort of legal gambling, in which the party who has failed risks his money in a second and a third appeal, and so the case is carried from Court to Court until, perhaps, both the parties are exhausted. At present the litigant, even on a matter of procedure, may appeal from the master to the judge at chambers, and thence to the Divisional Court, and then to the Court of Appeal, and finally to the House of Lords. A great French jurist thought that there ought to be one appeal in order to allow of a rehearing before a different tribunal, but that there should be no further appeal, and in that view I entirely concur."

The Faribault (Minn.) *Democrat* recently contained an announcement of sheriff's sale on execution, wherein it was stated that the sheriff had levied upon the upper set of false teeth belonging to the defendant, and would sell the same to the highest bidder for cash. This might seem at first sight the sale of a necessary, like the debtor's bed or cooking stove. But it appears that there were circumstances of peculiar aggravation in the case. The plaintiff, a dentist, made the teeth to defendant's order. Then the defendant got possession of them by carrying them off from the dentist's office in his absence. Payment of the dentist's bill being refused, suit to recover was entered, and the Court believing probably that it would be difficult to sell teeth still in the debtor's mouth, made an order supplementary to execution, that the defendant deliver the teeth to the sheriff. The defendant complied with this order, and thereupon the sheriff advertised the teeth for sale.

"Chaos is come again," according to an English writer, because counsel are advised to return fees which they cannot earn. It appears that recently a Queen's counsel who had received a brief was unable to attend the trial. The solicitor who instructed him, at the suggestion of the client, asked for a return of the fee. The learned counsel replied that he would be happy to do so if he could find any precedent. The Attorney-General being consulted, stated that in his opinion the right course was to "return so much of the brief fee as exceeds the amount which would have been proper if the brief had been simply a case for opinion." Even this seems to us too favorable a position for the barrister, for (1) he charges for a service which the client did not require except as a preliminary to advocacy; (2) he sets his own price upon such service. The mere fact of a counsel examining papers does the party no good, if he is afterwards obliged to place the case in the hands of another. However, even the Attorney-General's rule, according to the *Law Journal*, "would have made old-fashioned practitioners stare and gasp," and another authority says "chaos is come again." The only argument we see urged against a return of fees is that counsel will no longer trouble themselves to attend if they wish to be elsewhere, and they can salve their conscience by returning the fee. But the withdrawal of counsel at the eleventh hour would often be a matter of such serious moment to the client that the return of fees would be a poor compensation. The obligation to attend is as sacred as ever. The return of fees is simply a matter of honesty, which forbids a lawyer to keep money which he has not earned nor tried to earn, and which the client frequently can ill afford to pay a second time.

TRIBUNAL CIVIL DE LOCHES (France).

Juin 1885.

SIEUR H.... v. SIEUR L....

Chiens de chasse s'introduisant dans une propriété close—Droit du propriétaire du domaine.

Des chiens de chasse, la propriété de H., étant entrés sur des terrains appartenant à L., ce dernier, qui avait déjà averti H. et lui avait même fait défense de laisser venir ses chiens sur son domaine, tira sur eux, en tua un et en blessa un autre.

H. poursuivit L. pour 400 *francs de dommages.*

JUGÉ: *Que, quoique en règle générale, un propriétaire n'ait pas le droit de tuer, sans un motif sérieux de légitime défense, les animaux domestiques d'autrui qui pénètrent sur sa propriété, néanmoins, dans l'espèce, vû la défense préalable, le fait que le propriétaire conduisit ses chiens du côté où était située la propriété du défendeur, ce qui fournit aux chiens l'occasion de retourner sur le terrain du demandeur, était une provocation suffisante pour mettre le défendeur en légitime défense, et enlever au demandeur tout recours en dommage.*

Le 17 octobre dernier, un chien et une chienne de chasse appartenant au sieur H.... étaient entrés dans un enclos faisant partie d'un domaine dont le sieur L.... était propriétaire. Ce dernier d'un coup de fusil tua la chienne de H.... et d'un autre coup blessa le chien. H... a introduit devant le tribunal civil de Loches (Haute-Loire) une demande en payement de 400 francs à titre de dommages-intérêts.

Le tribunal a rendu le jugement suivant :

" Attendu qu'eu égard aux circonstances dans lesquelles le fait s'est produit, la demande d'H.... n'est pas justifiée ; qu'en général, sans doute, on ne saurait prétendre qu'un propriétaire ait le droit de tuer, sans un motif sérieux de légitime défense les animaux domestiques d'autrui qui pénètrent sur sa propriété; mais que, dans la cause, un tel motif peut seulement être allégué par le défendeur;

" Attendu, en effet, que L.... se plaignant à tort ou à raison, que les chiens d'H.... chassaient souvent dans son enclos, avait, le 16 octobre, c'est-à-dire la veille du fait objet du procès, à Cormery, signifié à H.... l'interdiction absolue de continuer à faire chasser ses chiens dans cet enclos, en ajoutant que si ces animaux pénétraient encore chez lui, il les tuerait ;

" Que, sans prendre cette défense au sérieux, ni s'en préoccuper, H.... ayant répondu à L.... qu'il serait le lendemain de ce côté, et de bonne heure, que le propriétaire de Long-Pont ne serait pas encore levé ; attendu que dès le lendemain matin, en effet, et comme il l'avait annoncé, H...., accompagné de ses deux chiens, allait passer tout en chassant dans des taillis qui ne sont séparés que par un chemin de l'enclos de L.... ;

" Attendu que ses chiens étant entrés une première fois dans cet enclos, il est vrai qu'il les rappela ; mais que bientôt ces animaux y rentrèrent, soit ensemble, soit isolément, et qu'alors ils furent l'un blessé, l'autre tué par le défendeur ;

" Attendu qu'après les paroles échangées la veille avec L.... à Cormery, H.... commettait une véritable imprudence en allant ainsi passer près de l'enclos de Long-Pont avec deux chiens en liberté, lesquels, tout en battant les taillis voisins, ne pouvaient en quelque sorte manquer d'entrer dans cet enclos ; que cette imprudence s'est accentuée encore, lorsque s'apercevant une première fois que ses chiens étaient entrés chez L.... et les ayant rappelés, il a négligé de les maintenir auprès de lui, comme cela lui était très facile, jusqu'à ce qu'il se trouvât à une distance suffisante pour que ces animaux ne pussent plus être entraînés à pénétrer dans l'enceinte interdite ;

" Attendu qu'en admettant, ce qui est invraisemblable, qu'il n'y ait eu ici qu'une simple négligence et absence complète de toute pensée agressive, il n'en est pas moins vrai qu'ainsi que l'avait déjà jugé le jugement correctionnel du 21 février dernier, " dans l'état des rapports des parties, l'entrée " même toute fortuite, et sans aucune participation de leur maître, des chiens d'H.... " dans l'enclos de L.... pouvait paraître à " celui-ci la manifestation d'une intention " blessante et comme une provocation."

" Attendu, qu'en cet état, le fait par L.... d'avoir tué l'un des chiens d'H.... et blessé l'autre, alors que ces deux chiens obéissant

à leur instinct se trouvaient ou pénétraient dans son enclos pour y chasser, et par conséquent, lui causaient à ce point de vue un préjudice, ne constitue de sa part que l'exercice rigoureux assurément, mais toutefois légitime, du droit de défense, et ne saurait, par conséquent, être considéré comme une faute pouvant donner lieu à des dommages-intérêts.

" Par ces motifs:

"Déclare H... mal fondé dans sa demande, l'en déboute, et le condamne aux dépens."—(Rapport de Mtre *Louis Albert*, *Journal de Paris.*)

(J. J. B.)

THE ADMINISTRATION OF JUSTICE.

[Continued from p. 288.]

The preparation of the record for re-examination is often made a serious affair, and takes no inconsiderable time. Why it should is not apparent. All that is needed is a transcript of such part of the record as is necessary for re-examination.

The question of appeal is always a serious one. How many successive appeals should be allowed, and within what time should they be taken? The answer to the first depends upon the organization of the courts. In the State of New York, for instance, where there are upwards of seventy co-ordinate trial courts of the highest original jurisdiction, it would be out of the question to give an appeal from each of them to the Court of Appeals; there must, of necessity, be a previous sifting of the case by a proceeding in the nature of an appeal in the original court itself; that is, an appeal from one judge to two or three co-ordinate judges. In other States the same reasoning may not apply, and one appeal may suffice. The time allowed for an appeal should be short. It is now in many instances long, grievously long indeed; a year, two years, sometimes six or seven.

The formality of appealing should be as simple as possible; nothing should be required but a notice that a party does appeal, a transmission to the appellate court of a copy of the record and security to abide the judgment, unless the suggestion hereafter made should be adopted, requiring a brief of the objections to the judgment appealed against to be filed with the notice of appeal. The problem is how to facilitate the hearing and decision when the record has reached the higher court. To solve it we must compare the work to be done with the workmen who are to do it; in other words, measure the workmen with the work. We must have skilled workmen, no doubt of that, or the work cannot be done; that is, it cannot be done to answer the purpose of the work, which is the same thing as saying that it cannot be done at all. We know how many hours there are in a day, and how many of these hours a man with a sound mind in a sound body can devote to work. We must put upon him therefore no more than he can do, for then the work will not be done. It is true that one man's rights are as sacred as another's; but it does not thence follow that a little case should go to the highest court, if a great one does. We have courts for small causes, and nobody is foolish enough to think that the costly machinery of the higher courts should be used for them. We make as many Courts of Appeals as the people of each community think expedient; some more, some less. Nobody dreams that we should go on multiplying appellate courts so long as any suitor wishes to try his hand again. There must be a limit to litigation, and that may be reached by limiting the causes that are to go to the Courts of Appeal, or increasing the judicial force, which is to take hold of them, and put an end to them.

The Supreme Court of the United States can hear and decide four hundred cases in a year and no more. It is folly then, it is grossly unjust, to send to it more than that number of cases. Where, it may be asked, shall the line be drawn? That depends upon the ability of the judges for the time being to hear and decide promptly. It was drawn through one point a century ago, it may be drawn through another to-day and through another a quarter of a century hence, according to the number of cases in the lower courts. When the government was founded appeals were allowed according to the supposed needs of suitors of that day, but the hundred years since have so increased litigation that

the privilege of appeal must be more restricted than it is. There may be and there should be as many intermediate appellate courts as the interests of suitors require. Certain cases there are in which the Supreme Court has, by the Constitution, original jurisdiction, and therefore the appellate jurisdiction must be so limited as not to embrace, counting in the original cases, more than four hundred in all. In selecting these, the interpretation of the Federal Constitution and laws should be the chief object. Not a single question of fact should go up in any case whatever. And what is here said of the Supreme Federal Court applies with equal force to the highest appellate courts of the States. It may be well also to observe here that the labors of all appellate judges would be much relieved, if a brief statement of the objections to the judgment were required to be filed with the clerk at the time of appeal.

The foregoing observations respecting the Supreme Court of the United States lead us naturally to the other Federal Courts. The delay there is often greater than in the State courts. Federal legislation has tended latterly towards enlarging the jurisdiction and increasing the labor of the Federal judges. Whether this be wise or unwise it is not within the province of this report to discuss. But it is appropriate to the discussion to say, that in our judgment, the practice in the Federal courts within a State should be made to conform to that of the State courts, for the reason that the people and the profession should be saved the time and the trouble of studying and practicing two systems. The act of Congress of June, 1872, requires this conformity in respect of legal actions, but leaves the equitable ones to be governed by the rules framed by the Supreme Court judges. We think that the practice in the latter class of cases should be conformed so far as it may constitutionally be done to that of the State courts, in respect of equitable as well as legal actions; and furthermore, that whenever in any State the two classes are merged in one they should be merged in the same way in the Federal courts. It has been suggested, and with much force, that there should be a Code of Procedure, civil and criminal, enacted by Congress for all the Federal courts in all the States. If there were reason to hope that the adoption of such a Code, simple and direct, without unnecessary details, would lead to the adoption of one like it in the States, we should think it very desirable. But until then we think that the entire conformity of Federal to State procedure in all actions is greatly to be desired. In respect of substantive law, we think also that the act of Congress, which provided so long ago as 1789 that the laws of the several States should be rules of decision in trials at common law in the Federal courts, should be made applicable to all trials and to embrace all law not purely Federal.

The statistics of business in the Federal courts show that many of the districts are so greatly in arrear that there is a practical denial of justice. How these courts should be reconstituted we do not inquire further than to call attention to the principles we have elsewhere discussed, and to add that we think an appeal should be provided against every judgment rendered by a single Federal judge to two or more judges holding an intermediate court.

We ought not to omit mention of the courts in the District of Columbia. They are specially important because they have close relations with the administration of the Federal government. It is enough however to say here that the judicial administration of the District violates almost every principle that we have been endeavoring to establish. The courts are badly organized, their procedure is faulty, and the substantive law is uncertain and confused beyond that of any other community in the United States. Of twelve appeals in the highest court in the District, decided by the Supreme Court of the United States during the last term, seven resulted in reversals, four in affirmances, and one was dismissed.

We have so far considered only the proceedings in a law-suit of a civil character, and have paid no attention to criminal proceedings. They scarcely need special mention. The principles discussed as applicable to civil suits will apply generally to criminal ones. One measure however we recommend, and that is the appointment of a public defender wherever there is a public prosecutor.

The innocent are liable to suffer, and do often suffer for want of proper advice and defence, especially when first arrested. It can hardly be disputed that to prevent abuse of its own processes the State should be a "helper of the helpless." Of course the office should be so guarded as not to interfere with the right of the accused to choose his own defender if he will.

The uncertainty of judicial administration arises from one of three causes; the mistake of the judge as to law or his mistake as to fact, or the uncertainty of the law itself. There may be no rule of law to fit the case, or there may be one and the judge ignorant of it. A mistake of fact there is no remedy for, except by procuring the best persons to decide, be they well-trained judges or intelligent jurors. A plaintiff often begins a lawsnit, or his adversary defends it, with prejudices derived from a one-sided view of the facts. Thus it often happens that a party does not know the whole case, because he sees only his side of it. It is only when both sides are heard and their evidence produced, that the whole case is known. This is not a fault, but a benefit of the lawsuit, as it develops all the circumstances, and thus enables the judge, jury and party to see the facts as they are. We need not however dwell on this cause of uncertainty. Our concern now is with the mistakes of law made by the judges and the uncertainty of the law itself. Supposing the law to be certain and easily known, the mistakes of the judges are the mistakes of ignorance, for which there is no cure but in the substitution of capable for incapable judges. By so much as a competent judge is a blessing, by so much is an incompetent one a scourge. The one is learned, courteous, patient, firm, quick to discern and prompt to decide; the other is ignorant, rude, impatient, infirm of purpose, dull and dilatory. Both may be honest in the sense of intending no wrong, but the difference between them is that one is in his right place and the other is out of his place altogether.

The only remaining element of certainty or uncertainty is the character of the law itself, as it is certain or uncertain. Now the state of the law we pronounce to be one of the greatest uncertainty. Did we not see many men of fair learning and intelligence affirm the contrary we should say that all men believed it and all men knew it. This uncertainty comes in a great degree from the nature of the sources whence the law is derived; it is made by the judiciary and not by the Legislature; made to fit particular cases, and not by general rules, and made always after the fact. It will not answer the objection to say that the Legislature makes bad laws sometimes. So does the judiciary. But the former need not make bad laws. If it be not able to make good laws for the future conduct of the citizen, leaving the judiciary to enforce them, still less is the judiciary able to make and enforce good laws for the past conduct of the citizen. We say a hundred times a day that we are governed by the common law. Where do we find this common law? The notion that it is found in usage or tradition we know in this young country to be untrue. Nothing here dwells in tradition; nothing in usage. The notion that common law is something floating in the atmosphere, visible only to the initiated, is one of those mythical phantasms which serve to amuse and deceive indolent credulity. Where then is this common law to be found? In the decisions of the judges, and there only. What judges? All the judges of the English speaking peoples—American, English, Irish, Scotch, and the English provinces all over the world—seventy or more distinct communities in all—with distinct judicial establishments. How many of these decisions are yearly made and reported? About 16,000 in this country alone. Are they announced in the form of legal propositions or precepts? By no means. They are the conclusions upon law and fact of legal controversies brought before different judges in different forms, argued on each side by different counsel, and reported by different reporters. Is there any guaranty of the accuracy of these reports? None but this: that they are generally made by official reporters, who gather as they may the facts out of documents, long or short, and masses of statement, large or small, and follow them with opinions as they are written by the judges, which opinions are sometimes dissertations

upon topics relevant or irrelevant according to the wisdom or unwisdom of the writer. Is this an imaginary picture? Let the facts stated in the beginning of this report answer.

We can imagine a primitive society in which a king and his judges were the only magistrates. They had made no laws. The judges decided each controversy as it arose, and by degrees what had been once decided came to be followed, and so there grew up a system of precedents, by the aid of which succeeding cases were decided. Hence came judge-made law. But could any sane man suppose that this was a scheme of government to be kept up when legislatures came in? .

The difference between judge-made law and jurisprudence founded upon statutes is as wide as the poles. The true function of the Legislature is to make the law; the true function of the judge is to expound it. But because language is at best an imperfect expression of intention, and sometimes susceptible of more than one interpretation, and the courts are now and then obliged to choose between different interpretations, it does not follow that the function of interpretation is to be enlarged into the function of legislation. The separation of the two is in theory assumed, and in constitutions declared, however the theory may be contradicted and the Constitution ignored in practice.

Jurisprudence is not the making of law, but the application of it; this application belongs to the courts. The Constitution of the United States was not made by the judges; they expound it, and generally in the exposition other courts will follow the Supreme Court; but the Supreme Court has not always followed itself, that is to say, it does not always adhere to its own precedents; the executive and legislative departments do not feel bound to follow it; nobody, in any department or court, would now follow the *Dred Scott* case, and there are many who would not follow the late legal tender exposition of the Constitution.

Jurisprudence is not retroactive. The statute is there; everybody may read it for himself; if he thinks it means something different from what the courts think, he takes the risk of that; such a risk is inseparable from the use of language. In construing the meaning of a statute the courts in no sense make the law; they only interpret.

Law libraries hold two classes of books, one large and one small; the latter contains the statutes. In the oldest of the States the statute books may number over a hundred. In New York there are one hundred and twenty-five. How many other law books are there? From ten to fifty thousand. The law not contained in the statute was made by the judges. For this reason it is called judge-made law; sometimes it is also called case-law, and sometimes the law of precedents. The last is the best name for it.

It may be asked: Can judge-made law be eliminated from our legal system altogether, as if the answer could affect the question of codification? It could not indeed affect it, because partial elimination may be better than none at all. But it is quite possible to eliminate judge-made law from our system; that is to say, every general rule of the law can be reduced to a statutory form; not all at once perhaps, but by degrees; that is, a great part now and the rest hereafter. Under such a code precedent ceases to be law, and becomes a guide. Exposition is not in any just sense judge-made law; in fact it is not law at all. If in the process of exposition the inferior court follows the superior, it yields to authority; if one co-ordinate court follows another it defers to another's judgment in cases where opinions may differ; if, however, the previous judgment is clearly in conflict with the enactment, the former must give way, for the reason that the enactment is the paramount authority.

Two questions are sometimes asked in respect of a code:

1. How will the judges decide if they find no provision of the Code to guide them? and

2. How will they decide if they find no provision of the Code, and no precedent?

The answer to each is easy:

1. If they find no statutory provision and a precedent, they will decide according to the precedent.

2. If they find no statute and no precedent they will decide, as they would now decide in the same circumstances, that is, upon the

nearest analogy to an established rule, or according to the dictates of natural justice; or they may possibly leave the case undecided, as Lord Mansfield did in *King* v. *Hay*.

There is still another question: Will not one court, in construing a provision of the Code, follow a construction already given by another? In other words, will not the courts thus make a law unto themselves by adhering to the principle of the following adjudged cases? The answer has already been given, and we will add that, so fast as concurring precedents accumulate in sufficient numbers the Legislature may add more provisions to the Code; so that in fact the Code will keep expanding as the people and their business expand. We shall meantime have gained this inestimable advantage: The rules already accepted will for the time being be collected, classified and arranged, inconsistencies will be reconciled, bad precedents will be discarded, good ones established, and, above all, the people will be able to see the law for themselves. We shall have firm ground somewhere; whereas, now the law of precedents is not and cannot be known generally by the people; nor can it be known with certainty by even the lawyers and the judges, to say nothing of the time wasted in searching innumerable precedents.

[To be continued.]

THE LATE HON. T. J. J. LORANGER.

The Hon. T. J. J. Loranger died somewhat suddenly, on the Island of Orleans, on the 18th August. *La Minerve*, in a notice of deceased, says:—

"M. Loranger fut une personnalité dans notre politique et au barreau. Tout le monde regrettera sa perte.

"Il naquit à Yamachiche, le 2 février 1823, et est le frère ainé de M. J. M. Loranger, conseil de la reine, et de l'honorable Louis Onésime Loranger, juge de la Cour Supérieure. Il fit ses études au collège de Nicolet, où il se distingua par ses talents remarquables. Il étudia le droit sous M. Antoine Polette, avocat des Trois-Rivières, qui devint plus tard juge de la Cour Supérieure, maintenant en retraite. Il fut admis à la pratique du droit, à Montréal, le 3 mai 1844, et nommé conseil de la reine, le 26 décembre 1854.

"Il épousa en 1850, mademoiselle Sarah-Angélique Trudeau, nièce de feu le grand vicaire Trudeau. M. Loranger eut de cette union une enfant, mademoiselle Alexina, femme de M. Henri Archambault, avocat. Il eut la douleur de perdre sa femme en 1858. En 1860, il épousa en seconde noces mademoiselle Zélie-Angélique Borne, petite-fille du regretté M. Aubert de Gaspé.

"Devenu l'associé de M. Drummond, qui fut fait, lui aussi, juge, M. Loranger ne tarda pas à se créer une très haute position au barreau, surtout comme criminaliste. Durant plusieurs années, il s'occupa activement de politique et se distingua éminemment à la législature des Canadas-Unis. Elu en 1854 député du comté de Laprairie, il fut secrétaire-provincial sous l'administration Macdonald-Cartier.

"M. Loranger a été nommé juge le 28 février 1863 et a occupé cette position jusqu'en 1879, époque où il prit sa retraite. Il a agi très souvent comme assistant-juge de la cour d'appel, et en 1855, alors qu'il était encore bien jeune, il a représenté la Couronne devant la cour seigneuriale où il se fit remarquer d'une manière spéciale. Le juge T. J. J. Loranger, durant tout le temps qu'il a administré la justice, a fait preuve d'un talent et d'une science qui se rencontrent rarement. Il était professeur de droit administratif à l'Université Laval, qui lui a conféré le dégré de docteur en droit. Il a été chargé de la codification des lois provinciales, et son érudition a rendu au pays des services dont tous les législateurs de l'avenir seront heureux de tirer profit. Il a écrit un commentaire sur le Code Civil—dont deux volumes ont déjà paru—qui n'aurait pu manquer de le placer au premier rang de ceux qui ont écrit sur notre jurisprudence. Ses lettres sur l'interprétation de la constitution fédérale sont en grande estime dans le monde légal. Président de la société Saint-Jean-Baptiste, il a travaillé, lors de la célébration de la grande fête de 1884, avec toute l'ardeur d'un jeune homme enthousiaste, pour célébrer dignement les noces d'or de cette société.

"Le juge Loranger demeurait à Sainte-Pétronille, Ile d'Orléans, avec sa famille, depuis le commencement du mois de juin, où il suivait un traitement spécial, pour soigner une

angine pectorale dont il souffrait depuis un mois. Depuis quelques jours, il s'affaiblissait beaucoup et avait beaucoup maigri. M. Loranger était toujours sur le point de partir pour la France afin de rétablir sa santé, mais il retardait constamment ce voyage, malgré l'avis de ses médecins, et travaillait à la codification des statuts."

GENERAL NOTES.

EXCOMMUNICATION CASE.—The Rev. Coker Adams, Rector of Soham Toney, has excommunicated Mr. Payne, a farmer, eighty-two years of age. Mr. Payne does not attend Church, and, it is said, has refused the clergyman admission to his house. A letter was written threatening to excommunicate him, but Mr. Payne, not understanding the process, wrote to inquire whether any part of the last half year's tithe had accidentally remained unpaid. He received the following reply: "Sir,—My letter of last Sunday was not written in consequence of any personal matter. You have, as you truly say, always paid me my dues. I wrote to remind you that you had persistently neglected to attend the Church's services and refused to receive her ministers, and that I should therefore feel it my painful duty to pronounce you cut off from the Church's communion and membership. The wish I express at the end of my letter was quite sincere and remains unaltered still.—Yours faithfully, COKER ADAMS." The wish referred to in the first letter was that the rector prayed God to change Payne's heart and save his soul. When the sentence was pronounced the whole congregation was taken by surprise. Just before the sermon the rev. gentleman said, 'In the name of God, &c.,' making use of the entire form of excommunication, which is generally believed to be obsolete. Mr. Payne seemed unmoved by the proceeding.—*Law Journal* (London).

THE FIRST LAWYER IN BOSTON.—Almost two and a half centuries ago, Thomas Lechford, who had been bred at the English bar, came to Boston to practice his profession. He was the first professional lawyer in the colony. He remained here three or four years, when he was glad to return to London and the more congenial haunts of Clement's Inn. Not very much is known of his doings here, except that in 1639 he was disbarred on a charge of going to the jury and pleading with them out of Court. He was at the same time admonished not to meddle with Court business unless he should be called upon by the Courts. The next year he was again taken to task for his officiousness towards the Courts, and he promised not to meddle in future. In 1642, after his return to England, he published his 'Plain Dealing, or News from New England.' It is apparent from this book that the ground of his trouble with the Courts was that he was trying to set up the common law, while the Puritan Courts cared nothing at all for the common law, but were trying to set up, especially in criminal matters, the Mosaic law. Lechford tells us that the Governor gave the charge to the grand juries 'under the heads of the Ten Commandments.' Long after Lechford was driven from Boston came the witchcraft trials, and there was not even then any lawyer to preside upon the bench, or to defend the accused at the bar. There was no use for lawyers learned in the common law, 'the perfection of common sense,' while ministers in the pulpit and on the bench proclaimed a law that was made up more of superstition than of sense. Now the Puritan ministers have gone; no place in the wide land is more free from the taint of the religion that in early days was the law as well. The lawyers have come; there are now about fourteen hundred of these ministers of a new civilization in Boston. Thomas Lechford, while there, kept a note-book in which he entered a memorandum of the cases that he conducted, the papers that he drew up, and the pay that he received. The American Antiquarian Society is about to publish it. It will be entertaining now.—*American Law Review*.

THE FRIEND OF MAN.—Courts have leaned so far in favor of the assured in the interpretation of insurance contracts, that we are not surprised at the ingenuity of counsel in the case of *The Trojan Mining Company* v. *The Fireman Insurance Company*, decided by the Supreme Court of California, May, 1885, in claiming that because a watchdog was kept in the building insured, while the watchman slept in another building across the road, and distant about one hundred feet, there was no breach of the condition of the policy which required the assured to employ a watchman to be in and upon the premises night and day while the same were idle. It also appears from the evidence that it was shown that the dog 'had the whole range of the building on the inside, and was accustomed to bark loudly when any stranger approached the building.' But this also failed to prevail with the Court, and for once at least an insurance company secured a victory: but it shows what a narrow escape it had from losing the case from the 'bark of a dog.'—*American Law Record*.

THE PRIVILEGES OF A FOREIGN ATTACHÉ.—At the Westminster County Court, on July 20, before Judge Bayley, an action brought by Mr. George T. Parkinson, of Bath, to recover from Henry A. Potter, of Hampstead, the sum of 37*l*. 19*s*. in respect of rates paid in the parish of Marylebone, was heard. It appeared that the plaintiff was the freeholder of 1 Blandford Square, and the defendant formerly held the lease. In 1883 the lease of the house was assigned to Senor Pinto Basto, at that time Portuguese consul-general, with offices at 1 Throgmorton Street, City, and attached to the Portuguese Legation at 12 Gloucester Place, Portman Square. In the meantime an application was made for payment of parochial rates, and these not being forthcoming from the occupier were eventually paid by the plaintiff, who now sought to recover them from the defendant, who in taking the house agreed to pay the rates. The defendant's counsel urged that Senor Basto, who was the proper person to pay the rates, was not privileged from arrest under the Act. It was contended that he could not claim exemption as consul-general, and that his connection with the embassy was an honorary one and not of a nature entitling him to the privileges allowed to ambassadors and their servants by this country. After a lengthened argument, his Honor held that Senor Basto, as an attaché to the embassy, was privileged, and gave judgment for the plaintiff accordingly.