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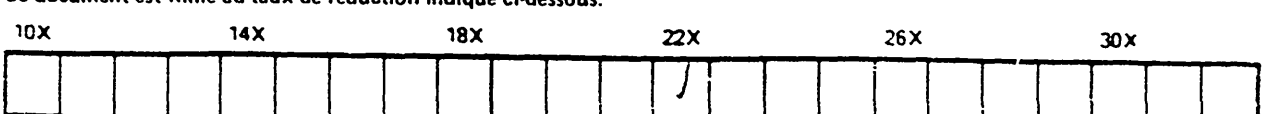

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CRIMINAL APPEAL.

It must have struck every one, who has taken the trouble to think about procedure at all as something extraordinary, that while we have Appeal in actions of the most trifling amount where real property is concerned, to every Court in the country, and from that to the Privy Council, a decision affecting the life or liberty of a British subject may be irrevocably rendered by a single judge. This strange anomaly in procedure no longer exists in England. By the 11 and 12 Victoria, chap. 78, the fifteen judges of Courts of Common Law at Westminster, or five of them, including one or all of the Chiefs of the Queen's Bench, Common Pleas, or Exchequer, form a Court of Criminal Appeal, to which may be referred the conviction of any one found guilty of any treason, felony or misdemeanour before any Court of Oyer and Terminer or jail delivery, or Court of Quarter Sessions. So long as Criminal Appeal was only a theory, in a new country, such as this, we might be excused for not introducing it; but now, that it has been tried in England, and stood the test of several years experience, there can be no excuse for our not following the example. At all events, *we* cannot plead conservatism in judicial matters, as a reason for not trying an experiment which at any rate has humanity to recommend it.

TARIF DES AVOCATS.

Nous devons nécessairement attirer l'attention des Tribunaux sur les omissions singuliéres qui se rencontrent dans ce tarif, et qui sont de nature a exciter les plaideurs de mauvaise foi a entraver l'exécution des jugemens rendus contre eux dans les Cours Civiles. Nous devons entre autres faire remarquer que dans ce tarif on ne trouve aucune provision dans les cas de Requête Civile, de tierce-opposition et de désaveu. Ces trois procédés comme tout de monde le sait sont d'une nature bien grave. En France les plaideurs *téméraires*, qui succombaient sur ces procédés étaient assujettis à de *fortes amendes*. Dans ce pays, le silence du tarif sous ce rapport permet aux plaideurs de mauvaise foi d'adopter impunément ces procédés, dans la vue de prolonger les délais au détriment de leurs créanciers. Dans un cas récent de Requête Civile la Cour n'a accordé que 11s. 8d. pour honoraires comme sur une simple Requête.

Nous croyons que ce sujet est d'intérêt public, et par conséquent est digne de fixer l'attention des Juges. Le tarif qui peut être aussi facilement amendé que les régles de pratique qui le sont souvent, requiert entr'autres des amendemens sur les sujets que nous avons indiqués.

COURT OF QUEEN'S BENCH.

It is our painful duty to record the recital of certain occurrences which took place in the Court of Queen's Bench, during the present Criminal Term. On Wednesday, the 22nd of March, as the learned Queen's Counsel, who conducts the Crown business, (Mr. Driscoll) was addressing the Court—composed of Mr. Chief Justice Rolland and Mr. Justice Aylwin—he was interrupted by the former of the learned judges, asking him "To whom do you address yourself?"—Mr. Driscoll replied, "To the Court."—Rolland, C. J., "You should address yourself to the President of the Court."—Mr. D., "I beg your Honor's pardon, it was involuntary."—R., C. J., "That's impossible, it happens too often; it must be intentional."—Mr. D., "Upon my honor as a gentleman, it was involuntary."—R., C. J., "No Sir, it was willing."—Mr. D., "Sir, I'll stand anything but that; but when I state on my honor as a gentleman that a thing is so, I'll not allow you to tell me it is not. My honor is as good as yours."—R., C. J., "Do you wish to push matters to the extreme?"—Mr. D., "I am willing to suffer any punishment; but I wont submit to have my honor questioned. I have plenty of witnesses." Mr. Driscoll was ordered to proceed, and no apology was offered. Mr. Justice Aylwin, took no part in the proceeding, and the learned Chief Justice continued to preside during the rest of the day.

On the morning of the 27th, it appears, Mr. Chief Justice Rolland unobserved by Mr. Driscoll entered the Court while the learned Queen's Counsel was addressing Mr. Justice Aylwin, who had opened the Court in the absence of the Senior Judge. As soon as Mr. Driscoll perceived that Mr. Chief Justice Rolland was upon the Bench, and fearing he might have given offence, he turned round, and appologised to the learned Chief Justice for not having sooner addressed himself to him; upon which Mr. Chief Justice Rolland rose and left the Bench, giving it to be understood that he did so as he thought himself insulted. The learned Chief Justice did not again appear on the Bench, but the business of the term proceeded without interruption under the guidance of the junior Judge. On Monday evening, the calendar having been gone through, Mr. Justice Aylwin, from whose manner, by the way, no one would have supposed that he was bursting with indignation at the conduct of the learned public prosecutor, adjourned the Court till next day at one o'clock, when the prisoners were ordered to be brought up for sentence. The Court adjourned—the crowd dispersed, little knowing what a night would bring forth. The next day (28th) at one, Mr. Justice Aylwin alone came on the Bench, and proceeded to read a paper, of which the following is a copy:—

"The marked misbehaviour of the person who represents the Attorney General, towards my brother and my senior, also to one who was Chief Justice of the District of Montreal, and who for the period of four and twenty years has filled the seat of Justice he e, with honour to himself and advantage to the Crown and the country, forbids my further proceeding alone at this time. I shall await the determination of the Executive Government, as to the performance o f the duty of Public Prosecutor by the Attorney General in person, o , by his sufficient and proper representative, but I cannot, with the regard and respect which I owe, and to which I therefore heartly testify, to my venerable revered and learned associate, proceed to the final disposal of the public business at this present term, until I see before me some gentleman as regardful of his duty to his superiors as he ought to be of his own rights, to move for judgment against the parties now awaiting it at the hands of the Court.

"Let this Court therefore stand adjourned until Tuesday, the eleventh day of April next, at the hour of noon."

The above narrative hardly requires comment. As to the first day's proceedings or to the ebullition of feeling which induced the learned Chief Justice to leave the Bench on the 27th, it is not necessary for us to speak. Mr. Driscoll, on the spot, sufficiently vindicated his own honor; and in his person that of the bar; and even if he had not done so as spiritedly as he did, we should be content to let Mr. Chief Justice Roland's long and useful service plead, if not as an apology for his conduct on this occasion, at least as a reason for our throwing it as much into the shade as possible. But for Mr. Justice Aylwin there is no such excuse as long service or momentary heat to be offered. We must presume that it was after a night's cool deliberation that he made up his mind to enact alone the third act of this farce—as farce we suppose it may be called; though one at which we cannot afford to laugh—which is, if possible, more inexcusable than the first act. Putting out of the question the unpardonable dereliction of duty in detaining prisoners for 15 days in gaol unsentenced, the language in which it is expressed is equally disgraceful to the heart and to the understanding of its author. Employed to the most juvenile member of the bar, Mr. Justice Aylwin ought to know, that it is not only indecent, but unprofessional,—the technical manner of addressing Counsel being the *learned* gentleman and not the *person*; no matter how far the person referred to may be removed both from gentility and from learning. But when such expressions are made use of to a gentleman of Mr. Driscoll's age, and to one who has been thought worthy of being named one of Her Majesty's Counsel, language fails to express the extreme amount of their impropriety.

The learned Judge had better beware how he calls in question the expediency of employing the usual titles of courtesy from his valuation of the merits of the party addressed. He should remember that his and his brethren's claim to such appellations is just as liable to be called in question as that of members of the bar. In leaving this disagreeable subject, to which we shall be glad not to be again obliged to recur, we

would only add one observation. In deferring the passing of sentence till the 11th of April, it was evidently the intention of Mr. Justice Aylwin to give the public to understand that this step was necessary owing to Mr. Driscoll's "marked misbehaviour;" but neither his manner nor his actions, subsequently to any possible cause of complaint, favor this pretension; on the contrary, it is obvious that, if at the rising of the Court on Monday evening he had not intended to pass sentence on the following day, he would not have ordered the prisoners to be brought up for judgment. Was the taking of offence then an afterthought? We hope the delay in the proceedings of the Court may not be due to any less worthy cause than that alledged, unworthy as it is.

Since writing the above, the Court of Queen's Bench met according to adjournment on the 11th instant. Present: Chief Justice Rolland and Mr. Justice Aylwin. Mr. Driscoll. Q. C., having taken his seat within the bar as Crown Prosecutor, Mr. Justice Aylwin read from a paper which he held in his hand as follows:—

"At a previous day, in this Term, the presiding Judge found it necessary to notice that the Queen's Counsel who has conducted the public business for Mr. Attorney General pointedly addressed himself to the Junior Judge, and not to the Court. A vehement disclaimer of any improper intention was then made by the learned Counsel, and was followed by an expression of readiness to go to gaol, uncalled-for, and under the circumstances unseemly in the person and from the quarter whence it proceeded.

"It is difficult to conceive that a Counsel who for years has been accustomed to see my learned brother presiding here, and to address him as Chief Justice of Montreal, and who, for the last four years that I have had the honor of a seat on this bench, has only known me as the Junior Judge, and never before used such a mode of address, could inadvertently, all at once adopt it. The plea of inadvertence, however, was made upon the occasion referred to, and matters rested there.

"The tendency of this behaviour was sufficiently obvious, but the Court was not long left to doubt of its actual effect by proofs, which will not now be more particularly mentioned, as in accordance with practice they will have to be brought forward in due course at a future time, and another stage of proceedings, should it be necessary.

"It was to have been hoped, after what had occurred, that the rules of courtesy and decorum would not again be violated;—it was therefore with mingled pain and surprise that on Monday, the 27th of March last at the opening of the Court, I was made to witness a repetition of the same conduct, assuming from that circumstance, the distinctive character of insult.

"If Courts of Justice can confidently look for respect and assistance, in the performance of their functions, in any one direction more than another, it should be from their own officers, and as Mr. Attorney General is the highest of these officers when here, his representative would seem more eminently bound to give active aid to the Court in his absence.

"Instead of active aid, the Court has experienced marked and offensive obstruction.

"If obstructions of justice and contumelious behaviour by inferior officers, or mere bystanders, call down speedy punishment upon the offender, how can Courts shut their eyes and their ears upon attempts openly made in the highest places to treat them with scorn and mockery.

"When such cases occur, even the vindication of the Court's authority becomes more difficult by the very position of the offender himself, and it was particularly so in this instance to which I know no parallel. But whatever may be the consequences, authority must be vindicated and maintained.

"When, in the usual course, on the next day, being the 28th March, the term was to have been closed by sentencing the convicts. I felt (what I hope was not an improper) repugnance or inconsistent with duty—but I did feel a repugnance, to commence the proceedings by the adoption of penal measures against the Crown Prosecutor himself, for to pass over in silence the occurrence of the previous day was impossible.

"It appeared to me that an adjournment to a future day was the only course left, as it would enable Mr. Attorney General, or Mr. Solicitor, his coadjutor, to attend here in person (as was formerly practised) and that the presence of one of these high functionaries, under the circumstances was due to the dignity of the Court, and to the performance of the public business which occasionally requires confidential communication between the Crown Counsel and the Court.

"Neither of these officers is here in his place to-day, it is to be presumed because more weighty duties, and the exigencies of the State and the public service forbid their being spared from the seat of government. But this Court requires no auxiliary and no extrinsic aid to make itself respected within these walls, or to enforce its authority at large beyond them, throughout that portion of the Queen's dominions which is subject to its jurisdiction. Whenever authority is necessary to carry out the great purpose for which all Courts of Justice are designed, the maintenance of law and order, its inherent powers are amply sufficient to ensure it.

"However painful it may be to call into exercise the power of the Queen's Bench in cases of contempt—when discipline requires it to curb the unruly—it will be resorted to, and firmly enforced.

"In the opinion of the Court, it has become necessary, under existing circumstances, to make the following rule. But before having it read, I must say, that though appearences are strong against the party whose conduct is incriminated the intention in this, as in all other criminal accusations, constitutes the offence: the mild course of proceeding to be adopted, will enable the accused to dissipate the charge, and to purge himself of the contempt upon his oath, which he can readily do, if innocent:—

"RULE.

"Henry Driscoll, Esquire, one of Her Majesty's Counsel, conducting the Crown business before the Court at this present Term for Mr.

Attorney General, having on Monday the 27th day of March last, when there were present on the Bench Mr. Justice Rolland, Presiding Judge, and Mr. Justice Aylwin, addressed himself in the singular number and in a marked manner to Mr. Justice Aylwin, and not as he was bound to do, to the Court or the Presiding Judge, and it appeared to the Court, that in so doing, the said Henry Driscoll, Esquire, acted wilfully and designedly with intent to cast contempt and reproach upon the Court, and to obstruct its proceedings ; it is ordered that the said Henry Driscoll, Esquire, do show cause on the first day of the next Term, to wit, Saturday the fourteenth day of October next, why an attachment for contempt should not issue against him and such farther proceedings be therefore had as to law and justice may appertain."

As the learned Judge has thought proper, protected by his position, to take upon himself to contradict Mr. Driscoll's assertion on his honor, he will probably not be surprised if we should expect from him an impartial statement of facts in the narrative which he has so carefully prepared and so ostentatiously published.

The first clause of Mr. Justice Aylwin's narrative contains the first statement, the correctness of which, as we were present on the occasion, we venture to impugn. Mr. Driscoll did not say that he was ready " to go to gaol ;" but that he was " willing to suffer any punishment," but that he would not submit " to have his honor questioned," and this observation was only made after a menace of some undefined punishment which the Court, in its *discretion*, though it better not to execute. On this more amplified statement of the facts, as they really happened, we imagine the government and the public will hardly agree with Mr. Justice Aylwin in considering that Mr. Driscoll's answer, even if it had been such as incorrectly stated in the judicial narrative, was either " uncalled for" or " under the circumstances unseemly." Indeed we can hardly conceive a more special call for such an observation than a threat of an unjust punishment, or circumstances under which an answer would be more seemly than when a gentleman is called upon indignantly to repel an attack on his veracity. We have no hesitation in saying that, had Mr. Driscoll tamely submitted to such an insult, and had his conduct been brought under the notice of the bar, we should have been in favor of his being severely reprimanded for ungentlemanly and unprofessional conduct. We have already drawn attention to the apparent improbability in the announcement of the time at which Mr. Aylwin thought it necessary to take offence, we shall not, therefore, again refer to it, as it must be sufficiently obvious. Further on, the learned Judge seems to express some uncertainty as to the cause of the non-appearanceof either the Attorney or Solicitor General " to move for judgment." We think we can account for their absence, and above all for the presence of Mr. Driscoll, by the hypothesis that the learned Attorney General and the other members of the Government disapprove entirely of the proceedings of the Court and mean to continue the present public prosecutor in his office ; in which determination, we feel persuaded, they will be supported by the force of public opinion, a force not to be overcome by impotent threats of commitment. Having done

with the facts of Mr. Justice Aylwin's *manifesto*, we shall not now refer to the law of this *rule*, as it may happen that at another time and in another place its legality may become the matter of more particular investigation.

Par son Jugement dans la cause de *Desbarats* v. *Lagrange* et divers opposants dont nous donnons un rapport dans ce numéro la Cour Supérieure a renversé la pratique invariablement suivie au Barreau de Montréal, de lier la contestation d'une opposition avec celle d'un Jugement de distribution dans un même procédé. Le résultat le plus certain qui doit découler de cette décision est de rendre la procédure encore plus embrouillée qu'elle ne l'est, multiplier les frais, faire perdre peut être les créances d'un grand nombre de personnes qui se trouvent dans la même position que les Opposants en la cause mentionnée, et en outre, pourquoi ne le dirions nous pas? de compromettre inutilement les membres du Barreau vis-à-vis de leurs clients.

Depuis quelques mois les enquêtes de la Cour de Circuit étaient complètement arrêtées, par suite de la décision rendue à différentes reprises par le Juge siégeant a l'enquête de la Cour Supérieure portant " que les enquêtes de la Cour de Circuit ne devaient pas se tenir dans la salle des enquêtes de la Cour Supérieure." Le Greffier avait reçu des ordres formels de ne point faire d'entrée au Régistre et le Crieur de ne pas appeler les parties à procéder. Pour tout dire, il n'y avait pas de possibilité de déterminer les causes de la Cour de Circuit, ce qui ne manqua pas de créer un certain émoi puisque cet état de chose équivalait à un *déni de justice*.

Le cinq du courant dans une cause à la Cour de Circuit de St. Hilaire v. Murphy et Brossard intervenant, le Demandeur ayant procédé à l'examen d'un témoin et voulant faire appeler la partie adverse pour le transquestionner, l'Hon. Juge président renouvela ses ordres et fit valoir la même objection. Le Demandeur insistant néanmoins sur son droit cita a l'appui de sa prétention l'acte de judicature de 1849, clause 60 " et tout tel Juge lorsqu'il présidera à des enquêtes dans des " causes pendantes à la Cour Supérieure devra présider aux enquêtes " dans les causes pendantes à la Cour de Circuit qui devront être " reçues le même jour et au même endroit." Après l'audition des Avocats dans la cause MM. Lafrenaye et Loranger et de plusieurs autres membres du Barreau, son honndur M. le Juge Mondelet en ayant conféré avec M. le Juge Smith déclara qu'à l'avenir les parties pourraient procéder aux enquêtes de la Cour de Circuit devant les Juges de la Cour Supérieure.

Le Demandeur dans la cause susmentionnée avait évidemment raison de prétendre que la Cour de Circuit avait droit en vertu de l'amendement passé en 1853, 16 Vict., chap. 194, de fixer comme c'a

été le cas les enquêtes de la Cour de Circuit, et en vertu de la clause susrécitée d'ordonner que ce soit dans le même endroit et pour le même jour que les causes de la Cour Supérieure. Car l'amendement 16 Vict., chap. 194, n'a pas abrogé la 60me clause ; tout son effet est simplement de faciliter la dépêche des affaires de la Cour de Circuit en l'absence d'un Juge pour présider aux enquêtes, et d'obliger alors le Greffier d'enrégistrer les objections ; en sorte que l'amendement ne dispense pas le Juge de présider aux enquêtes de la Cour de Circuit lorsqu'il préside aux enquêtes de la Cour Supérieure. Le but bien évident de cet amendement est de mettre les parties en état de procéder aux enquêtes de la Cour de Circuit sans la présidence d'un Juge comme cela arrive fréquemment dans les circuits à la campagne et sans certainement dispenser le Juge de la Cour Supérieure de les présider lorsqu'il préside à d'autres enquêtes.

Nous sommes heureux de pouvoir annoncer que cet état de choses qui arrêtait le cours de la justice dans les causes portées devant la Cour de Circuit est enfin disparu.

THE LATE MR. JUSTICE TALFOURD.

It is with feelings of the deepest regret, both professional and personal that we record the death of Sir Thomas Noon Talfourd, on Monday last, the 13th March. This much lamented and sudden event took place at Stafford, whilst the learned Judge was delivering his charge to the Grand Jury, and commenting with his usual eloquence on the causes which had produced the fearful and numerous cases of crime which then stood for trial,—there being no less than 30 manslaughters, and in the whole 100 prisoners. It seems not improbable that the deep feeling which was excited in the mind of the Judge by this enormous amount of criminality, in some degree contributed to the fatal result. In the midst of his address he was seized with apoplexy, and although attended by several medical men, expired almost immediately.

It is consolatory to those who had the gratification of knowing Mr. Talfourd in private as well as public life, that the public journals have uniformly expressed the highest respect and regard for his eminent worth, genius, and learning, both as a lawyer and an author. In the Profession there is but one sentiment of deep regret for this unexpected calamity. It is, indeed, lamentable beyond all measure, that a man so highly gifted in all excellent qualities of head and heart, so beloved by all who knew him, should be thus cut off without warning, at a time when, in the ordinary course of nature it might have been anticipated that he would fulfil the duties of his judicial station for many years, and then retire for some period of leisure and tranquility before he departed hence and should be seen no more.

It is our melancholy duty to notice some of the principal events of his life and his legal and literary labours.

He was born at Reading, on the 26th January, 1795, and became

a pupil of Mr. Chitty, the eminent Special Pleader, in 1813. Besides his ordinary studies and labours as a diligent pupil, he zealously and ably assisted in the composition of several of Mr. Chitty's voluminous works. He was a member of the Middle Temple, practised as a Special Pleader for a few years, and was called to the Bar on the 9th February, 1821. He joined the Oxford Circuit and Berkshire Sessions, and at this time, we are informed, he was a Law Reporter for the *Times*.

In 1833, he was appointed Recorder of Banbury, and called to the degree of Serjeant-at-Law. By the Royal Warrant of William 4th, of 24th April, 1834, he was included in the Patent of Precedence next after Mr. Justice Coleridge. He was promoted, in 1846, to the dignity of Queen's Serjeant, taking precedence of all Queen's Counsel. Lord Lyndhurst gracefully conferred this honour on a political opponent, whom he esteemed as a man of genius. On the promotion of Sir Thomas Wilde, in July, 1846, to the Chiefship of the Common Pleas, Mr. Serjeant Talfourd became the Queen's Ancient Serjeant, —the permanent head of the Bar.

His career in Parliament commenced in January, 1835, when he was returned at the general election for his native borough; he was re-elected in July, 1837, and continued until the general election in 1841. He was again elected in August, 1847, and held his seat till his elevation to the Bench.

As a legislator, he was distinguished by the introduction of the Bill for amending the Law of Copywright, which he advocated for several Sessions with an eloquence rarely equalled and never surpassed, and the measure was ultimately carried under his guidance, though at the time it passed he was not in the House. He also commenced, and successfully carried through, the Bill for the custody of infants,—one of the several measures of Justice and humanity for which he always contended.

In the month of July, 1849, during the Summer Circuit, on the death of Mr. Justice Coltman, the learned Serjeant was raised to the Common Pleas Bench. To all these honours must be added that of the degree of Doctor of Civil Law, which was conferred on him by the University of Oxford. Such has been his eminent course as a lawyer and a senator. We turn now to review the distinction he attained as an Author.

Whilst a law student, he wrote Strictures on Capital Punishments, the true nature of Justice, and the legitimate design of Penal Institutions; with Observations on the Punishment of the Pillory; and an Appeal against the Act for regulating Royal Marriages. He also wrote an Address to the Protestant Dissenters of Great Britain in regard to the Roman Catholics. Besides his contributions to the many elaborate works of Mr. Chitty, we may notice his several editions of the Quarter Sessions Practice, the last of which was published in 1841.

Viewing him next as a literary author, his benevolent and enlightened disposition shone forth at an early period of his life. Whilst at school he wrote a poem on the education of the poor. His fertile im-

agination was also evinced at the same period in "An Indian Tale;" to which may be added a didactic poem on the union and brotherhood of mankind. He was also the author of "An estimate of the Poetry of the Age," in which he zealously defended Mr. Wordsworth from the hostile attacks which were made upon him by almost all the critics of the time. He also contributed many articles to the Encyclopædia Metropolitana, the Edinburgh Review, and several Magazines.

His clebrated tragedy of "Ion" was written in 1834, and on the 26th May, 1836, it was represented at Covent Garden Theatre, then under the management of Mr. Macready. His "Athenian Captive" was subsequently produced, and afterwards "Glencoe." He also edited "The Remains of Charles Lamb," and others works. These were followed by his "Vacation Rambles."

He married soon after he was called to the Bar, and has left a widow and three sons and two daughters, to lament his grievous loss. One of his sons was called to the Bar in Michaelmas Term, 1852. It remains only to add, that throughout his life he was distinguished alike for his kindness and generosity and his prompt and brilliant intellect. During his career at the Bar, for nearly thirty years, he acquired the regard and esteem even of the competitors whom he surpassed. His elevation to the judgment-seat made no difference in the warmth of his friendship or the affable courtesy of his manner to all, however humble, who approached him. He held his high office meekly and nobly, and though he has not lived long to enjoy its dignity, he died honoured and respected throughout the land which gave him birth, and his renown will extend wheresoever the English language is understood. In the words of Mr. Justice Coleridge, addressed to the Grand Jury at Derby, "he had one ruling purpose of his life—the doing good to his fellow-creatures. He was eminently courteous and kind, generous, simple-hearted, of great modesty, of the strictest honour, and of spotless integrity." This is the highest praise from a man of kindred excellence, pre-eminently competent to pronounce a just, sincere, and discriminating opinion. —*Legal Observer, London, March* 18, 1853.

(*From London Legal Observer.*)

Court of Criminal Appeal.

Regina v. *Beaumont.* Jan 21; Feb. 4, 1854.

MASTER AND SERVANT.—EMBEZZLING MONEYS.—EVIDENCE OF PRIVITY WITH RAILWAY COMPANY.

On an indictment against the prisoner for embezzling the moneys of his master, it appeared that the master had contracted with a Railway Company to deliver coals to their customers, and to account for the money by himself or his carmen. It was the custom for the carmen to receive the invoices from the Company, and on receieving the money for the coals on delivery, to bring the delivery note to the master to have the cartage entered, and then to pay the money to the Company's clerk. Held, *that there was such privity between the Company and prisoner as to render the money their property, and the conviction was quashed.*

This was an indictment of the prisoner, as servant of Edward Wiggins, for embezzling 5*l* 10*s*, the property of his master. It appeared on the trial at the Central Criminal Court, that the prosecutor had contracted to deliver coals for the Great Northern Railway Company to their customers, and to account for the money received by himself, or by his carmen. It was the practice for the invoices to be given to the carmen, who received the money for the coals on delivery, and then went to the prosecutor's office with the delivery note, in order that an account of the cartage might be entered, and afterwards paid the money to the Company's clerk. The prisoner had received the sum in question, and had not paid it over.

Dearsley, for the prisoner, contended that the moneys had not been received by the prisoner on account of the prosecutor, but of the Railway Company; and that there was no embezzlement of his money under the 7 & 8 Geo. 4, c. 29, s. 47.

Clarkson & Giffard, for the prosecutor, contra.

Cur. ad. vult.

The *Court* said, that if there was a privity to be inferred between the Company and the prisoner, so as to make him their agent in receiving the money and agreeing to pay it over to them when received, the money would be their property, and not that of the prosecutor, and that as such privity had been established the conviction must be quashed.

Regina v. *Inhabitants of Horsea, Yorkshire, East Riding.* Feb. 11, 1854.

INDICTMENT FOR NON-REPAIR OF ROAD.—WHERE DESTROYED ENTIRELY BY ENCROACHMENT OF SEA.

On an indictment against the Defendants for the non-repair of a road to the sea, it appeared that a large portion had been entirely swept away by the encroachment of the sea. Held *that they were no longer liable to repair, nor to make an available road to the sea.*

This was an indictment for the non-repair of a road called the sea road which had been set by commissioners under the authority of an Act passed in 1801, for enclosing common and waste lands, and which had been repaired by the defendants until a portion of it was entirely swept away by the encroachments of the German Ocean. The point reserved on the trial before *Martin*, B., was, whether the defendants were bound to provide an available road.

Bliss for the Defendant; *Hall* in support of the prosecution.

The *Court* said, that the road, which ran to the beach, had been washed away and destroyed by natural causes without the fault of any body, and that the liability to repair no longer existed. The Defendants were therefore entitled to judgment, and an application for the costs of the prosecution was refused on the ground of want of jurisdiction.

Regina v. *Green.* Feb. 11, 1854.

INDICTMENT FOR EMBEZZLING AGAINST BAILIFF.—OBTAINING MONEY UNDER FALSE PRETENCES.

The prosecutor's bailiff, who was in the habit of receiving and paying moneys, had overcharged certain payments to laborers and brought in the prosecutor his debtor to an amount which he had paid. Held, *that an indictment would not lie for embezzlement but for obtaining moneys by false pretences.*

This was an indictment for embezzlement against the prisoner, who was bailiff of the prosecutor, and was in that capacity in the habit of receiving and paying moneys, and it appeared that he had overcharged in his accounts certain payments to harvest laborers amounting to 1*l.* 7*s.*, bringing in the prosecutor as his debtor for 2*l.* odd, which he had paid. The prisoner was found guilty on the trial at the Gloucester Sessions, subject to the point reserved, whether the offence amounted to embezzlement.

Tozer for the prisoner.

The *Court* said, that the prisoner should have been indicted for obtaining money by false pretences, and the conviction was accordingly quashed.

THE LAW REPORTER.

JOURNAL DE JURISPRUDENCE.

MONTREAL COURT HOUSE TAX.

This unjustifiable tax has been the subject of so much discussion already, that it may appear almost too late for us again to touch upon it; but lately we met with a speech of Lord Brougham's in the House of Lords relative to a similar tax in England, which appeared to us to be so thorough and excellent an exposition of the absurdity of all such taxes, that we cannot refrain from giving the following extract. His Lordship said:

"It would be superfluous at this time of day, in the latter half of the 19th century, to enter into arguments to show the utter injustice and impolicy of any taxes whatever on law proceedings. Sixty years ago Mr. Bentham had demonstrated their entire and monstrous absurdity and iniquity.

"How would any one hear the proposition that a tax should be imposed, which a particular portion of the community—so many thousands, or tens of thousands,—should alone pay for the benefit of the whole? Yet that was the proposition of those who said that the suitors in the County Courts should singly pay a tax the use of which was beneficial to the whole community,—that use being the administration of public justice, a matter manifestly for the benefit, not simply of the individuals immediately concerned, but of the entire body of the nation. You single out a certain number of her Majesty's subjects, say 100,000 persons, or whatever the number representing the suitors in the County Courts might be, and you say that these 100,000 persons should pay the entire taxation imposed on the administration of justice, which is a thing concerning the entire community, the community accordingly deriving the full use of that benefit which the 100,000 individuals are compelled singly to pay for—compelled, that was to say, because in the assertion of a right, or in the repelling of a wrong, they resolved to put into operation that justice the administration of which, in their case, served to benefit all the rest of the community, who yet were permitted to avail themselves of that benefit without contributing to pay for it. Nor was even this the worst feature of the abuse; for the persons who were thus mulcted by the State were precisely those who, from the very operation of th suit in respect to which they were mulcted, were least able to bear additional burdens. At the very moment when all the other expenses of a suit were, perhaps, weighing down a man—the professional charges, the cost of evidence, and similar necessary outlay—down came the Treasurer with a demand, by way of tax, exceeding in amount, not improbably—the whole of the charges for professional skill and labour. It was not enough that the suitor should

pay for the skill, or the want of skill,—that he should pay all the regular and fairly understood expenses of his case and its consequences. The Government must at that moment overwhelm him with a monstrous tax.

"There was much talk just now of the defences of the country—and heaven forbid a stone should be left unturned to render them complete!—but how would a proposition be received for casting on the frontier, or the southern coast,—say, the whole burden of these defences, leaving the inland counties free from any contribution to the object?—for making, in other words, the southern counties bear the whole coast of our militia, and our army, our navy, and our coast-guard, on the plea that they would immediately benefit most by the protection? Such a proposition would not be endured for a moment; yet this was the very thing, in another but not less monstrous manner, that you were now doing with the suitors in County Courts. They underwent the expense, the harassment, the vexation, the risk of litigation, by which the whole country mediately benefited, and for that reason they were made singly to bear a heavy burden of taxation besides,—a burden which operated not merely as a burden on the suitors for justice, but as an obstruction to the administration of justice itself.

"Let him put a case to his noble friend opposite. Suppose—which heaven forfend!—a riot should happen in the part of the town which he honoured with his abode, or that fire should be attempted to be set to his mansion, and that he should have occasion to call in the aid of the civil power, and then of the military force, to save his property, his life, from destruction—how would he, when the object had been happily so effected, relish the intimation that his property, his life perhaps, having been so preserved by the police and the soldiery, he must pay the bill of the police for attending, and of the military for attending? He would reply, that he paid his share, as a member of the community, of those taxes by which both police and military were maintained, in common with other purposes, for the protection of the subjects generally; and he would protest that it would be very hard upon him, in addition to all the alarm and anxiety, and perhaps loss he had undergone, to pay all the cost of the force which had been called in for his protection as one of those subjects. Yet that was a parallel case with the case of the suitor in the County Court. The noble lord, on this supposition, would have to pay, not only for the military and police who had aided him in his particular need, but for military and police with whom he had nothing to do, and of whom he had thought himself quit on paying his quota, as one of the community, to their maintenance. So the County Court suitor had to pay, not only for the Judge and the clerk, and the bailiff, and what not of the court in which his case was heard, but he had to pay a heavy tax for County Courts in all parts of the country, with which he had nothing to do.

"The access of suitors to the County Courts was obstructed by the fees which were levied upon them, and the money thus extracted or extorted was applied to defray the salaries of Judges and to provide the buildings in which suits were investigated. He conceived that it was

the bounden duty of a Government to provide for the administration of justice and to place the expenses of that administration of justice upon the community at large, instead of allowing it to fall upon suitors who could ill afford the payment. The Government ought not to aggravate the weight which the bare fact of being suitors imposed upon men in such a position, but they should throw the charge of providing for the administration of justice upon the community at large, because it was the duty of the Government to afford its subjects full protection in return for the allegiance exacted from them. He might be told that the plaintiff recovered the amount of the fees if the defendant could pay them, but in two out of three cases the defendant was unable even to pay the court fees. At the very moment when a man might, by various accidents or misadventures, or by the pettifogging, chicanery, or dishonesty, or malpractices of others, be suffering the greatest loss, what did the Exchequer do? Why, the moment when the suitor was complaining of the dishonesty of one party and the insolvency of another was the very time chosen by the Government for pouncing upon him, and subjecting him to still greater exactions, sharing, as it were, with knaves the fruits of their dishonesty. This system reminded him of the story of a certain man who 'fell among thieves." A person who appeared to be passing accidentally found him lying exhausted upon the ground, and inquired, in sympathising tones, 'Pray what is the matter with you, sir?' 'Oh,' was the reply, 'a villain has run off with my purse and my hat.' 'Why,' asked the false Samaritan,' 'are you quite exhausted?' 'Yes, almost entirely.' 'Try, can't you move a little?' 'No, I cannot stir.' 'Oh, then, if that is the case, said the interrogator, 'I'll take your wig.' Now, that was just the conduct of the Government in this instance. They found the suitor plundered by the malpractices or insolvency of others, and they said to him—at the time he could least afford it—'Come, pay these fees; they are only *3l 11s 8d.*; it is true that in the Court of Queen's Bench the same fees are only 17*s.*, but they are 3*l.* 11s. 8*d.*, here and you must pay."

His Lordship then proceeded to show that the tax of which he complained, amounted in many instances to 30 per cent on the sums recovered, and 17 per cent on the sums sued for. Here we have not to complain of so heavy a burden; but the object for which our tax is raised, is even more objectionable than that complained of by Lord Brougham. Here, a person who has been so unfortunate as to go to law, is subjected not only to pay a tax for the building in which his case has been heard, and his papers kept safe, but he is also obliged to pay for the accommodation, necessary for the trial of every malifactor who is brought to justice, and for his safe keeping while the trial is being proceeded with. Now allowing for the sake of argument, that the litigants in civil cases, during the next ten years should pay for the accommodation of the Courts of Justice, for three or four generations to come, by what rule should they also be condemned to pay for the housing of the Criminal Courts? It may be said that this part of the grievance is not worth mentioning; but that is a mistake. We venture to assert that the additional accommodation necessary for the

criminal business, adds at least one third to the expense of the building now in the course of erection. But it is unnecessary to dwell longer on a subject that is so simple. The broad principle, that the general administration of justice should be maintained at the public expense, appears to us to be inassailable.

COURT OF QUEEN'S BENCH.—OCTOBER TERM.

In a previous number of this Journal we gave a detailed account of certain misunderstandings between the learned Judges who presided at the Criminal Term held in the month of March last, and the learned Queen's Counsel who occupied for the crown, and which resulted in a rule for contempt taken by the Court against Mr. Driscoll, returnable on the 1st day of this term. Of the facts from which these misunderstandings arose, it is not necessary for us now to speak, as we have already sufficiently expressed our views on the subject; but there is one point, namely the legality of this rule, with respect to which we deferred speaking so long as it was still pending, but it being now adjudicated upon, we have no hesitation in giving expression to the views we have from the first entertained with respect to it.

Before proceeding to minute details it will be well first to establish what a contempt is—the different kinds of contempt—and the procedure usually adopted in punishing these offences.

Within the whole range of criminal law there is no offence more undefined than that of contempt. A creature of the common law, almost necessarily coeval with Courts of Justice, which it protects, it never has, in England, been subjected to legislative restraint. The power to-day which vests in every judge of the land, from the non-professional Justice of the Peace up to the Chief Justice of the Court of Queen's Bench, is as wild and as unrestrained, save by usage, as it was in the days of our Saxon ancestors* It, therefore, becomes a matter of very great importance to know what the nature of this power, so widely spread and unlimited is, and by what usages it has been kept in check, so that a means for the efficient working of institutions created for the protection of society may not, unobserved, be turned to the oppression of individuals. To take then the definition given of this offence, according to the spirit of the best authors who have treated of it, it is: *any act by which a person openly insults or resists the powers of a Court of Justice or of the Judges who preside there*, or *which plainly tends to create a universal disrespect of their authority*.

This offence, for the purposes of this inquiry, may be divided into two kinds: contempts committed out of the presence of the Court; and contempts *facie curiæ*, or those of which the Court has ocular testimony.

The procedure in the former of these kinds of contempt is, as soon

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* It would seem that the Superior Courts do not hold that the Sessions have a right to imprison for contempt for a longer period than the time of their sittings. V. Dickinson's Guide, 99 & 100, (Talfourd's ed.)

as the commission of the offence is brought within the notice of the Court, by affidavit or otherwise, either to serve a rule on the party complained of to shew cause why an attachment should not issue against him to bring him before the Court to answer the alleged contempt, or if a very heinous one, at once to issue the attachment. Upon the party being before the Court, *by attachment,* he is then furnished with interrogatories touching his criminality, and if his answers are straightforward and clear, he is usually dismissed; but it is competent to the Court, if unsatisfied with the answers, to proceed to take such other evidence in the matter as it shall see fit. Then follows judgment accompanied with such punishment as the Court shall think fit to impose.

The procedure in contempts of the second kind is naturally simpler, and more expeditious. Immediately on the contempt being committed it is the duty of the Judge observing it to put it of record, and thereupon the Court may at once proceed to punish the offender.*

In referring to the rule it is clear that the contempt, if contempt it can be called, of which Mr. Driscoll was accused was one of the second class; but what was the procedure? On the 27th day of March the offence is alleged to have taken place, and Mr. Justice Rolland left the Bench *without explanation.* No *record* was made, the Court undisturbed continued its sitting, and it was only on the 11th day of April, a fortnight after the commission of the alleged offence, that Mr. Driscoll had notice of the proceeding to be taken against him.

It is unnecessary for us to enlarge on the extravagance of such a procedure. The common sense of all men will at once suggest that if Courts of Justice are not under the necessity of taking cognizance immediately of contempts which take place in their presence, then they may defer to do so, not only for a day or a fortnight as in Mr. Driscoll's case, but for any time they please, and if so, then no man will dare set his foot within their precincts, for at no moment could he feel certain he was safe from the vindictive misconstructions of some vengeful judge, who might choose to convert some past expression, interpreted by a present look, into a contempt.

The law of contempts, when not checked and kept in reasonable bounds by the wisdom and moderation of English Judges, has been found, in some of the States of the neighbouring Republic, to be so dangerous to liberty that it has been defined by Statute as other offences. We hope that the imprudence of the Courts here may not force us to follow this example; but we cannot shut our eyes to the evils likely to arise from the perpetration of such acts of injustice as those directed against Mr. Driscoll, nor are we disposed to say that if repeated and persisted in, we should not be inclined to choose the lesser of two great evils and recommend that the law of contempt should be subjected to statutary interference.

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* We have drawn this *résumé* of the procedure in cases of contempt from so many sources, and the information is so scattered in the books, we have consulted that it is impossible to give exact references; but our readers will find our statements supported by the following authors: 4 Blackstone, 283-4, Hawkins, 273.

Unfortunate as the precedent of last Term may be considered, we, however, console ourselves with the idea that the victory gained by the Bench over law and common sense, was not sufficiently decisive to incite the judicial prosecutors soon again to tempt public patience with another such flagrant act of tyranny. Bystanders could not fail to perceive that the learned author of the rule was only too well pleased to slip it through without exacting Mr. Driscoll's oath, thereby satisfying himself with no better evidence than that contained in the "violent," "uncalled for" and "unseemly disclaimer" of last term.

LIVINGSTON'S MONTHLY LAW MAGAZINE, NEW YORK.

We have received the August number of this publication. It contains the reports of thirty cases decided in the courts of various of the United States. The publication is well got up, and the cases reported in it are generally of practical utility, comprising insurance, patent law, railway, corporation, criminal and mercantile law cases.

In the number before us we notice, copied from 3 Indiana R. two cases involving the law of part performance of contract. They are headed thus: "Where A. agrees to do a specified thing, for which B is to make a specified compensation, and A. only performs his contract in part, he may recover for such part performance *pro rata*, subject to the deduction of special damages caused by his default. These cases were simple actions of assumpsit, though the parties had made their "written contracts." "The defendant," (it was said by the Judge in one of the cases,) "is answerable to the amount whereby he is "benefited on an implied promise to pay for the value he has received, "though no action can be maintained on the special contract. The "plaintiff is clearly in default in not having completed his contract in "the time and manner specified; and, therefore, he does not bring his "action on the agreement, but relies on a general count for work and "labor."

We know that judges and writers have held like doctrines,—yet we have never been able to approve them. We consider them radically unsound. The contract executory, we would make Plaintiff declare specially. The defendant's contract is to pay upon the works being perfectly executed and finished. Upon the principal point in the two cases referred to the best law is to be found in Kent's Comm., Vol. 2, p, 509, sixth edition. "With respect" (says Kent) "to part performance of an entire contract for the sale and delivery of personal "property of a given quantity at a specified price and time, or for the "performance of certain labor and service, a delivery of a less quantity "than that agreed on, or a refusal or omission to perform the entire "labor or service, without any act or consent of the party, will not "entitle the party who has delivered in part, or performed in part, to "recover any compensation for the goods which have been delivered, or

" the service which has been performed. The entire performance is a " condition precedent to the payment of the price, and the courts can- " not absolve men from their legal engagements, or make contracts for " them."

Pothier, Louage, No. 406, seems to be of like opinion as *Kent*. In Lower Canada it would, probably, be held that the condition precedent precluded action. It is said that this is hard; but we say no. Engagements ought to be enforced. If a contractor be content to make his legal engagement in a particular way, *when he might have made it in any other*, let him bear the consequences. In any contract for works to be done the case may be provided for of part only of the works being done; and the remuneration to be made to the contractor, in such case, may be regulated. While there is such freedom, we confess that we cannot see the propriety, in a legal point of view, of considering the rule stern that in entire contracts, *say* for work, the entire performance is a condition precedent.

(From the London Legal Advertiser.)

MEMOIR OF THE LATE LORD DENMAN.

Lord Denman was the son of Dr. Denman, an eminent physician in London. His mother was an aunt of Sir Benjamin Brodie. He was born on the 23rd July, 1779. One of his sisters married Sir Richard Croft, and the other Dr. Baillie, the two leading physicians of their time. Thomas Denman went to Palgrave School, near Diss, in the county of Norfolk, then superintended by the celebrated Mrs. Barbauld, and her distinguished scholar often mentioned, that " he had received from that accomplished lady the rudiments of instruction and the first lessons of discipline." From thence he proceeded to Eton, at which eminent school he remained several years, until he entered St. John's College, Cambridge, where he graduated in 1800.

In 1806, he was called to the Bar by the Honourable Society of Lincoln's Inn, practised at the Common Law Bar, and selected the Midland Circuit for his career at the Assizes. Before his call to the Bar he married the daughter of the Rev. Richard Vevers. Whilst at the Junior Bar, he was much esteemed as an arbitrator and we recollect several important references before him.*

*One of them was of an extraordinary character. The premises of a trader of the City of London had been burned down, and it was suspected that the fire was not accidental, and that the value of the property was enormously overstated. The man was tried for arson, the punishment for which was then certain death. He was acquitted, became bankrupt, and his assignees brought an action against the insurance company. On the trial coming on, Lord Chief Justice Gibbs advised a reference, and Mr. Denman was chosen arbitrator. After numerous meetings he felt compelled to decide against the claim.

Mr. Denman espoused the principles of the great Whig party, and entered Parliament for the borough of Wareham, at the general election of 1818. In the following year he was elected for Nottingham, for which place he continued to sit, to the great satisfaction of his constituents, until he became Chief Justice. In Parliament he warmly supported several reforms in the Law, as well for the removal of abuses in the administration of justice in the Civil Courts, as in the mitigation of the severities of the Criminal Law. He was also eminently distinguished in the great contest for the abolition of Slavery.

In the year 1820, the trial of Queen Caroline called forth all his impressive and dignified eloquence. Mr. Brougham was appointed her Majesty's Attorney-General and Mr. Denman her Solicitor-General. The distinguished ability shown by Mr. Denman in that celebrated trial, raised him highly in the estimation of the public for his moral courage and unbending firmness. The judgment, as well as zeal which marked his advocacy, must have essentially contributed to the issue of that great question. But, as might be expected, this opposition to the feelings of the King and his powerful ministry, placed a barrier against Mr. Denman's participating in the honours of his profession, to which his talents and standing at the Bar entitled him.

In the year 1822, however, the City of London, many of whose leading members had taken an active part in support of the Queen, appointed Mr. Denman to the office of Common Serjeant.†

At length, however, in 1828, when Lord Lyndhurst first became Lord Chancellor, to the credit of that distinguished lawyer and statesman, the barrier was removed, and Mr. Denman received a patent of precedence.

In 1830, when Earl Grey became Prime Minister, Sir Thomas Denman was promoted to the office of Attorney-General, which he held during the debates on the Reform Bill. Whilst he filled the office of first law adviser of the Crown, an application was made to incorporate the members of the Law Institution, and to him and Lord Brougham—then the Lord Chancellor—that Society is indebted for the liberal grant of its charter.

In November, 1832, upon the death of Lord Tenterden, Sir Thomas Denman was appointed Chief Justice of the Court of Queen's Bench, and received the honour of the peerage in 1834.

We deem it unnecessary in these pages to enter into the consideration of the exact rank in which Lord Denman should be placed amongst the eminent *Nisi Prius* advocates of his day and generation, such as Lord Abinger;—nor of the station he should occupy as a Parliament-orator, amongst men like Lord Broughman;—nor indeed shall we compare him with the judicial chiefs who preceded him on the Bench, or the eminent personage who succeeded him. Our duty rather leads us to consider his qualifications as a constitutional Judge and a Legislator.

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† Mr. Alderman *Wood* (not Waithman, as stated in *The Times*,) the father of the present Vice-Chancellor, took a very prominent part in that memorable affair.

It is one of the advantages of a plurality of Judges over the "single seatedness" which Jeremy Bentham preferred, that whilst such learned and excellent Judges as Bayley, Holroyd, Tindal, and others may be perfect masters of the abtruse rules and technicalities of the profession, there are such men as Mansfield, Stowell, and Denman, who consider the general principles of Jurisprudence, and, where it can be done, safely adapt them to the changes and exigencies of society. A man may be a wise and excellent Judge, though not an acute special pleader; and in these days a profound knowledge of the ancient and deep parts of our laws is not so essential as it was in the time of Lord Eldon and Lord Tenterden.

We gladly extract from the able columns of *The Times*, the following judicial character of Lord Denman:—"As a Judge no man ever took a loftier view of its duties to society. To quote but one exemple:—the conduct of the Court in the difficult case of *Stockdale* v. *Hansard*, when it was directly assailed by one branch of the Legislature, is a memorable instance of the exercice of that constitutional power which enables our Judges to interpose the authority of the law against the arbitrary pretensions of the most powerful body in this realm, and to combat privilege in the name of justice. 'Most willingly would I decline,' said Lord Denman, in giving judgment on the occasion, 'to enter upon an inquiry which may lead to my differing from that great and powerful assembly (the House of Commons). But, when one of my fellow-subjects presents himself before me in this Court demanding justice for an injury, it is not at my option to grant or to withhold redress. I am bound to offer it to him, if the law declares him intitled to it. Parliament is said to be supreme. I must fully acknowledge its supremacy. It follows then, that neither branch of it is supreme when acting by itself.' In those few words, and in the judicial power of enforcing that truth, lies the supreme guardianship of the liberties of England."

"Lord Denman lived the life of a reformer of abuses, and an enemy of all that in his judgment clouded the honour or impaired the public utility of our institutions. His hatred of Negro Slavery in every form rose to a passion, for he stood armed against cruelty and injustice, and in the wretched fate of kidnapped Africans and degraded slaves, he beheld the united and accumulated evils and wrongs which have most degraded humanity and profaned religion. He powerfully contributed to the furtherance of those reforms of the Criminal Law which Sir Samuel Romilly had commenced, and which Lord Denman brought to the test of his own judicial experience. To the cause of toleration and freedom within the boundaries of law, he at all times gave his hearty support, and in all the undertakings set on foot in our day for more extended popular education, for the diffusion of useful knowledge, for the reformation of criminal offenders, and for other acts of enlightened charity he readily bore his part."

"For 18 years he filled the honoured seat of the Chief Justice of England, and, if any men excelled him by the vivacity of their genius or the acuteness of their intellect, none certainly surpassed, or perhaps

equalled him, in the moral dignity which gave an appropriate and additional lustre to his office. The personal aspect and outward bearing of Lord Denman in the administration of justice, were strongly impressed with those moral qualities which he displayed in all the duties of life, and we cannot but bear testimony to his unflinching rectitude of purpose, his love of truth, his sincerity and simplicity of character. His extreme benevolence and humanity were the fittest ornaments of the chief legal guardian of the public morals, and these qualities deserve to confer lasting honour upon his name."

"His closing years, though afflicted with severe illness, were serenely devoted to that contemplation which is the worthiest termination of human life—to those acts of kindness which endear the memory of the departed—and to the exercises of religion which anticipate the final change. We rank him not with the greatest, but with the worthiest of our contemporaries, and the life he led affords, in our judgment, a better example to those who follow him than that of more eager and impetuous aspirants after power and fame."

His lordship resigned his high office in 1850, and died at Stoke Albany, in Northamptonshire, on the 22nd September last, aged 75.

An admirable bust of his lordship by Mr. Christopher Moore, has been placed in the Hall of the Incorporated Law Society.

We have availed ourselves in this memoir of some of the eloquent passages which appeared in *The Times*. The biographical facts stated in that journal are remarkably accurate, except on two or three points. It seems not to have been known to the writer that young Denman, after leaving Mrs. Barbauld's school, went to Eton for many years. There is also a mistake in describing the ladies who married Sir Richard Croft and Dr. Baillie as the sisters of Dr. Denman (the father of the Chief Justice). They were his daughters, sisters of Lord Denman.

DISTRICT OF THREE RIVERS.

We learn from the daily papers, that Three Rivers has had the honor of being chosen as the scene of the first human sacrifice that has been offered up to appease the outraged majesty of the law for the last fifteen years in Lower Canada. On Friday, the 3rd February, Theberge was executed for the murder of Madame Gauthier, and it must be gratifying to the eulogists of the death penalty to learn, that an immense concourse of people was assembled on the occasion to profit by the moral lesson, which it is the principal object of this mode of chastisement, to inculcate. We cannot, however, but laud the discretion of our daily contemporaries in not indulging the prurient curiosity of, probably, a great portion of their readers in the fullest details of the confession, last speech and dying words of this criminal hero, according to the usual practice on such occasions.

PERIODICALS.

Since the appearance of our last number, we have received several numbers of Livingston's Monthly Law Journal, New York, the last number of which (No. xi.) contains a long article against the Usury Laws. It is the opinion of the learned editor, that the operation of the Usury Laws in the State of New York has had for many years a prejudicial effect upon its commercial movements; thus adding another testimony to the bad policy of keeping up this unnatural restriction on the circulation of money. We hope soon to see disappear the last shred of the Usury Laws with which we are still troubled in this Province.

We have also duly received the American Journal of Insanity, Utica, the Montreal Medical Chronicle and the Law Reporter, Boston. Each number of the Law Reporter contains notes to one or two leading cases, carefully copied from English Reports, in which students of criminal law will find a great deal of interesting and useful information.

(From London Legal Advertiser.)

CROWN CASES RESERVED.

Regina v. *Hewgill*, clerk. Feb. 11, 1854.

CONVICTION FOR OBTAINING MONEY UNDER FALSE PRETENCE OF "ORDER."—WHERE A "LETTER" HAD BEEN PRETENDED.

On the trial of an indictment against a curate for falsely pretending he had received an "order" from his vicar for the payment of his quarter's salary, and upon which he had obtained 15l., it appeared that he had stated he had received a "letter" from his vicar for such purpose. The conviction was confirmed.

This was an indictment against the Curate of Crofton, Titchfield for falsely pretending to a Mr. Walters that he had received an *order* from his vicar on a Mr. Layton, for the payment of his quarter's salary amounting to 25*l.*, from Wr. Walters. It appeared on the trial at the Hampshire Quarter Sessions, that the prisoner had stated he had received a *letter* from his vicar requesting Mr. Layton to pay the 25*l.*, and that he had called on Mr. Layton who was ill, and said he should therefore be obliged to Mr. Walters to let him have the money—whereupon he had obtained 15*l.* The prisoner had received no letter, nor was any salary due, and he was convicted, subject to a point reserved whether the variance was fatal.

C. Saunders for prisoner.

The *Court* said, that the conviction must be affirmed.

Regina v. *Carlisle and another.* April 29, 1854.

INDICTMENT.—FALSE REPRESENTATIONS.

S. had sold a horse to the prisoner B. *for* 39*l.*, *but had been induced by him and the other prisoner* C. *to take a less sum by falsely representing the horse to be unsound, and that* B. *had consequently sold it for* 27*l. A conviction for such offence was affirmed.*

It appeared from this indictment that a Mr. Simpson had sold a horse to the prisoner Brown for 39*l.*, but that he and the other prisoner Carlisle had induced Mr. Simpson to take a less sum by falsely representing the horse to be unsound, and that Brown had in consequence sold it for 27*l.* The prisoners were convicted.

Whigham now contended the indictment did not disclose any offence.

The *Court*, however, held, that the conviction must be affirmed.

Regina v. *Harris.* April 29, 1854.

INDICTMENT FOR EMBEZZLEMENT.—MONEY NOT RECEIVED AS SERVANT OF PROSECUTOR.

A prisoner was appointed by the Magistrates miller in the county gaol, and was paid weekly out of the county rates. It was his duty to take tickets from persons bringing grain to be ground, and to receive money for the same. It appeared he had ground grain without a ticket, and had not accounted for the money received. On an indictment against him as servant of the inhabitants, or of the clerk of the peace, for the embezzlement of their money: Held, *that the conviction could not be supported.*

This was an indictment against the Defendant as servant of the inhabitants of the county of Worcester, or of the clerk of the peace, for the embezzlement of their money. It appeared that the prisoner was appointed by the Magistrates miller in the county gaol, and was paid weekly out of the county rates, and that it was his duty to take tickets from persons bringing grain to be ground and to receive money for the same, and that he had not accounted for moneys received for grinding grain taken in without ticket.

Selfe in support of the conviction.

The *Court* said, that the prisoner had taken in grain without ticket, showing his intention to make an improper use, and for his own benefit, of the machine intrusted to him. He had, however, no right on behalf of his master to grind any corn except such as was brought to him with a ticket, and the money was therefore not received on his master's account, and the conviction for embezzlement must be quashed.