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### *ACTIONS IN FORMA PAUPERIS.*

In the case of *Laramée et al.* v. *Evans*, noted in the present issue, Mr. Justice Jetté decided a question of some importance to the revenue. The defendant, in an action to annul a marriage, is defending herself *in forma pauperis*. The evidence was taken by stenography, and the costs on the depositions of witnesses called for the defence, including a lengthy cross-examination, amounted to over a hundred dollars. The defendant having represented to the Court that it would be out of her power to pay this amount, Mr. Justice Jetté allowed the privilege granted to defendant of pleading *in forma pauperis* to be extended so as to include the fees on the depositions, and an order was made that the evidence should be filed unstamped. It has not been the practice to receive the evidence without payment of fees in these cases, and it is stated that the late Mr. Justice Mondelet, in granting leave to plead *in forma pauperis*, used to except the cost of depositions. On the other hand, of what benefit would it be to allow a party to file pleadings gratuitously, if the expense of the evidence, swollen perhaps chiefly by the cross-examination, bars the way to final hearing?

### *THE LATE LORD JUSTICE THESIGER.*

Lord Justice Thesiger, of the English Court of Appeal, who died on the 20th ult., was one of the youngest judges on the English bench. He was the third surviving son of the late Lord Chelmsford, an ex-Lord Chancellor, who died only two years ago, and a brother of Lord Chelmsford who commanded in the Zulu campaign. Lord Justice Thesiger was educated at Eton and at Christ Church, Oxford, and was called to the bar in 1862. He obtained considerable business before Parliamentary Committees and at *Nisi Prius*, and about three years ago was raised to the bench of the Court of Appeal at the early age of 39. The *Law Journal* remarks that he was one who, being placed in the best situation for success, was quite equal to the situation, and succeeded. "He would not have succeeded had he not possessed great industry and conscientiousness. He was a man of great quickness of parts; but he knew his defects. He acquired by labor what others had by intuition, and was able to equal and sometimes beat them in the race." His death was somewhat sudden, and is attributed by a London correspondent to an injury received while swimming, which aggravated an old complaint in one of his ears. His place in the Appeal Court has been filled by Mr. Justice Lush, a judge of long standing and eminent reputation, but who has already attained the ripe age of 74.

A Syllable Too Much.—In the case of *City Bank* v. *Barrow*, Lord Hatherley speaks of our Civil Code as "this voluminous Code." Perhaps his Lordship meant to say "luminous."

## NOTES OF CASES.

### COURT OF QUEEN'S BENCH.

Montreal, Nov. 12, 1880.

Sir A. A. Dorion, C.J., Monk, Ramsay, Cross, J J., Baby, A.J.

Shaw (plff. below), Appellant, & McKenzie et al. (defts. below), Respondents.

*Capias—Damages—Probable Cause.*

*A debtor, about to depart for England, refused to make a settlement of an overdue debt with his creditor, who thereupon caused him to be arrested on capias; held, that the arresting party being in good faith, and there being probable cause for the issue of a capias, the creditor was not liable in damages.*

The appeal was from a judgment of the Superior Court, Montreal, Johnson, J., Dec. 30, 1878, which will be found reported in 2 Legal News, p. 5.

Ramsay, J. To obviate all misapprehension let me say at once that the Court is not about to lay down any doctrine at variance with the jurisprudence which reached its highest development in the case of *Hurtubise & Bourret* (2 L.N.54). Only one member of the Court, so far as I know, doubts the soundness of that jurisprudence, and though my doubts have not disappeared, I do not contend against a jurisprudence which I consider settled. Although I do not assent, I have ceased to dissent, to the doctrine laid down in that well-known case. But the case

of *Hurtubise & Bourret* and this case have no resemblance whatever. In the former the question was as to the sufficiency of an affidavit for a capias; and we held that it was not sufficient to swear to the fact of the intention to depart, and the grounds for believing this intention to exist, together with the fact of the overdue debt, but that the affidavit must set forth the reasons for believing the intent to defraud besides, or, as Chief Justice Meredith, in a more recent case, has precisely expressed it, the fact that the debt is overdue is not evidence that the departure from the jurisdiction is with intent to defraud. What we are invited to decide in the present case is, that because the affidavit on which defendants took out the capias against the plaintiff is insufficient, therefore, the defendants are liable in damages. I take it this is not the doctrine of the law. *Milot & Chagnon*, 3 R. L. 454. To give it a little substance we have an argument put forth, which, to say the least of it, is novel in form. It is contended that when a suspicious fact is established, the deponent must enquire as to whether the suspicion can be removed. Now, let us leave all subtleties and see what the law does require to protect the party suing out extraordinary process from an action of damages. It requires "probable cause" and absence of malice. If there be not want of probable cause and malice combined no action of damages for false imprisonment will lie. I use the words of the English law because they have been commonly used here; and I fancy they have gained currency because they express in a striking manner the elements of the doctrine of the civil law. The governing doctrine I take to be, that there is no action of damages when the arresting party is in good faith, understanding good faith to exclude *faute grossière*. At any rate the English formulary has been distinctly recognized by the Legislature, Art. 796, C.C.P., and by this Court as expressing correctly the law, in the case of *Brown* v. *Gugy*. The second jury trial was on issues formulated by the judgment of this Court ordering a new trial; they were as to the existence of probable cause, malice, and amount of damages. We held the same doctrine in the case of a magistrate who had signed a warrant of arrest in Quebec in 1875, *Marois* v. *Bolduc*, in the case of *Beauchemin* v. *Valois*, and in *Ryan* v. *Laviolette*. Malice may be presumed, it is true, from want of probable cause (*Dennis & Glass*, Q.B., 17 L.C.R., p. 473), but where there is cause, even express malice will not render the party liable. *David* v. *Thomas*, Q.B., 1 L.C.J., p. 69.

Under these principles let us examine the evidence. It is now totally unimportant whether Howard or Reid told McKenzie that Shaw was going to leave the country, for the fact is admitted to be true, however McKenzie knew it. The next fact is that there was an overdue liability. This is fully proved by Reid, the broker who negotiated the transaction. He swears that the debt was due on the 25th of June, nearly a month before the arrest. This is confirmed by Turner, who also proves that the debt was not paid. The answer to this is that the account was disputed, and that an action was pending at Toronto in which Shaw denied that the debt was due. It is the first time I ever heard that it was an evidence of integrity to dispute the payment of an account that was due. It is frequently done by people otherwise respectable, but it is a fraud, nevertheless. But the non-payment of a commercial debt 23 days after it was due, and after demand of payment, is no complete measure of Mr. Shaw's delinquency in this matter. Mr. Greening was especially charged to wait upon Mr. Shaw in Toronto in order to obtain a settlement. This was in March or April. Mr. Shaw's answer, if not a lie, was at all events a prevarication. To set Greening off the track, he told him that he had sent a settlement. The settlement he sent was the 4 months note mentioned by Turner, a departure from the contract proved. In *Mills and Meier et al.*, 5 Q.L.R., p. 274, prevarication and unsatisfactory excuses were held to be some ground for an attachment. We have therefore fully proved—shuffling and prevarication as to the settlement, a fraudulent defence to the action at Toronto and departure. And yet we are coolly told that there is absence of probable cause, for it would have been easy for Mr. Powis, who was in Toronto, to find out that these were merely the eccentricities of a great land owner, of an opulent merchant of first-class standing, who could buy on credit as easily as other people could with cash. It seems to have been quite possible to get witnesses to swear to all this;

but, apart from the antecedent improbability of the story, it happens all to be contradicted. Mr. Reid, one of appellant's own witnesses, proves that Mr. Shaw was so "troublesome about giving settlements according to contract, altering the contract some way or other," that MM. Damase Masson & Co. would not deal with him. From the mouths of defendant's witnesses we have the thing more explicitly. Mr. Osborne tells us that all plaintiff's transactions with him were unsatisfactory. Previous to the 19th July, 1878, Osborne would not have trusted him. In Osborne's absence he did get credit, and paid by note, which was protested. Osborne sent Fulton to get a settlement of the note in Toronto. Fulton saw Shaw, "who received him very cavalierly." This must have been about the 18th, for Fulton could not again see Shaw, who had started for England. Fulton did not get paid till the 20th or 21st. Now how did he stand at New York? Mr. McGregor tells us his credit was not good, that he was supposed to be involved "very heavily" in tea transactions that would entail an "enormous loss," he could not readily buy on credit, and some of his paper was overdue. In Boston, we might also infer that his business standing was pretty much as McGregor has described it was in New York; but the words are open to another interpretation, and therefore they should be passed over. In Montreal, Mr. Lightbound declined to give him either a good or bad character, but said that with him his credit was as good afterwards as before the issue of the writ. Mr. Thompson, of Montreal, had two transactions with Shaw, one of which was unsatisfactory. Not only there is no contradiction to this testimony, but Shaw scarcely ventures to cross-examine those who complain of his dealings with them. If the unsatisfactory nature of the transactions with Osborne and Thompson was due to them and not to him, he might have extracted from them something to show that the dispute differed in kind from that raised by the plea in the Toronto action brought by defendants. The audacity of Mr. Shaw in suing the creditors he had thus wronged by keeping them out of their money or what they could have used as money for nearly five months, for $50,000 damages is confirmatory of the testimony of those who have spoken as to his claims to high standing. I have only to add that we agree with the Court below in distinguishing this case from that of *Lapierre & Gagnon*. In that case the settlement of the debt implied a waiver of any claim for damages. No such waiver can be inferred from a payment made in order to allow the party to go at large.

The appeal is dismissed with costs.

Judgment confirmed, Dorion, C.J., and Cross, J., dissenting.

*Trenholme, Maclaren & Taylor*, for appellant.

*Doutre, Branchaud & McCord*, for respondents.

## COURT OF REVIEW.

MONTREAL, NOV. 13, 1880.

SICOTTE, TORRANCE, JETTÉ, JJ.

MCNAMEE et al. v. JONES et al.

[From S. C., Montreal.

*Capias — Petition to be discharged—Failure of defendant to explain suspicious circumstances.*

*On a petition for discharge from custody under C.C.P.* 819, *if the defendant fails to explain circumstances which induce a strong suspicion of guilt, and which he might easily explain, if innocent, his omission furnishes a forcible inference against him.*

The judgment under Review was rendered by the Superior Court, Montreal, Papineau, J., granting defendant's petition to be liberated from capias.

The capias issued upon the affidavit of W. G. Turner, book-keeper of the plaintiffs, who alleged that the defendants were indebted to plaintiffs in a sum of $14,564, money feloniously stolen by defendants, James Jones and James Trainor, and others, from the plaintiffs,—that defendants had, shortly after the larceny, been arrested for the crime and committed for trial; that they had presented an application for habeas corpus, which was dismissed by the Court of Queen's Bench,—that subsequently the Crown had given a consent for the admission of the defendants to bail, and an order was being prepared for their liberation, &c.

PAPINEAU, J., granted the defendants' petition, "Attendu que les demandeurs n'ont pas de créance personnelle contre les défendeurs, requérants."

SICOTTE, J., differed from the judgment of the majority of the Court of Review on the following grounds:—

1o Le déposant Turner ne connait rien per-

sonnellement du vol reproché aux défendeurs; —c'est ce qu'il affirme dans son témoignage sur la requête pour libération. Ainsi l'affidavit donné par lui pour l'émanation du capias est expliqué par le témoignage qu'il a donné sur la requête pour libération. La cour en première instance a bien décidé, en accordant la libération, faute de preuve de dette.

2o Les défendeurs étaient dans l'exercice d'un droit en demandant par habeas corpus à être admis à caution sur l'accusation de vol. Dans telle circonstance, tout se faisait en pleine publicité, sous la surveillance des tribunaux, comme des demandeurs mêmes. Cette publicité, cette surveillance, excluent l'idée comme la possibilité de fraude. Le capias est permis pour faire incarcérer le débiteur qui, étant libre, peut s'esquiver furtivement. Mais quand il est sous verrou, pourquoi demander qu'un autre ordre émane pour le mettre où il est déjà? Le plus extraordinaire dans l'espèce, c'est que ceux qui demandent cet ordre s'entendent avec les défendeurs, avec la Couronne, pour que ces derniers soient élargis par le procédé qu'on invoque maintenant comme preuve de leur intention de quitter le pays avec intention de les frauder.

TORRANCE, J. This was a petition by defendants for discharge from custody, on the ground that the affidavit upon which a *capias* had issued was untrue. C. C. P. 819 says that the defendant may obtain his discharge by showing that the essential allegations of the affidavit are false or insufficient. The affidavit describes the defendants as follows:—"James Jones and James Trainor, heretofore residents of some place in the United States of America, to the plaintiffs unknown, but at present temporarily of the said city of Montreal, laborers." After setting up the cause of action, there is the usual allegation of *meditatio fugæ*, immediate intention to depart on the part of the defendants, with intent to defraud, and as a reason for belief of such intent, defendant says, "that the said defendants have no domicile within the Province of Quebec or Dominion of Canada, and are strangers who have come to this Province for the purpose of committing larcenies, and are mere adventurers unable to give any satisfactory account of themselves."

Now, what are the facts? On the 19th April last the deponent, clerk of plaintiffs, drew out of the Bank of Montreal, about mid-day, the sum of $14,564, in bills of various denominations, many $10 and $2, with the intention of going West. He put these in a valise which he took to the Bonaventure Station and placed in a section of a Pullman car shortly before 10 p.m. While his attention was diverted for a moment the valise disappeared. The detective, Andrew Cullen, passing the Bank that day, noticed two suspicious looking persons loitering about the Bank door, and spoke of it. One of these persons was the defendant Trainor. The following day three or four persons were arrested on the charge of larceny of the money, one of them being Trainor, and on the 21st Jones was arrested, and on his person were found eighty-eight $10, one $5, one $2, twelve $1—same kind of money which was stolen. Further a valise was found at his boarding-house, Mme. Fortin's. This valise had been brought by a carter, and after lying some days in the passage was put into a shed under some coats and furniture. The valise was found to contain 300 $5, 95 $4, similar bills to those taken from the bank.

These being a few of the facts, of record, it would have been easy for the defendants to disprove the character given them and their fraudulent intentions charged in the affidavit, or that they were debtors of McNamee & Co., or that the bills found upon the person of Jones and in the valise were honestly got, and were not stolen from McNamee & Co. They did nothing of the kind, and it is here the duty of the Court to throw the burden of proof upon the defendants in matters peculiarly within their cognizance. Was it in the ordinary way of business for Jones to carry about on his person 88 bills of $10 each, $880, or to send to his boarding house a valise by a carter, and allow it to lie under the coals of a shed neglected and uncared for, for days? Was it a usual thing? Is Jones to be discharged without explaining all this, when he could so easily do it if he had an explanation to give which would bear the light of day? I cannot agree to it. Starkie on Evidence, vol. 3, p. 937, says, "If circumstances induce a strong suspicion of guilt, and where the accused might, if he were innocent, explain those circumstances consistently with his own innocence, and yet does not offer such explanation, a strong natural

presumption arises that he is guilty. And in general, where a party has the means in his power of rebutting and explaining the evidence adduced against him, if it does not tend to the truth, the omission to do so furnishes a forcible inference against him." This rule is applicable to civil as well as criminal proceedings. See also Taylor, Evidence, vol. 1, §. 347 et seq. Broom's Maxims [726] et seq. I am of opinion to dismiss the petition for discharge as unproved.

JETTÉ, J., concurred. The debt was established by the affidavit, and it was for the defendants to show that the allegations of the affidavit were false. Unless they could rebut the affidavit, they could not obtain their liberation.

The judgment in Review is as follows :

" Considering that defendants have failed to disprove the allegations of the affidavit upon which the said *capias* issued;

" Considering, therefore, that there is error in the said judgment of 31st August last, doth reverse the same," &c.

*M. J. F. Quinn* for plaintiffs.
*F. X. Archambault* for defendants.

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## SUPERIOR COURT.

[In Chambers.]

MONTREAL, Oct. 29, 1880.

LARAMÉE et al. v. EVANS.

*Pleading in forma pauperis—Costs of Depositions.*

*The permission to plead in forma pauperis includes the privilege of having the defendant's depositions taken and filed without payment of the usual fees.*

The defendant in this case was allowed to plead *in formâ pauperis*. Subsequently the depositions taken on her behalf, with the cross-examination, involved an amount exceeding $100 in stenographer's fees, which, she represented, it was not in her power to pay.

JETTÉ, J., held that the depositions might be filed unstamped. The stenographer was an officer of the court, being employed and paid by the prothonotary, and therefore the permission to plead *in forma pauperis* included exemption from the stenographer's fees as well as all other court dues. C.C.P. 31.

*Bonin & Archambault* for plaintiffs.
*Maclaren & Leet* for defendant.

## SUPERIOR COURT.

MONTREAL, Nov. 13, 1880.

HOWARD et al. v. YULE.

*Security for costs—Absent plaintiffs—C. C. 29.*

*Where of two or more co-plaintiffs, (co-heirs) one is absent from the Province, security can be demanded from the absent plaintiff.*

The plaintiffs, in their quality of heirs of the late William Yule, instituted an action to have defendant removed from his office of executor. Some of the plaintiffs being described in the declaration as resident in Ontario, the defendant moved that the absent plaintiffs be held to give security for costs, and to file a power of attorney.

The plaintiffs cited *Beaudry* v. *Fleck*, 20 L. C. Jurist, 304.

*Kerr, Q.C.*, as *amicus curiae*, referred the Court to *Henderson* v. *Henderson*, 2 Legal News, 191.

PAPINEAU, J., granted the motion, citing C.C. 29, and *Humbert* v. *Mignot*, 18 L.C. J. 217. The judgment is as follows:

" Considérant que les demandeurs sont conjoints dans la demande qu'ils ont porté contre le défendeur, et que dans le cas où celui-ci réussirait dans son action il aurait un recours contre les demandeurs pour les frais encourus à cause de leur action conjointe;

" Considérant cependant que vu l'absence du pays des demandeurs, Catherine Letitia Mary Howard, épouse dûment séparée de biens de Cameron Marsh Hamilton Bartlett, et du dit Cameron M. H. Bartlett, assigné pour autoriser sa dite épouse, le recours du défendeur ne pourrait pas être exercé comme il aurait droit de le faire;

" Considérant de plus que la procuration produite au dossier de la part des dits demandeurs absents n'autorise pas spécialement le procédé en destitution du défendeur en sa qualité d'exécuteur testamentaire demandé par l'action;

" La cour accorde la motion du défendeur et ordonne que les dits demandeurs absents es-qualités fournissent le cautionnement *judicatum solvi* demandé par la dite motion, et une procuration autorisant spécialement le procédé adopté contre le défendeur, et que tous les procédés soient suspendus dans cette cause jusqu'à ce qu'ils se soient conformés aux présentes, les dépens devant suivre le sort du principal."

*Bethune & Bethune*, for plaintiffs.
*Ritchie & Ritchie*, for defendants.

## *THE DECLINE OF CIRCUIT LIFE.*

In those days there was a certain amount of romance and adventure in Circuit life—when Thurlow rode the Western Circuit on a horse procured "on trial." Eldon went the "Northern iter" on a hired horse, but was obliged to borrow one for the youth who rode behind him, in charge of the saddle-bags, in the capacity of clerk; and North, afterwards Lord Keeper Guilford, when riding the Norfolk Circuit, got mellow and had to be put to bed in a public-house, while "the rest of the company went on for fear of losing their market," (Campbell's Lives of the Chancellors, Vol. III., p. 441). Even the perils of the road had to be shared by the gentlemen of the long robe in comparatively recent times. Thus we find that Mr. Wood and Holroyd (both of whom were afterwards raised to the Bench), when crossing Finchley Common on their way to join the Northern Circuit, were stopped by a gentleman of fashionable appearance, who rode up to the side of the carriage and begged to know "what o'clock it was." Mr. Wood, with greatest politeness, drew out a handsome gold repeater and answered the question; upon which the stranger, drawing a pistol, presented it to his breast and demanded the watch. Mr. Wood was compelled to resign it into his hands, then the highwayman, after wishing them a pleasant journey, touched his hat and rode away. The story became known at York, and Mr. Wood could not show his face in Court without some or other of the Bar reminding him of his misfortune by the question, "What's o'clock, Wood?" (Law and Lawyers, Vol. I., p. 142, 1840).

The Circuiteer set out on his biennial pilgrimage in a post-chaise, if he was a man of means, or mounted on some sturdy steed if otherwise, while some beardless youth, seated among the saddle-bags on another nag, in the capacity of clerk, brought up the rear—the heavier baggage being consigned to the Circuit baggage-wagon. But in whatever mode he journeyed, the etiquette of his profession had decreed that he should not avail himself of any stage-coach or other public conveyance, as he might thereby have an opportunity afforded him of meeting an attorney and "hugging" him, *i. e.* making himself agreeable to him and securing his briefs: and that would be taking an undue advantage of his brethren. Arrived at the Circuit town he could not enter it before the judges, or at least not before mid-day of the Commission Day, so that all might have a fair start in the race for briefs; and even when he got within the "happy hunting-grounds" he was not allowed to stay at or frequent any public inn, lest the same temptations to "hugging" and other undue influences should be presented to him—but he must go into lodgings, for which, of course, he had generally to pay an exorbitant price, there being no keener appreciators of Circuit etiquette than the landladies. In some of the northern towns they used to adopt a sort of sliding scale of charges—a certain price if you had no business, an extra guinea if you had. If he was fortunate enough to know an attorney in the place, or be related to one there, he could not stay with him, or dine with him, or even call on or be civil to him, without contravening the Circuit Code; and were he even known to utter in public his opinion that an attorney "was a most estimable and highly respectable gentleman," he was certain to have to pay a fine to the Circuit mess. Even the very judges were, so to speak, strangers in the land, an old statute of the 8 Richard II. making it unlawful for any one to ride Circuit in a county of which he was a native, or in which he had inhabited, without a writ of *non obstante*.

So numerous a body—often for a fortnight in one town—could not be held together without rules for its guidance and control, and the appointment of officers to execute them. These were as necessary for the guild in its perambulations as when located in its Inns of Court; and the Grand Court, with its Attorney and Solicitor-General, its Crier, its messengers, its Master of the Revels, and Poet Laureate, and even its Bishop, had its distinct sphere of usefulness as well as its comic side. The High Jinks themselves tended to repress irregularities and malpractices, while adding to the hilarity and amusement of the members. The more serious business was of course transacted before dinner; but even in the after dinner "quips and cranks" and uproarious mirth and chaff, a salutary hint could often be conveyed, and a warning given to one who was hovering on the brink of malpractice, and be the means of averting future unpleasantness and severe

measures. These were, besides, but the reflection of the Revels of the Inns of Court, where, as in the Middle Temple Hall, the Master of the Revels after dinner sang a "carol or song, and commanded other gentlemen there and then present to sing with him and the company;" or when, as in Gray's Inn, after dinner "a large ring was formed round the fireplace," when the "Master of the Revels, taking the Lord Chancellor by the right hand, he with his left, took Mr. Justice Page, who, joined to the other Serjeants and Benchers, danced about the coal fire, according to the ceremony, three times, while an ancient song, accompanied with music, was sung by one Toby Aston, dressed as a barrister," in 1773.

In those days when men were accustomed to sit far into the night, it was but natural that the mighty intellects and reverend seniors, after the labors of the day, should unbend a little under the influence of old port, and seek relaxation in the flow of soul and interchange of chaff, as well as reason.

One ceases to wonder that an occupant of the woolsack, when a member of the Oxford Circuit, should have occupied the office of Crier, holding a fire-shovel in his hand as the emblem of his office; that Lord Eldon, while he was Attorney-General of the Northern Circuit mess, indicted Sir Thomas Davenport at the Grand Court at York, for murdering a boy "with a certain blunt instrument of no value, called a long speech;" or that Serjeant Prime was fined by the Grand Court of his Circuit for setting a boy to sleep by his eloquence. There even seems no incongruity in the practical jokes of those days that have since become historical; the hoax upon "Jack Lee" at York, with the dummy brief, Rex *v.* Inhabitants of Hum Town, drawn up by Wedderburn and Davenport; or that practiced on Boswell at Lancaster, when he moved for a writ of *Quare adhœsit pavimento;* or that a late Chief Baron had been crowned with a punch-bowl at York, "in the days when he went circuiting;" and that such men as Alderson, Tindal, Serjeant Cross and others joined in a quadrille to the tune of "Fol de rol rol," but Alderson, setting off wrong, put the rest out, and the whole was soon a scene of confusion."

Much has been written and said as to the value, for the purposes of discipline, of the Grand Circuit Court "*foribus clausis* among the barristers themselves, in which toasts were given, speeches were made, and verses were recited, not altogether fit for the vulgar ear" (Campbell's Lives of Chief-Justices), where the privilege of unrestrained freedom of speech which prevailed was reduced to the following rule by an Attorney-General of the Northern Circuit (Lycester Adolphus): "Never sacrifice your friend to your joke, but remember that man is not your friend who would stand in the way of your joke." There seems to be general consensus of opinion as to the tendency of the amusement of the Circuit table to promote friendship and to bring the leaders of the profession in contact with the juniors, and thus produce a feeling of harmony and good will amongst the Bar, which was productive of the best effects. The terms of intimacy in which the counsel who went the Circuit lived, are pointed to as one of the chief characteristics of those days; and the free interchange of opinions between seniors and juniors as giving rise to sentiments of kindness and respect, and, indeed, the strictness with which the etiquette of the Bar is maintained in England is alleged to be owing in a great measure, to the institution of the Circuit Court for the trial of all breaches of professional etiquette.

The methods of procedure of such a tribunal were doubtless admirably adapted to secure the objects in view; it could pass "from grave to gay, from tender to severe," and could fine the venial offender half in jest, while the graver breaches of etiquette could be visited with all the severity they deserved—even to the extent of expulsion from the mess. Thus in Lord Eldon's time, we find in the Northern Circuit fines for the following offences: "Lancaster, Grand Night, 29 March, 1783. Jno. Scott, Esq., for having come into Lancaster the day before the Commission Day, and having taken up his abode that evening at the King's Arms in Lancaster, fined one gallon." Carlisle, Grand Night, 14th August, 1784, Mr. J. Scott, convicted of travelling between Durham and Newcastle in company with Mr. Clayton, an attorney, fined one gallon." "Lancaster, Grand Night, August, 1784. The following gentlemen were fined a bottle each, for making a party to dine from the rest of the Circuit, at a different house than the Circuit house, in violation of the rules of the

Circuit." "Lancaster, Spring Assizes, 1783. Mr. S. Heywood was congratulated on coming in his new carriage, and Mr. J. Scott congratulated for the like." On the other hand, there have been instances, in very recent times, of appropriate action being taken in the case of graver offences, in which the offenders have, with all due formality, been either admonished or expelled from the body altogether, though happily such instances are rare.

The palmy days of Circuit life, however—when the Grand Court flourished and revelry ran high—were in the times when locomotion was difficult, when Turnpike Trusts were not, and roads were bad, and people and their business could afford, or were obliged, to wait. Then the advent of the legal army was an event in the dreamy life of an Assize town; Assize balls and other festivities abounded, and a Circuit "Bespeak" was an honor sought after by the lessee of the local theatre at every Assize town. We can still remember threading our way with a late Baron of the Exchequer (then a gay circuiteer), to the Theatre Royal, Durham, and listening to a noble army of two announcing to the villain of the play that resistance was useless, as they had surrounded the house. The glories of the festivities on an Assize Sunday at the residence of John Jones, of Ystrad, in his time a leader of the old Carmarthen Circuit, and the dinners of "Lawyer Fawcett" to the members of the Northern Bar, in Lord Eldon's time, when there were such struggles between the claims of "consultation" and the host's old port, are enshrined in history: while the hospitality extended to the Northern Circuit by the Lord of Lowther Castle, was continued down to a very recent period (curiously enough, this having originated at a time when there was only one Assize in the year in those parts, it was given only during the summer Assizes).

But times have changed since then. As the Arab Sheik said to the author of "Eothen," "Puff! puff! there is nothing like steam," it has displaced the stage-coach, the chaise, and even the roadster. The baggage wagon lingered longest, but even it had to succumb a quarter of a century ago on most Circuits, though it still exists on the Western, and might, until recently, have been seen at the accustomed times in the Temple ready for the reception of the baggage of the Circuit; but so little were its uses dreamed of, that it has, ere now, been mistaken for a prison-van. Now the leader or the junior, who, by the aid of the midnight mail and the Pullman car, can be in London to day and the remotest part of the country to-morrow, is no longer placed under circumstances favourable to the cultivation of the old Circuit life and its attendant associations. The clanish or tribal spirit has vanished, and that cosmopolitan idea—the outcome of the steam-engine and other facilities for intercommunication—which would obliterate nationalities, has left its impress indelibly marked on this as on other institutions.—*Mr. Kinghorn in Law Magazine and Review.*

## *RECENT CRIMINAL DECISIONS.*

*Sentence.*—1. Where a defendant is convicted of separate misdemeanors charged in separate counts in the same indictment, the court has power to pass separate sentences exceeding in the aggregate the maximum punishment for one offence.—*Castro* v. *Regina*, English Court of Appeal.

2. C. was charged in the first count of the indictment with perjury in a trial at Westminster, and in the second count with perjury before a commissioner in London, the same false statement being charged in both counts. He was tried in the Court of Queen's Bench at bar, convicted on both counts, and sentenced on the first count to seven years' penal servitude, and on the second count to a further term of seven years' penal servitude, to commence immediately on the expiration of the first term. A writ of error having been brought—Held, that the sentences were warranted by law.—*Ib.*

At Derby, England, Judge Maule was in the act of passing sentence upon a man, when the governor of the county jail came to the table to deliver some calendars to members of the bar, and, in so doing, passed between the prisoner and the judge. Maule thereupon intimated to the governor that, in so doing, he had outraged one of the best known conventional rules of society. "Don't you know," said the judge, "you ought never to pass between two gentlemen, when one gentleman is addressing another?" The offender against this rule apologized and retired, whereupon the judge sentenced the other gentleman to seven years' transportation.