THE

LEGAL NEWS.

VOL. XIX. FEBRUARY 2, 1896. No. 3.

CURRENT TOPICS AND CASES.

By 59 Vict. ch. 44, passed at Quebec last session, art. 499 of the Code of Procedure has been amended so as to permit the Superior Court in the district of Montreal to sit in review in two or more divisions at the same time, in separate apartments, on any juridical day. This amendment became necessary, in order to prevent the roll from being overcharged with cases. The Superior Court is also authorized to sit in review at Quebec in two divisions. The following paragraph has been added after the first clause of art. 500, as contained in art. 5909 of the Revised Statutes:—"The court sitting in review, however, on motion, of which notice has been given to the adverse party, accompanied by an affidavit establishing that the inscription in review of any cause was made with the view of unjustly obtaining delay, may order that, after the expiry of the above delays, it shall be heard, before its turn, on any day or days specially fixed for that purpose."

By 59 Vict. ch. 46, it is enacted that "whereas, by reason of the coming into force of the Revised Statutes and the repeal of section 23 of chapter 78 of the Consoli-

dated Statutes for Lower Canada, doubts have arisen as to the powers of prothonotaries of the Superior Court, clerks of the Circuit Court and their deputies, to judicially close inventories, and whereas it is expedient to remove such doubts;—inventories judicially closed by prothonotaries of the Superior Court, clerks of the Circuit Court or their deputies, since the coming into force of the Revised Statutes, are declared to have been validly closed, and power is conferred on the said officers, for the future, to judicially close inventories, in cases in which such formality is required, as if the said section 23 of chapter 78 of the Consolidated Statutes for Lower Canada were still in force." The Act does not affect pending cases in so far as costs are concerned.

In the notice of the late Lord Blackburn, in the present issue, reference is made to the fact that the announcement of his first appointment to the bench caused a growl of discontent, as he was hardly known to the profession as a practising lawyer. Yet he was afterwards held in great esteem as a judge. An analogous case occurred in this province. The late Mr. Justice Ramsay was hardly known at all as a practitioner, and had very little to do until the Crown business in Montreal was assigned to him. Yet when, in 1873, he was raised to the bench of the Appeal Court, by the learning and acumen of his judgments he immediately took a high place, and added greatly to the reputation of that court. There could be no such thing as slurring over the difficulties of a case while he was a member of the court, as he insisted on the fullest examination, and the more difficult the case the greater the attraction it had for him, and the more careful the investigation it received. Like Lord Blackburn, Mr. Justice Ramsay w as not a Queen's Counsel when appointed to the bench, though he had conducted the Crown business in Montreal with great zeal and ability for several years. Another instance

which might be mentioned is that of the late Mr. Justice Sanborn. We remember well the dissatisfaction expressed at his appointment to the Court of Appeal, but this soon disappeared, and Mr. Justice Sanborn ere long had earned an enviable reputation which he maintained up to the time of his decease.

The great evil of endless appeals and rehearings in criminal cases, which seem to be a matter of course in some portions of the United States, has been vigorously exposed by Mr. Justice Parker in charging a Federal Grand Jury in Arkansas. This judge, who, it is said, has himself sentenced over one hundred and fifty persons to death, asserted that the number of those who have been murdered in the United States in the last five years is six times larger than the Continental army at the close of the Revolution, and that the number of the murdered last year is greater than the standing army at the outbreak of the civil war. In the absence of precise figures, we do not know how far this may be an exaggeration, but the judge went on to say that the issue before the country was whether or not life was to be adequately protected. He thought the people should demand of the courts that they discountenance intrigue and hair-splitting distinctions in favor of criminals. The appellate court, he added, existed mainly to stab the trial judge in the back and enable the criminal to go free. In the same journal in which this synopsis of Judge Parker's address appeared, we read of the execution of a murderer who was found guilty so long ago as July 13, 1894, and sentenced to be executed Aug. 21, 1894. The day the execution actually occurred was the fifth day fixed for it. Such cases, if not common, are certainly not unprecedented.

SUPREME COURT OF CANADA.

OTTAWA, 9th Dec., 1895.

Quebec.]

KERR v. ATLANTIC & NORTH-WEST RY. Co.

Prescription—Action for damages—Injury to property—Continuance of damage—Art. 2261 C. C.—Railway Company—Construction of road—Wrongful act of contractor—Liability for.

K. brought an action against a railway company for damages by reason of a right of way (which he claimed) having been closed up by the building of a portion of the road through the city of Montreal, and claimed that he suffered an annual loss of $450 by being deprived of the right of way. The company pleaded, *inter alia*, that the action, not having been brought within two years from the time the alleged wrong was committed, was prescribed by Art. 2261, C. C., and also, that the injury was done by the contractor for building the road, and they were not liable therefor.

Held, affirming the decision of the Court of Queen's Bench, that the injury complained of having been committed by one act, the consequences of which might have been foreseen and claimed for at the time, the fact that the damage continued did not prevent the prescription running against K., and his action was barred by Art. 2261, C. C.

Held, also, that the company were not liable for the wrongful act of the contractor in borrowing earth for embankments from a place, and in a manner, not authorized by his contract, and so committing the injury complained of.

Appeal dismissed with costs.

Taylor for the appellant.

Abbott, Q.C., for the respondents.

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9 December, 1895.

Quebec.]

LA COMPAGNIE POUR L'ECLAIRAGE AU GAZ DE ST. HYACINTHE v. LA COMPAGNIE DES POUVOIRS HYDRAULIQUES DE ST. HYACINTHE.

Construction of statute—By-law—Exclusive right granted by—Statute confirming—Extension of privilege—45 Vic. c. 79, s. 5 (P. Q.)—C. S. C. c. 65.

In 1881 a municipal by-law of St. Hyacinthe granted to a com-

pany incorporated under a general act of Quebec the exclusive privilege for twenty-five years of manufacturing and selling gas in said city, and in 1882 said company obtained a special act of incorporation (45 Vic. c. 79), sec. 5 of which provided that "all the powers and privileges conferred upon the said company as organized under the said general act, either by the terms of the act itself or by resolution, by-law or agreement of the said city of St. Hyacinthe, are hereby re-affirmed and confirmed to the company as incorporated under the present act, including their right to break up, etc., the streets . . . and in addition it shall be lawful for the company, in substitution for gas or in connection therewith, or in addition thereto, to manufacture, use and sell electric, galvanic or other artificial light . . . with the same privilege, and subject to the same liabilities as are applicable to the manufacture, use and disposal of illuminating gas under the provisions of this act."

Held, affirming the decision of the Court of Queen's Bench, that the above section did not give the company the exclusive right for twenty-five years to manufacture and sell electric light; that it was a private act, notwithstanding it contained a clause declaring it to be a public act, and the city was not a party, nor in any way assented to it; that in construing it the court would treat it as a contract between the promoters and the legislature, and apply the maxim, *verba fortius accipiuntur contrà proferentem*, especially where exorbitant powers are conferred; that the right to make and sell electric light "with the same privileges" as was applicable to gas, did not confer such monopoly, but gave a new privilege as to electricity, entirely unconnected with the former purposes of the company; and that the word "privilege" there used could be referred to the right to break up streets, and did not necessarily mean the exclusive privilege claimed.

Appeal dismissed with costs.

Geoffrion, Q. C., for the appellants.

Lafleur and *Blanchet*, for the respondent.

Ontario.] 9 December, 1895.

DOMINION GRANGE MUTUAL INSURANCE CO. v. BRADT.

Insurance against fire—Mutual Insurance company—Contract—Termination—Notice—Statutory conditions—R. S. O. (1887) *c.* 167 *—Waiver—Estoppel.*

B. applied to a mutual company for insurance on his property

for four years, giving an undertaking to pay the amounts required from time to time, and a four months' note for the first premium. He received a receipt beginning as follows: "Received from B. an undertaking for the sum of $46.50, being the premium for an insurance to the extent of $1500 on the property described in his application of this date," and then providing that the company could cancel the contract at any time within fifty days by notice mailed to the applicant, and that non-receipt of a policy within the fifty days, with or without notice, should be absolute evidence of rejection of the application. No notice of rejection was sent to B. and no policy was issued within the said time, which expired on March 4th, 1891. On April 17th B. received a letter from the manager, asking him to remit funds to pay his note maturing on May 1st. He did so, and his letter or remittance crossed another from the manager, mailed at Owen Sound, April 20th, stating the rejection of his application, and returning the undertaking and note. On April 24th the insured property was destroyed by fire. B. notified the manager by telegraph, and on April 29th the latter wrote returning the money remitted by B., who afterwards sent it again to the manager, and it was again returned. B. then brought an action, which was dismissed at the hearing, and a new trial ordered by the Divisional Court and affirmed by the Court of Appeal.

Held, affirming the decision of the Court of Appeal (*Barnes* v. *Dominion Grange Insurance Company*, 22 Ont. App. R. 68, and of the Divisional Court, 25 O. R. 100), Gwynne, J., dissenting, that there was a valid contract by the company with B. for insurance for four years; that the statutory conditions in The Ontario Insurance Act (R. S. O. 1887, c. 167) governed such contract, though not in the form of a policy; that if the provision as to non-receipt of the policy within fifty days was a variation of the statutory conditions, it was ineffectual for non-compliance with condition 115 requiring variations to be written in a different coloured ink from the rest of the document, and if it had been so printed, the condition was unreasonable; and that such provision, though the non-receipt might operate as a notice, was inconsistent with condition 19, which provides that notice shall not operate until seven days after its receipt.

Held, also, that there was some evidence for the jury that the company, by demanding and receiving payment of the note, had

waived the right to cancel the contract, and were estopped from denying that B. was insured.

Appeal dismissed with costs.

Aylesworth, Q. C., for the appellant.
Cameron for the respondent.

Ontario.] 9 December, 1895.

CANADA ATLANTIC RAILWAY v. HURDMAN.

Railway company—Loan of cars—Reasonable care—Breach of duty—Negligence—Risk voluntarily incurred—"Volenti non fit injuria"—"Kicking" cars on switch.

A lumber company had railway sidings laid in their yard for convenience in shipping lumber over the line of railway with which the switches connected, and followed the practice of pointing out to the railway company the loaded cars to be removed, the railway company thereupon sending their locomotive and crew to the respective sidings in the lumber yard, and bringing away the cars to be despatched from their depot as directed by the bills of lading.

Held, affirming the decision of the Court of Appeal for Ontario (22 Ont. App. R. 292), and of the Queen's Bench Divisional Court (25 O. R. 209), that in the absence of any special agreement to such effect, the railway company's servants while so engaged were not the employees of the lumber company, and that the railway company remained liable for the conduct of the persons in charge of the locomotive used in the moving of the cars. That where the lumber company's employees remained in a car lawfully pursuing their occupation there, the persons in charge of the locomotive owed them the duty of using the utmost skill and care in moving the car with them in it, so as to avoid all risk of injury to them. *Heaven* v. *Pender* (L. R., 11 Q. B. 503) followed.

In the trial of an action for damages in consequence of an employee of the lumber company being killed in a loaded car which was being shunted, the jury had found that "the deceased voluntarily accepted the risks of shunting," and that the death of the deceased was caused by defendant's negligence in the shunting, in giving the car too strong a push.

Held, that the verdict meant only that deceased had voluntarily incurred the risks attending the shunting of the cars in a careful

and skilful manner, and that the maxim, "*volenti non fit injuria*," had no application. *Smith* v. *Baker* (1891, A. C. 325) applied.

Appeal dismissed with costs.

Chrysler, *Q.C.*, and *Nesbitt* for appellants.

McCarthy, *Q.C.*, and *Blanchet* for respondent.

CORPORAL PUNISHMENT OF CHILDREN.

The School Board for London has been of late engaged in a protracted and inconclusive discussion on the subject of regulations as to the corporal punishment of girls in its industrial schools; but the matter may now be regarded as in the way to settlement owing to the intimation that the Home Office is not prepared to authorize this mode of correcting refractory girls, and to the decision of Mr. Denman at Westminster Police Court upon a summons against Mrs. Hooton, head-mistress of Cook's Ground School, in Chelsea, for caning a very refractory girl. The magistrate said: "The case is of some importance, especially remembering the fact that the school attendance was compulsory. There is no doubt that the girl deserved punishment, and if she had been caned on the hand there would have been no objection. I am not prepared to say what the punishment should have been when she would not hold out her hand, but I am unable to say that it was a proper form of chastisement for a girl of thirteen to be flogged in the manner adopted. If it had been a boy it would have been a most proper procedure, for there was no undue violence or anything of the sort. I give the schoolmistress full credit for moderation and restraint of temper. She acted honestly and *bona fide;* but still in my opinion it was an error of judgment. There was no excessive cruelty, but till I am overruled by a higher tribunal I shall hold that such a form of chastisement to a girl is not permitted by law. Under all the circumstances, though deciding that there was a legal assault, I shall exercise the power I possess under the Summary Jurisdiction Acts and shall not impose any punishment." The School Board authorities are believed to intend to apply for a special case. We assume that it will raise two points: 1. Whether the rights of the teacher to inflict corporal punishment apply in the case of girls as in that of boys; and 2. If a girl may be whipped, where she may be whipped. There is authority in the "Paston Letters" for whipping even adult daughters, as it

was on at least one occasion resorted to by the wife of the eminent Mr. Justice Paston, no doubt on the strength of his learned opinion.—*Law Journal* (London).

FREDERICK THE GREAT AND THE LAWYERS.

There have been many efforts to reform the law, but very few to reform the lawyers, possibly because the connection between the two is often so slight. Frederick II, of Germany, the most heroic figure in history, and, according to Carlyle, the last of the kings, had his own notion of how to reform the law, and began by reforming those who administered it. To your "disgusted layman" nothing should be more entertaining or hopeful than Frederick the Great's disposal of the case of *In re Arnold and wife, the Millers;* and indeed for the profession itself this *cause célèbre* can point a moral or two; or at the very least it can partially indicate the true spirit in which law reform should be conceived and executed.

In 1770 Arnold, a young miller, and his frau Rosine, were joint tenants of a grist-mill on Crab-run, a little provincial stream near Cüstrin. They held their property subject to a small annual rent due one of the local nobility, and by hard work and true German economy they were barely able to make ends meet. It so happened, however, that one of the land barons up the creek decided to build himself an ornamental fish pond, and to do so diverted part of the stream; with the result that the Arnold mill ran short of water and the miller was unable to pay his rent. Re-entry proceedings dragged on before the local judge for some years, Frau Arnold contesting every inch so bitterly that she had to be locked up once or twice for contempt of court, until finally she and her husband were ousted and the mill sold.

Frau Rosine had good fighting blood in her, and she at once petitioned *Unser Fritz* to investigate her wrongs. Petition being of no avail, the Arnolds appealed the case to the Neumark Regierung, which confirmed the decision of the lower court in every point. By this time four years had passed, and Rosine again petitioned the King for a military commission. This was referred to the Department of Justice, which investigated and dismissed it. Thereupon she petitioned the Grand Chancellor, temporarily sitting in Cüstrin, but he also turned her down. Finally Arnold's brother succeeded in interesting his colonel, Prince Leopold, one of the King's nephews, who eventually

enabled the Frau Rosine to get a new petition before the King, who thereupon appointed Col. Heucking, stationed in Pommerzig, to assist a local commission of judges and lawyers to make report on the facts of the case. The lawyers made one report the colonel another. Frederick immediately forwarded the colonel's "*deutliches und ganz umständliches*" report, as he endorsed it, to his Supreme Board of Justice at Berlin, with a cabinet order that justice be done these Arnolds.

A new commission of lawyers straightway sat upon the case. They delayed reporting for some weeks until Frederick, after another petition from the redoubtable Rosine, issued another royal order demanding that the Arnold matter come to an end. Whereupon the learned commission at once handed down its decision: lower court correct on the law, justice clearly done; as to the facts a mistake is discovered, thirty odd dollars still due the Arnolds; otherwise everything all right, Col. Heucking to the contrary notwithstanding.

By this time Frederick's patience was about exhausted, but not quite. He ordered one more appeal—to the highest court in the kingdom this time—and demanded that the chancellor drop all other business and pass upon this case immediately. The judges worked on the papers—a small cart-load of them—all night, and the next morning the court handed down its decision, in eight folios, completely affirming that of the other courts. When Frederick heard of this he at once issued a cabinet order for a copy of the judgment and the production of the papers, and although sick in bed, he again went over the case. Next morning there was a royal order summoning the Grand Chancellor and his two associates before their King; and what there took place is, perhaps, as claimed by Carlyle, the most interesting and inspiriting chapter in the whole history of law reform.

The King, who was confined by gout, had his couch placed in the middle of the room, and there, in a shovel hat, red dressing gown, black velvet breeches, with military boots that came above his knees, he received the Chancellor and his associate judges. No one else was allowed to be present except a stenographer who took a record of every word that was said, and afterwards incorporated it all in the King's famous protocol. The judges ranged themselves in front of their royal master, and like school boys up for a whipping, waited tremblingly for the fun to begin. Frederick, after a few awkward minutes, finally

threw down the copy of the judgment which he had been perusing, and said to Friebel, the most pompous looking of the associate judges:

"Come here!" whereupon that worthy advanced to within reach of the king's bony forefinger and underwent such an examination into his knowledge of equity and right and "natural fairness," as he never afterward forgot.

"Here is a nobleman," said the King, concluding his examination, "who wishes to have a fish-pond; to get water for it, he taps the stream that runs a poor peasant's mill, so that the miller can do no business except for about four weeks in the year, and of course cannot pay his rent. Now what do the provincial courts do,—they sell the mill so that the nobleman can get his rent. Do you call this justice and fair dealing?"

"No, Sire," answered the portly Friedel.

"And yet," continued Frederick, "the Berlin Tribunal....." Here the Chancellor, piqued at the contemptuous indifference the King has so far shown him, steps forward and meekly corrects: "Not Berlin Tribunal, Your Majesty, but Kammergericht's Tribunal."

"Correct it!" says the King to his stenographer, and then turning to the Grand Chancellor, the highest legal dignitary of the kingdom, he says:—

"And you,—go you, sir, about your business, *instanter*. Your successor is appointed; I am done with you."

Which order the Chancellor obeyed with the utmost speed. The other judges were not so fortunate. He read them a mighty lecture on law and equity, all set forth in the Royal Protocol of December 11, 1779, and then clapped them in jail. Sentence was, dismissal from office, one year's confinement, and payment of compensation to the Arnolds for all losses and costs. The judges of the lower courts were then sent for, and likewise punished,—all except Cüstrin Regierungsrath Scheibler, who had dissented from the decision of his colleagues; he went free; was, in fact, promoted.

This attempt to reform law by example set all Europe talking. The Berliners took the side of the judges, thought Frederick had been too severe, and immediately upon his death the disgraced dignitaries were re-instated. But the King's protocol did its work. Catherine of Russia promulgated it as a noteworthy example of royal supreme judicature; the French people went

wild over it; both kings and peasants found hope in it. And a noteworthy document it is; well calculated to arouse Carlyle's enthusiasm for the strong and heroic; and well deserving the special enthusiasm of all who have to do with law and lawyers. Surely these extracts from the famous document are not grown entirely archaic in these days of equal rights for none and special privileges for all. Heroic judges might commend these words to some of their suitors:—

"The King's desire always is and was, that everybody, be they low or high, rich or poor, get prompt justice; and that, without regard of person or rank, no subject of his fail at any time of equal right and protection from his courts of law.

"Wherefore with respect to this most unjust sentence against the miller Arnold of the Pommerzig Crabmill, pronounced in Neumark and confirmed here in Berlin, the King will establish a never-to-be-forgotten example; to the end that all courts of justice in all the King's provinces may take warning thereby, and not commit the like glaring unjust acts. For let them bear in mind that even a beggar is no less than His Majesty a human being, and one to whom due justice must be meted out.....And whenever the law courts do not carry out justice in a straightforward manner, without fear or favor, but put aside natural fairness, then let them look out for *Seiner Königlichen Majestät*. For a court of law doing injustice is more dangerous and pernicious than a band of thieves; against these one can protect himself; but against rogues who make use of the cloak of justice to accomplish their evil passions, against such no man can guard himself. These are worse than the greatest knaves the world contains, and deserve double punishment.....Courts which fail to deal in equity and justice and natural fairness henceforth can see from the example I have made in this case, that they will be visited with swift and rigorous punishment.

"Of which all Colleges of Justice in all His Majesty's provinces are particularly to take notice."

And they did take notice, and do to this day.—*O. F. Hershey* in "*The Green Bag.*"

THE LATE MR. JUSTICE BLACKBURN.

The death of Lord Blackburn took place on the 8th January. He was born in 1813, and educated at Eton, whence he proceeded to Trinity College, Cambridge, where he graduated in 1835 as

eighth wrangler, and was called to the Bar at the Inner Temple in 1838. Mr. Blackburn established a reputation for legal learning by the publication, in 1845, of his well-known book on "Sales," which held its own as the leading text-book on the subject until the appearance, a quarter of a century later, of the late Mr. Benjamin's treatise. Like several of the present occupants of the Bench, and the Chancellor to whom he subsequently owed his appointment, Mr. Blackburn spent several years of his life in law reporting. In conjunction with Mr. T. F. Ellis, he was engaged in the preparation of "Ellis and Blackburn's Reports." The series was carried on for eight volumes, and was followed by the single volume of Ellis, Blackburn, and Ellis, published in 1858. On the promotion of Erle to the Chief Justiceship of the Common Pleas in 1859, Lord Campbell appointed his fellow-countryman to a puisné judgeship in the Queen's Bench. It is related that Lord Campbell consulted Blackburn as to whom he should appoint. Blackburn mentioned several names, whereupon the Chancellor replied, "I do not think, Mr. Blackburn, that any of these gentlemen would make so good a judge as yourself." Mr. Blackburn was practically unknown to the public and his appointment was disapproved of by the profession. In Lord Campbell's life an extract is given from his diary of July 3, 1859, in which he says: "I have already got into great disgrace by disposing of my judicial patronage on the principle *detur digniori*." He goes on to say that Lord Lyndhurst and others had gallantly defended him in the House of Lords. Objection was taken that the new judge was not a Q. C. But in the short debate in the House of Lords it was pointed out that neither Willes nor Lord Tenterden had ever worn a silk gown, and the Lord Chancellor said: "I knew nothing of Mr. Blackburn except what I knew from having seen him practise in the Court over which I presided. I have no private intimacy, and I declare on my word of honour I don't know of what side he is in politics. But I have known him as a sound, good, and able lawyer—one of the ablest in Westminster Hall." The opinion of Lord Campbell was amply borne out by the subsequent career of the judge. During his occupancy, from 1859 to 1876, of a seat in the Queen's Bench, Blackburn, who had learnt more from reporting than others do from practice, proved himself to be a learned and capable judge. His career is identified with several most important criminal and civil trials. In 1863 he presided over the trial at

the Central Criminal Court of Buncher and others who had been engaged in extensive forgeries of Bank of England notes, and passed sentences of varying degrees of severity, from penal servitude for life to penal servitude for four years. In 1865 he sentenced to death Ferdinand Kohl, a German, who had been convicted of the murder of a fellow-countryman, Fuhrkop, in the Plaistow marshes. At his own request the prisoner was tried by a mixed jury of foreigners and Englishmen. The most famous trial, however, in which he was engaged was the special commission, of which the late Mr. Justice Mellor was also a member, sent to Manchester for the trial of the so-called "Manchester Martyrs." Allen, Larkin, Gould, Maguire, and Shore were charged with the attempted rescue of Colonel Kelly and Captain Deasey from the prison van, and with the murder of Sergeant James Brett on September 18, 1867. Twenty-six men in all were arraigned, but only five were convicted, and only three were hanged, Mr. Justice Blackburn pronouncing sentence. The learned judge had to decide in the Queen's Bench, early in 1868, whether an information by the Attorney-General or an indictment would lie against Governor Eyre on account of his proceedings in the suppression of a riot among the black population of the island of Jamaica. He held that 11 & 12 Wm. III. c. 12, and 42 Geo. III. c. 85, by the provisions of which a governor of a colony, or other person in the public employment out of Great Britain, who has been guilty of any crime or misdemeanor in the exercise of his office, may be prosecuted in the Court of King's Bench in England, were applicable, and that an indictment would lie. When the case came before the grand jury the learned judge reviewed all the circumstances, and pointed out the difficulties of the Governor's position, and in the result the bill was thrown out. Among the civil cases brought before him was an action by a Mr. Wason against various Parliamentary leaders, in which Mr. Justice Blackburn, in conjunction with Lord Chief Justice Cockburn and Mr. Justice Lush, decided that members of either House of Parliament are not liable for civil or criminal proceedings for statements made in Parliament. A question of privilege of a different character was also settled by the late judge in 1873 in the case of *Dawkins* v. *Lord Rokeby*. He held that the privilege which exists with respect to statements made before one of the ordinary tribunals of the land also extends to a court of inquiry appointed by the commander-in-

chief to investigate a complaint made by an officer in the army, and that the privilege is effectual even though the statements are not made in good faith. After seventeen years' service in the Queen's Bench, Sir Colin Blackburn was, in October, 1876, created a Lord of Appeal in Ordinary under the Act of 1876, and on this occasion the approval of his appointment was general and emphatic. He took part in many important cases, both in the House of Lords and in the Privy Council, and seldom failed to make a valuable contribution to the judgments delivered. Among the most important decisions in which he shared were the many appeals in the liquidation of the City of Glasgow Bank. In the well-known case, *Wilson* v. *Waddell*, his was the principal judgment by which it was decided that when mineral workings cause a subsidence and a consequent flow of rainfall into an adjacent mine, no damages can be recovered by the owner of the neighbouring mine. He also gave judgment in two ecclesiastical cases which made a great stir at the time. One was *Julius* v. *The Bishop of Oxford*, under the Clergy Discipline Act, which related to the alleged ritual excesses of Mr. Carter of Clewer, and the other was *Enright* v. *Lord Penzance*, when Lord Blackburn presided in the House of Lords. *Dalton* v. *Angus*, in which he also assisted, and which was heard in 1881, is memorable, not only for the law laid down with respect to the right of lateral support for a building by adjacent land, but for the circumstance that it was the last occasion on which the judges were asked by the House of Lords to deliver their opinions. Lord Blackburn retired in 1886, owing to the state of his health.—*Law Journal.*

INNKEEPER'S LIEN.

The recent case of *Robins & Co.* v. *Gray*, in the English Court of Appeal, brings up an interesting point. A commercial traveller did not pay his hotel bill, and the proprietor set up a lien on certain articles in his custody, although he had known all along that they were the property of the salesman's employer. The Court held that, as the innkeeper was bound to receive the articles, regardless of whose they were, he was entitled to his lien, notwithstanding his private knowledge of the ownership. Lord Esher's opinion is refreshing. Whether agreeing with his conclusion or not, all will welcome so clear and straightforward a treatment of a subject which has often been handled vaguely and unsatisfactorily.

The statement in the opinion that the decision represents what has been the undisputed law for centuries seems rather broad. The judges who decided *Broadwood* v. *Granara*, 24 Law J. Rep. Exch. 1; L. R. 10 Exch. 417, and *Threfall* v. *Borwick*, 44 Law J. Rep. Q. B. 37; L. R. 7 Q. B. 711, for instance, apparently had a contrary principle in mind. And Wharton, in his book on innkeepers, p. 119, makes the unqualified assertion that the innkeeper has no lien on goods he knows are not the property of the guest. That this view has often been taken in America, too, is shown by such cases as *Cook* v. *Kane*, 13 Oreg. 482, and *Covington* v. *Newberger*, 99 N.C. 523. However, the doctrine of the case under discussion seems clearly preferable. As the innkeeper's lien is grounded, not on the credit he gives his guest on the faith of the goods, but on the extraordinary liability imposed on him by law, it seems only just that on all goods which he is bound to receive he should have his lien, whether or not he knows them to be the property of another than his guest. As to articles which he is not bound to receive, his state of knowledge or ignorance may be material, but in the ordinary case, where he has no choice, it should not be the crucial test.—*Harvard Law Review.*

GENERAL NOTES.

MR. JUSTICE HAWKINS AND THE OATH.—At the Cambridge Assizes, Mr. Justice Hawkins commented strongly upon the absurdity of the oath administered to witnesses. Was there a juryman who understood this: 'The evidence you shall give to the Court and jury, sworn between our Sovereign Lady the Queen and the prisoner at the bar,' &c.? Counsel were engaged in asking a child of seven whether she understood it. He did not believe that one witness sworn that day could explain it, and his lordship was astonished that no one had suggested a simpler form than the complicated formula used in Courts. It was surprising that the Legislature had not turned its attention to the matter and devised a much simpler form. His lordship suggested that the words, 'I swear to God that I will speak the truth,' would be sufficient for all purposes, and would be understood even by little children.