The Legal News.

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INSANITY AS A DEFENCE.

The law periodicals of our neighbors on this continent continue to be largely occupied, as is natural, with discussions on the subject of insanity, in its bearings upon criminal acts. Many good people seem to imagine that because Guiteau did an unreasonable thing, in that he killed a worthy man, without the incentive of any immediate personal benefit to himself, such as might be reaped by a highway robber who shoots a person in order to steal his watch, he must be insane. That, of course, is not the doctrine of the law, and let us hope that it never will be. It is true that at the present time medical authority is not entirely consonant on the subject of insanity, but the difference between the higher lights on this question is not really so great as might be supposed. Let us hear what Dr. Hammond, who has devoted much study to the subject, has to say :—"An individual may be medically insane, and yet not a lunatic in a legal sense. His brain is diseased, either temporarily or permanently ; his mind is not in all respects normal in its action, and yet he is responsible for his acts. Many of the insane are clearly irresponsible, and their punishment is demanded only by the imperative necessity which exists of securing the safety of society by preventing their committing criminal acts. This should be done in that way which experience shows is most conducive to the accomplishment of the end in view, even if it involves the taking of the life of the lunatic. But there are others, people with morbid impulses—with delusions as to their mission as reformers, messengers of God etc., with intense egotism and desire for notoriety, manifestly abnormal in character; with tendencies towards the performance of eccentric and unusual acts ; with a total disregard for the restraints upon individual indulgence which a decent sense of the opinions of mankind requires, of excessively-developed passions, which lead them to the commission of various bestial crimes—but who nevertheless show little or no want of intellectual power (indeed this is often above the average), who transact their every day routine work with regularity and precision, and who reason logically and clearly on the subject of their particular point of aberration. Such people are medically insane; their mental processes are radically different from those of mankind in general; there is some defect, inherent or acquired, in the organization of their nervous systems ; and the medical expert who goes into court and testifies to the fact of their insanity is entirely justified, by the accumulated experience of those most competent to know, in so doing. They are insane from a medical standpoint, but they know right from wrong; they know legal acts from illegal ones ; they are able at some time at least to control their propensities, and their delusions may be entirely without reference to the alleged criminal act they may have committed. *While a knowledge of right and wrong can never be properly regarded as a test of insanity, it is a test of responsibility: and by knowledge of right and wrong is not meant the moral knowledge that a particular act would be intrinsically right or wrong—in other words, a sin—but that it would be contrary to law.* In reality, however, the individual may not even have this knowledge; but he must have, in order to make him responsible, the mental capacity to have it."

The president of the Oneida community, to which Guiteau at one time belonged, has written a letter which chimes in with the foregoing. There really seems to be no evidence to show that Guiteau should be saved from the ordinary punishment meted out to murderers, unless his trial should bring out something yet unknown to the world. Of course the utmost latitude of defence should be accorded. Some people are so thoughtless that they would curtail the privileges of a criminal who has done something unusually atrocious. Surely, the world is old enough to have outgrown such folly. It has been wisely said that it would have been better that Guiteau should have been lynched by the mob than that he should be lynched by a Court of Justice. The greater the culprit, the more strictly must recognized rule and precedent be adhered to. The act of Mason, who shot at a helpless prisoner in his custody through the window of his cell, can excite nothing but disgust and contempt in persons of healthful mind.

NEW PUBLICATIONS.

THE PRACTICE IN CIVIL ACTIONS AND PROCEEDINGS AT LAW, in the courts where the Common Law Practice is in vogue; with the amendments thereto necessary to incorporate the provisions of the Statutes of Maine; by Joseph W. Spaulding, of the Sagadahoc bar, reporter of the decisions of the Supreme Judicial Court of Maine. Portland: Dresser, McLellan & Co.

This is a work which, though not adapted to the use of the legal profession in the Province in which the majority of our readers reside, is one which we can commend to those who are in quest of a clear and careful exposition of common-law practice. Mr. Spaulding is no novice in the mysteries of procedure, and those who resort to his work will often meet with an unexpected deliverance from perplexity. The arrangement of the work is very good, and everything, apparently, has been cited which could serve to throw light upon the text, or be useful to the practitioner.

THE ODDITIES OF THE LAW, by Franklin Fiske Heard.—Boston: Soule & Bugbee.

The title of this work indicates its character. It is a collection of quaint and amusing sayings of or about legal and judicial personages, perhaps not all strictly authentic, but which may well serve for the diversion of leisure moments. Some portions of the miscellany we may reproduce hereafter, as space permits. It is only fair to add that this little book is not defaced by the vulgarities which sometimes pass current under the head of legal anecdotes.

NOTES OF CASES.

COURT OF REVIEW.

MONTREAL, Oct. 31, 1881.

JOHNSON, RAINVILLE, JETTE, JJ.

[From S. C., Montreal.

HURTUBISE v. RIENDEAU, and TESSIER, *mis en cause.*

Witness — Officer of Court — Review — Powers of Court of Review.

A bailiff of the Superior Court, who, by the judgment complained of, was suspended, in consequence of his testimony as a witness in the cause, is not a party to the cause in which he was examined, and the Court of Review will not, upon an inscription by him, inquire into the legality of the suspension.

Semble, that the proper mode of seeking redress in such case is by petition to the Superior Court.

The judgment inscribed in Review was rendered by the Superior Court, Montreal, (Mackay, J.), June 27, 1881.

JOHNSON, J. There are two inscriptions in review of this case—1st, the defendant, who had been arrested under a writ of *capias*, petitioned for his discharge, and got it, and the plaintiff inscribes the judgment which liberated him. 2ndly, Louis Tessier, a witness in the case, who happened also to be a bailiff of this court, was found by the learned judge to have been tampered with, and to have sworn falsely; and he was then and there struck from the list.

There would thus appear to be two cases before us: the plaintiff's case, which he inscribes regularly, and which is met on the merits by the defendant, who supports the judgment, and in my opinion, supports it with reason on his side; and secondly, there would be the case of this witness, who assumes to inscribe the judgment in so far as it affects him; and his case would present two points—1st, has he a right to come into review? is he a party? and 2ndly, if he has the right, has he been properly dismissed? In *Ex parte Chartrand*, petitioner, and *Lambert*, respondent, (reported in 3rd volume of Legal News, p. 77), we decided that a bailiff regularly dismissed on petition, and after answer and hearing, had no right to review; and though it was not expressed, I believe we all felt in that case that his recourse would have been to the appointing power, the Superior Court (not to three Judges sitting here in Review) to get himself reinstated. He may or may not have been properly dismissed. He might or might not have had a right to be put under a rule to answer. We say nothing about that now; but the fact of his being improperly dismissed, which we by no means assume, would certainly not give jurisdiction to the three judges sitting here in review. How a witness can call himself a party in the case merely because his evidence was animadverted upon by the Judge in giving judgment, with whatever consequences to himself, I cannot understand. Injustice, if any has been done, gives him a right to redress in the right quarter, but not in the wrong quarter. I do not think that an inscription in review by a witness in a case should be received or can be acted upon. The most outrageous consequences would ensue, if

unprincipled litigants could delay justice by causing all the witnesses to inscribe every judgment. I would therefore confirm the judgment as between the parties, with costs against the plaintiff inscribing, and I would reject the inscription which has been illegally made by a witness who is not a party to the case, and who, if he suffers hardship, should apply to the proper source for redress. As there is no party contesting this singular inscription made by the witness, there is no one to whom we can award costs.

RAINVILLE, J., concurred with Mr. Justice Johnson in holding that upon an inscription in Review, a witness could not complain of the part of the judgment which affected him.

JETTE, J., (*diss.*) differed from the majority only as to the part which concerned the bailiff. His Honor held, as a matter of principle, that disciplinary punishment could be inflicted upon an officer of the Court only for something done or some default committed by him in the discharge of his duty as such officer. Here the bailiff was a witness in the suit, and it appeared to his honor that he had been punished by suspension from the office of bailiff for his conduct in the witness box, and in consequence of the evidence which he had given. His Honor, while agreeing with the judgment of the Court on the merits of the case, was of opinion that the powers of the Court of Review were sufficiently comprehensive to strike out and obliterate—to *biffer*—from the judgment the illegal punishment inflicted upon the witness, Tessier, and he was therefore of opinion to reform the judgment in this respect.

Judgment confirmed, Jetté, J., dissenting.

Z. Renaud for defendant, petitioner.

Desjardins & Co. for plaintiff contesting.

COURT OF REVIEW.

MONTREAL, Oct. 31, 1881.

JOHNSON, TORRANCE, RAINVILLE, JJ.

[From S. C., Ottawa.

BIRABIN dit ST. DENIS v. LOMBARD.

Pleading—Demurrer—Quality of defendant.

In an action against a curé for refusing to receive a vote at a meeting of the Fabrique, it is not ground of demurrer that the writ was addressed to the curé in his personal and not in his official quality.

The judgment inscribed in Review was rendered by the Superior Court, district of Ottawa, (McDougall, J.) February 17, 1881.

JOHNSON, J. This was a writ of mandamus, accompanied by a *requête libellée*, and the complaint was that the *curé* of Ste. Angelique, of which the plaintiff was a parishioner, had rejected the vote of one Pierre Chabot, tendered in support of a motion in amendment then before the chair, at a meeting of the Fabrique.

The writ was addressed to the « Révérend Messire François Lombard, Prêtre et curé de la dite paroisse de Ste. Angelique, diocèse d'Ottawa, dans le dit district." Then, the *requête libellée* set out fully that the *curé*, as such, was *ex officio* by law chairman of the meeting, and had rejected the vote in that capacity. There was an *exception à la forme* on another point—and it appears to have been withdrawn; but there was no *exception à la forme* to the writ as containing a *défaut de qualité* in the designation of the defendant.

The action, however, was dismissed on a plea of *défense en droit* to the *demande* or *requête*; and it was dismissed on the ground, not that it contained insufficient allegations, nor on any ground relating to the contents of the *requête* itself, but upon the ground that the writ was addressed to the defendant in his personal, and not in his official quality. Now, in the first place, this was not a ground of a *défense en droit* at all. That plea could only raise the question whether good cause of action was alleged on the face of the petition or not. In the second place, if that were the question raised here, (and no other can be raised by a *défense en droit*), we are all of opinion that the allegations were sufficient. The defendant, it is true, is addressed as *curé* in the writ; that is not objected to, but in the *demande* or *requête*, it is plainly and fully alleged that he was, in virtue of his office of *curé*, bound by law to preside at that meeting; and that he did preside at it. Then it was said that the allegations did not show that the vote was refused; because there was no vote actually given, and therefore none could be refused. This is a mere subtlety. No vote was given because (according to the allegations) none was allowed to be given. We unanimously reverse this judgment and dismiss the *défense en droit.*

I should add, perhaps, that though the sole ground of the judgment is expressed to

be that the writ was addressed to the defendant in his personal capacity, it was further objected here in review that the petitioner merely alleged himself to be a parishioner at the time of bringing his action, without showing that he had been a parishioner at the time of the meeting. It can be plainly collected from the allegations, however, not only that he called himself a *paroissien* at the time of his petition (which is all perhaps that he does in the first part of it), but also that he subsequently alleged his right to petition in this case by the words, "*Qu'il est qualifié et bien fondé comme paroissien de se plaindre.*" Besides, even the first part of the petition says he *is* a parishioner of that parish, and resides there, and resided there before the meeting; and had a farm there, and in fact had all the qualifications of a parishioner at the time of the meeting, though he does not actually aver that he was such parishioner on that day, and at that hour. So we hold the allegations of the petition perfectly sufficient, and we reverse the judgment.

C. B. Major for plaintiff.

A. Rochon for defendant.

Mercier, Q. C., counsel for defendant.

COURT OF REVIEW.

MONTREAL, October 31, 1881.

JOHNSON, MACKAY, RAINVILLE, JJ.

[From C. C., St. Hyacinthe.

THE CANADIAN COPPER AND SULPHUR COMPANY v. MARION et al.

Cord of Firewood—Measurement—Standard Foot in absence of agreement.

The English foot, by the Weights and Measures Act, is the standard for measuring the cord in the absence of any agreement.

In this case no agreement to the contrary was proved.

The defendant inscribed in Review from a judgment of the Circuit Court, St. Hyacinthe, Sicotte, J., March 31, 1881.

JOHNSON, J. The plaintiffs here sued the defendants to recover from them a balance alleged to be due on the price of 1,000 cords of wood sold to one of them (Marion), the two others (Gray and St. Amour) being his sureties. The wood was sold at so much per cord, and the issue is substantially what is the number of cords delivered,—the plaintiffs alleging the delivery of the whole number of cords sold, and the defendants insisting that the sum of $1,285 35 (which they are credited with) more than pays for the number of cords that have been delivered.

To decide this question we must know what is a cord of wood. Now, it may be said, perhaps, that the parties as well as the Court perfectly understand what is a cord of wood—that it is a matter of common knowledge in Lower Canada, and one with which the court would probably be expected to be acquainted; but that is not the case. It is true that the cord has been commonly understood to be eight feet long and four feet high—the length of the wood varying. In olden times in Lower Canada the French foot, which is somewhat longer than the English, was used, but not exclusively, to measure cords of firewood. We are not called upon, however, here, to say whether the cord now is, or whether it ever was, an invariable measure. The contest between the parties is not what is the cubic measure in feet of a cord of fire wood, but what is the standard foot. Is it the English or the French foot? and they both agree upon two points, viz., 1st, that by the Weights and Measures Act, the English foot is the standard, and in the absence of contrary agreement, is to prevail; and 2ndly, that if the English foot is used in this instance, the whole number of cords sold have been delivered.

The contest is thus reduced to a question of fact, viz.: Whether by the contract as proved, the cord was to be measured by the French foot. I say this is the only contest in reality between the parties; because the case was so expressly presented at the hearing. I do not say that is the true issue by the record, for the plea does not allege a contract by the French foot, as it should have done. It only alleges that 779 cords are all that has been delivered; and that they have been paid for by the sum credited, the difference of 71 cords being caused by the fact that the seller used the English measure, and the purchaser the French. The contract was in writing. There is no pretence of fraud or anything of that sort; and the verbal evidence as to the kind of measure to be used is all thrown away. The 12th section of the Weights and Measures Act (36 Vict. c. 47) enacts that after the coming into force of the Act, "all contracts, bargains, sales or dealings

made or had in any part of Canada for work to be done, or goods, wares, or merchandise, or other things to be sold, delivered, or agreed for by weight or measure, where no special agreement is made to the contrary, shall be deemed and taken to be made and had according to the standard weights and measures fixed and defined by this Act." It results from the first and second sections of the statute that the standard foot is the English foot. The French foot is, by the first sub-section of the 13th section, declared to contain seventy-nine hundredths of an inch more than the English foot. If it was intended to contract by the French measure, it should have been so stipulated. The judgment below was conformable to this view, and we confirm it.

There was a point mooted as to the form of the condemnation, which has merely the effect of a joint condemnation against all the defendants, which was all that was asked by the conclusions of the declaration. The defendants are not aggrieved by this. It is less than might have been asked, and the plaintiffs do not complain of it.

Judgment confirmed with costs.

Fontaine & Co., and *Hall & Co.*, for plaintiff.

Mercier & Co., for defendant.

SUPERIOR COURT.

MONTREAL, Oct. 31, 1881.

Before JOHNSON, J.

GOULET v. STAFFORD.

Damages—Negligence—C. C. 1054.

A shutter from an upper story slipped off its hinge while defendant's servant was opening it. Held, that although there was no gross negligence on the part of the servant, yet her employer was responsible for injuries sustained by the plaintiff, in consequence of the shutter falling upon her.

JOHNSON, J. The plaintiff was walking in the public street, and a shutter from an upper story of a house in the occupation of the defendant fell upon her, breaking the right clavicle, and she was rendered unable to work for some time. She now sues for damages; and the defendant pleads that he was not guilty of any carelessness or negligence, and that, if the plaintiff has suffered any damage, it did not arise from any act of his, or of those for whom he is responsible.

Articles 1053 and 1054 C. C. settle the law; Art. 1053: "Every person capable of discerning right from wrong is responsible for the damage caused by his fault to another, whether by positive act, imprudence, neglect or want of skill." 1054: "He is responsible, not only for the damage caused by his own fault, but also for that caused by the fault of persons under his control, and by things which he has under his care."

The fact is that the shutter slipped off the hinge when the servant girl of the defendant was opening or shutting it. There was no gross fault on her part. She was handling a very dangerous and stupid contrivance, which, I see by the papers, has caused frequent so-called accidents. The defendant, under article 1054, is clearly responsible for her acts, or rather for the consequences of them. The only thing said for the defence was that there was no "fault" on the part of the defendant or his servant, and that it was inevitable accident. "Fault" is the word used in the law. It means, says Guyot, Rep., vol. 7, page 296, an act done by ignorance, unskilfulness or negligence. The *onus probandi* is on the party charged to show there was no negligence. (*Holmes* v. *McNeven*, 5 L. C. J. 271.) Of course, there was no inevitable necessity for the defendant to use shutters. If he does so, he must see that they are hung so as to be used with safety to others.

The only question is as to the amount of damages under the circumstances. The plaintiff has proved conclusively that for five weeks her arm was tied up, and useless; and is even now of impaired strength. Her sufferings were considerable from privation of sleep caused by the pain. She had been earning a dollar and a half a day; and it is also proved that her trade is that of an ironer at a shirt maker's, and the injury was to the right shoulder which will in future always be lower than the other.

There is no doubt a right to considerable damages; and it is no answer nor part answer to her claim that she has received something from a benefit society to which she, and her fellow operatives contributed. She has only by her own providence and that of others got back in part what she and they have contributed; and the defendant has nothing to do with that at all. But in settling the damages, I come to a techni-

cal difficulty which is vexatious in such a case. The fact occurred on the 1st of July, 1881. Without waiting to see the extent of damage she might suffer, the action was brought on the 8th of the same month, and asks not only for the damage then already accrued; but for that which was to come; and the case was treated by both the parties, at the argument, without reference to this at all; and as if all the damages were due seven days after the fact—when the action was brought. If I were to give final judgment now, I should only expose the parties to further useless and expensive litigation; I therefore discharge the case from the *rôle*, with a view of having an incidental demand (which is inexpensive) put in. Art. 149 C. P. allows this, either where the plaintiff has omitted anything, or has acquired any right since the bringing of the action.

Duhamel & Co., for plaintiff.

J. J. Curran, for defendant.

SUPERIOR COURT.

MONTREAL, Oct. 31, 1881.

Before JOHNSON, J.

GEOFFRION v. THE CORPORATION OF BOUCHERVILLE.

Quasi contract.

JOHNSON, J. On the 2nd July, 1879, two persons of the name of Riendeau made a contract with Bruno Prevost, road inspector for the *Rang du Lac* and the *Rivière au Pins*, in the municipality of the parish of Boucherville, to do some repairs to a bridge called the Pont du Lac, and the price they were to be paid was $470. The work was done, and the question now is, who is to pay for it? The plaintiff, to whom the Messrs. Riendeau have assigned their claim, contends that the contract was made with the inspector so as to bind the present defendants. The latter, however, plead that in May, 1822, Mr. Delery, then Grand Voyer, had this bridge reconstructed, and erected into a public bridge, and duly *procès verbalised*, and the *procès verbal* homologated at Quarter Sessions. Between 1822 and 1873 the bridge has been rebuilt or repaired four times, and the cost has been each time paid in accordance with the old *procès verbal*. On all these several occasions the local inspector acted without consulting the Grand Voyer while that office existed; and when it came to 1879 and further repairs were required, the inspector Mr. Bruno Prevost, still followed the old practice, and without addressing himself to the local council, or getting their authority, adjudged the work to the Riendeaus as the lowest tenderers, and a number of those interested and assessed to pay the cost, duly paid the inspector, who had his right of action against all the others for their share. To have acted as he did, the inspector did not require the authority of the council, and that body never meddled with the matter at all, and never contracted with the Riendeaus, who neither themselves have any right of action against the defendants, nor could assign any such right to the plaintiff. This is in substance what is contended for by the defendants. The action, however, is only for a balance of the $470, which was the whole cost of the work; the declaration alleging that the defendants had paid in part through their secretary-treasurer. This is specially denied by the plea, and it is averred on the contrary, that Mr. Normandin paid, not as a secretary-treasurer of the corporation, but simply being a notary of the place—as agent for the inspector, on whose behalf he had received certain payments made by some of the *contribuables*.

The plaintiff's counsel rested his case, at the argument, on two grounds: 1st. He said there was a direct contract with the corporation, defendant; and 2ndly, he contended that if the bargain with the inspector of the 2nd July, 1879, did not amount to a direct contract with the corporation, the latter have at all events assumed and profited by the work, and should pay for it on the ground of a *quasi* contract having been operated by law. On the first point I am clear that the plaintiff has no case; there is no authority shown from the corporation; and it is quite plainly in evidence, from the course of proceeding taken by the inspector, that he himself felt and considered he was acting under the old *procès verbal*, and that it was not a contract on behalf of the Corporation at all. On the 2nd point, I am also against the plaintiff. The case of *DeBellefeuille* v. *The Municipality of the Village of St. Louis* decided by this Court about a year ago, (4 L. N. 42,) was cited in favor of the view that in the present case there was a *quasi* contract. That case, it ought to be observed, was not decided on the ground of a *quasi* contract; I did not indeed say there was no *quasi* contract there, for I am strongly inclined to the view that there was one;

but the judgment rested on the specific ground that the defendants had taken, and had used what was got for them by the plaintiff's services. If I saw that such was the case here, I should, of course, hold this corporation liable also; but I see nothing of the sort. I see a work done not for their exclusive benefit, but for the more especial benefit of an *arrondissement* subjected by the old *procès verbal* to pay for it, and in which the parties who ought to contribute have actually paid on account, and to that extent have admitted their liability; I see that those payments so made by the *contribuables* under the old *procès verbal* are in bad faith alleged to be payments made by the corporation, because the notary Mr. Normandin, who received them on behalf of the inspector, happened also to hold office under the corporation as secretary-treasurer; and I see no corporate act of assumption of this work. Therefore, as there is neither contract, quasi-contract, nor assumption or ratification by the corporation, the plaintiff's action is dismissed with costs.

Choquet for plaintiff.

Loranger, Loranger & Beaudin for defendant.

SUPERIOR COURT.

MONTREAL, Oct. 31, 1881.

Before JOHNSON, J.

TREMBLAY v. JODOIN et al.

Account—Vouchers in possession of plaintiff.

JOHNSON, J. On the 24th of July, 1879, the plaintiff made an assignment of his property to the defendants, to whom he gave power to realize the price and pay it over to his creditors, some of whom, a few days later, ratified the assignment. He now brings his action, alleging that the defendants took possession and sold, and got a price exceeding $3,000, which is much more than sufficient to pay the plaintiff's debts, but that they have not paid all the debts, and although often requested to give an account, refuse to do so, and have in their hands over a thousand dollars belonging to the plaintiff. The conclusion is for a condemnation to render an account within a fixed delay, and default to pay $1,000, interest and costs.

The defendants, by their plea, admit their obligation under the deed of assignment, and allege that they have sold the property, and realised $2,861.99, out of which they have paid creditors $2,857,21, and have a balance in hand of $77, which they have a right to keep until the execution of a proper discharge. That they have already rendered an account *à l'amiable* to the plaintiff, and have given up to him all the vouchers, which he keeps and refuses to restore.

The evidence is that the plaintiff and his wife went to see Jodoin, one of the defendants, and got this account. There is a copy of it produced by the defendants, and it is not final. The parties appear quarrelsome and litigious, and the fight is as to whether this account was ever accepted; because if it was, there is good reason and good authority for saying that the plaintiff would not have an action *en reddition: i. e.*, to render what had been already rendered, especially if he kept the papers and vouchers, as it would be manifestly unreasonable to ask for an exact account from memory. I do not find, however, from the evidence either that the account has been accepted as final, or that the plaintiff absolutely refuses to give them up; but he has got them, and he must give them up before the defendants can be obliged to account to him. Therefore the judgment is that the account is to be rendered in due form within three weeks of the production and filing by plaintiff (of which notice is to be given to the defendants) of all the papers and vouchers which he got from Jodoin and now has in his possession. Costs reserved.

Prefontaine & Co. for plaintiff.

Pelletier & Jodoin for defendants.

RECENT U. S. DECISIONS.

Libel—In a newspaper article.—In a declaration for publishing a libellous article in a newspaper, it is not necessary to aver that the publication was made to divers persons or to any third person; it is enough to aver that the libel was printed and published in a newspaper. To publish is to make public. A publisher is one who makes a thing publicly known. Had the allegation been merely that the defendant "printed" a libel, that would not have been enough. But to aver that a defendant "published" a libel does declare that he circulated it or caused it to be circulated "among divers and sundry persons." The degree of notoriety given to the publication is matter of proof and

not of pleading. Commonwealth v. Blanding, 3 Pick. 304; Commonwealth v. Varney, 10 Cush. 402; State v. Barnes, 32 Me. 530; Rex v. Burdett, 4 Barn. & Ald. 95; Bailey v. Myrick, 50 Me. 171. *Sprout* v. *Pillsbury*, 72 Me

Municipal corporation—Liability for personal injury in city building let for profit.—A city let its city hall, a building erected for municipal purposes, for profit, to an exhibition society. With it the services of the janitor, to light and care for the building, were let. While the building was so let, plaintiff, who was rightfully therein and using due care, was injured by falling through a trap-door negligently left open by the janitor. *Held*, that the city was liable for such injury. A city or town is not liable to a private citizen for an injury caused by any defect or want of repair in a city or town hall or other public building erected and used solely for municipal purposes, or for negligence of its agents in the management of such buildings. But when a city or town does not devote such building exclusively to municipal uses, but lets it or a part of it for its own advantage or emolument, by receiving rents or otherwise, it is liable while it is so let, in the same manner as a private owner would be. Oliver v. Worcester, 102 Mass. 344. The defence of *ultra vires* in the letting held not available as a defence in the case. French v. Whitney, 3 Allen, 9. *Worden* v. *City of New Bedford*. Supreme Judicial Court, Mass., April, 1881. 24 A. L. J. 355.

GENERAL NOTES.

Lord Ellenborough showing some impatience at a barrister's speech, the gentleman paused and said: "Is it the pleasure of the court that I should proceed with my statement." "Pleasure, sir, has been out of the question for a long time; but you may proceed."

When sitting in the Rolls Court, indignant at the conduct of one of the parties, Lord Kenyon astonished his staid and prosaical audience by exclaiming, "This is the last hair in the tail of procrastination!" Whether he plucked it out or not, observes Mr. Townsend, the reporter has omitted to inform us.

When Plunket was driven to resign the Irish Chancellorship, he was succeeded by Lord Campbell. The day of the latter's arrival was very stormy, and a friend remarked to Plunket how sick of his promotion the passage must have made the new-comer. "Yes," he replied ruefully, "but it won't make him throw up the seals."

Henry Hunt, the famous demagogue, having been brought up to receive sentence upon a conviction for holding a seditious meeting, began his address in mitigation of punishment by complaining of certain persons who had accused him of "stirring up the people by *dangerous eloquence*." Lord Ellenborough C. J. (in a very mild tone): "My impartiality as a judge calls upon me to say, sir, that, in accusing you of that, they do you great injustice."

In the case of the King v. The Warden of the Fleet, 12 Mod. 340, it was objected to a witness that he had been convicted of common barratry; and a record of his conviction was produced, which showed that he had been fined one hundred pounds. Holt, C.J., said: "If he had had the handling of him, he had not escaped the pillory, and that he remembered Sergeant Maynard used to say it were better for the country to be rid of one barrator than of twenty highwaymen."

"Nihil habeat forum ex scenâ" is one of Bacon's maxims; but he there refers to fictitious cases brought into the courts in order to determine points of law. Sergeant Maynard, who died in the reign of William III., is said to have had "the ruling passion strong in death" to such a degree that he left a will purposely worded so as to cause litigation, in order that sundry questions which had been "moot points" in his lifetime might be settled for the benefit of posterity.

Here is an instance of Lord Lyndhurst's good nature. When Cleave, the news-vender, was tried in the Court of Exchequer on a government information, he conducted his own case, and was treated with much indulgence by Lord Lyndhurst, the judge. Cleave began his defence by observing that he was afraid he should, before he sat down, give some rather awkward illustrations of the truth of the adage that "he who acts as his own counsel has a fool for his client." "Ah, Mr. Cleave," said his lordship, with great pleasantry, "ah, Mr. Cleave, don't you mind that adage: it was framed by the *lawyers*."—*From* "*Oddities of the Law*," *by F. F. Heard.*

Huissier en Mer.—Le *Testamanian* avait pris sa cargaison et se préparait à quitter le port, quand arriva un huissier qui saisit le navire. C'était la loi, mieux valait se taire et obéir; c'est ce que le capitaine comprit. On nomma un gardien, et c'est sur lui que le marin, irrité du fâcheux contretemps qu'il subissait, assouvit sa colère. Dimanche matin, il monta sur son navire, sans addresser une parole, assaillit le gardien qu'il chassa du vaisseau. Il donna ensuite des ordres à son équipage, les ancres furent levés, et quelques minutes plus tard le navire prenait sa course vers le bas du fleuve. Les inquiétudes du capitaine se dissipaient peu à peu à mesure que le vaisseau s'éloignait du port; il commençait à croire à la liberté, peut-être même à rire du moyen audacieux qu'il venait d'employer pour échapper à la justice, lorsque soudain il aperçut un vapeur qui courait dans la direction de son navire. Le coupable ne repose jamais tranquille, et à l'approche de ce vapeur, le marin présuma qu'on le poursuivait; ses prévisions étaient justes. On n'était pas rendu à l'île aux Pommes qu'un signal d'arrêter fut donné au capitaine du navire, et presqu'aussitôt le vapeur s'en approcha. Alors, un huissier, M. Richard, fils, signifia au capitaine l'ordre de rebrousser chemin. Celui-ci fut obligé de se soumettre à cet ordre et hier soir il occupait l'endroit qu'il avait quitté si effrontément la veille. La cargaison de bois est évaluée à $25.000. La cause de tout ce trouble est une misérable somme de $15 que le capitaine refuse de payer. —*L'Evénement.*