The Legal News.

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Few men that have occupied the chief position in a court of justice have been so honoured, and so deservedly honoured, as the late Sir Antoine Aimé Dorion, Chief Justice of the Court of Queen's Bench for the province of Quebec, of whose career some particulars will be found in another column. In the course of active political life, feelings of animosity are apt to be aroused, but the gentleness and lovableness of his disposition were such that every trace of bitterness was speedily obliterated, and during the seventeen years of his career as Chief Justice we are not aware that a harsh word was ever uttered respecting him. He was perhaps more at his ease on the bench than amid the stirring scenes of parliamentary warfare. In the latter his accurate knowledge of law and his clear perception of things made him a valuable coadjutor, but in debate he was apt to become the mouthpiece of those who availed themselves of the aid and countenance afforded by his eminent reputation and unrivalled facility and clearness of exposition. Even after his elevation to the bench we remember that he once playfully remarked that a judge was apt to be carried away by a view stated confidently by an impetuous colleague, and to yield his own opinion, although further consideration might convince him that his first impression was the more correct of the two. For some years it has been painfully obvious that the Chief Justice's strength was declining, and that rest was more and more necessary. Although entitled to retire some years ago, he appeared to shrink from any interruption to the busy life which he had led from boyhood, and continued to discharge the arduous duties of his position with unflinching resolution. After concluding the business of his Court in May, on the eve of the Long Vacation he went home, but it was not for a temporary rest. The end was nearer than any one that day imagined, and before the third day of his illness had closed he had passed away. Irreproachable in every relation of life, as statesman, advocate, citizen, and judge, Sir Antoine Dorion will not easily pass from the memory of the people of Canada.

Our readers are aware that the Canadian Government have been consulting the judges on the usefulness of the grand jury system In his charge at the opening of the Court of Queen's Bench, Crown side, Mr. Justice Church took occasion to state his views as follows:—"The periodical assemblage of the grand jury is an event always looked forward to by the people of this district as an occasion of very considerable public importance. The inquisitorial powers and functions of the grand jury, properly understood and wisely exercised, are of great public usefulness. For the time you may be said to represent the people of the district, not alone in regard to the investigation into alleged infractions of the criminal laws, but also in regard to those matters of great public concern which it is within your well-known province to enquire into and report upon. It has been the fashion in some circles and in some localities for a considerable period of time to look with disfavor upon the periodical assembling of the grand jury, some people regarding it as an unnecessary and cumbrous institution, if not an obsolete one for useful purposes; some have even gone so far as to suggest the substitution of a public prosecutor in its stead, whilst others have looked upon it as a sort of relic of old respectability unsuited to the times in which we live, and of no, or at most of little, practical utility; whilst others have gone so far as not alone to propose the abolition of the institution of the grand jury, but to suggest the appointment of a public officer, who, as in Scotland, would fulfill its functions. Now, without wishing to enter into the domain of contention too much, I may be permitted to doubt whether an unpaid public office, which has endured from early Saxon days up to the present, which has given representation to the public in all matters connected with the administration of the criminal law, which has afforded protection to the citizens against oppression and

executive aggression, which forbade that anyone should be put upon his trial for an alleged criminal offence, till, at least, twelve of his peers had endorsed the necessity of so doing, can be safely and wisely replaced by an officer named by the executive of the day, and removeable at its will. I have had occasion for upwards of a quarter of a century to observe grand juries, and the result of my observation is that, in my opinion, any attempt to suppress them or to replace the grand jury by an executive nominee would be as unwise as it would, perhaps, be dangerous to our liberties. The true remedy for the cavilling against grand juries, in my opinion, is to be found in an intelligent devotion to duty upon the part of the grand jurors themselves, and a full conception of the dignity and importance of the office. Let grand jurors realize that they and each of them represents the judicial district, that the public institutions, such as the jail, the lunatic asylums, and the reformatories, are under his official surveillance, that the efficient administration of the police laws, the health laws, the licensing laws, and, in a measure, of the municipal laws, are under his guardianship; that he with his colleagues can present any matter of public concern to the court, and through the court to the executive of the country, and he will at once see how potent for usefulness is the institution which he with his colleagues administers."

THE LATE CHIEF JUSTICE DORION.

Sir Antoine Aimé Dorion, Chief Justice of the Court of Queen's Bench for the Province of Quebec, who died at Montreal, May 31, 1891, after an illness of only three days, was born on the 17th of January, 1818, at Ste. Anne de la Perade, P.Q. His father the late P. A. Dorion, represented Champlain in the Lower Canada Assembly from 1830 to 1838. His mother's father, the late P. Bureau, sat for St. Maurice in the same body from 1820 to 1834. He had six brothers several of whom filled prominent positions, one of them, V. P. W. Dorion, being appointed to the Bench of the Superior Court on the 8th October, 1875.

The late Chief Justice was educated at Nicolet College, was called to the Bar in January, 1842, and entered the firm of Cherrier & Dorion. He very soon occupied a distinguished position at the Bar, and also assumed an active part in political life. He was a member of the Canadian Assembly, representing Montreal from 1854 until the general election in 1861, and subsequently Hochelaga from 1862 until Confederation. After the union of the provinces in 1867 he continued to represent Hochelaga until the general election in 1872, when he was returned for Napierville, and represented that county until his elevation to the Bench on the 1st June, 1874.

In the course of his political career he was a member of the Executive Council of Canada from 2nd to 4th August, 1858; from 24th May, 1862 to 27th January, 1863, and again from the 16th May, 1863, until the 29th March, 1864. During these periods he held the office of Commissioner of Crown Lands from 2nd to 4th August, 1858; Provincial Secretary from May, 1862, to January 1863; Attorney General of Lower Canada and coleader of the Government (with Hon. J. S. Macdonald as Premier) from May 1863 to March 1864. On the advent of the Liberal party to power in November, 1873, he was appointed Minister of Justice of the Dominion, but some months later, on the 1st June, 1874, he resigned that office in order to accept the vacant position of Chief Justice of the Court of Queen's Bench for this Province. Several times he has been called to act as temporary administrator of the government of the Province owing to the illness or absence of Lieutenant-Governors.

Mr. Dorion was always in active practice at the Bar, his firm of Dorion & Dorion, and afterwards Dorion, Dorion, & Geoffrion, being one of the most prominent in the city of Montreal. In 1863 he was appointed a Queen's Counsel.

After his elevation to the Bench, an appointment which was accepted on all hands with the utmost satisfaction, he filled the position of Chief Justice for seventeen years, during which time he was distinguished for accurate legal knowledge, painstaking examination of the cases which came before

his court, and sound judgment, tempered by a regard for equity as far as was consistent with a correct application of legal principles.

During the May term of the Court of Queen's Bench sitting in appeal at Montreal he was unusually bright, and was not absent an hour during the whole term. He rendered judgment on a number of applications and cases heard during the term, which closed May 27. He remained a little time in chambers attending to various matters, and exhibited to the last his usual cheerfulnesss and courtesy. That evening, however, he was taken ill, and the malady assumed complications ending in paralysis, of which he died early on the 31st. He retained consciousness to the last, and exhibited in his dying moments the composure and resignation which formed a fitting close to an honourable and well spent life.

At the opening of the June term of the Court of Queen's Bench, Crown side, (June 1), the Hon. Mr. Justice Church made the following reference to the decease of his distinguished colleague :—

Gentlemen of the Grand Jury,—I do not propose to do more than organize this court to-day, address a few words to you and then adjourn. The great public loss which, in the providence of God, has fallen upon this community in particular and the people of this Dominion in general in the unexpected death of Sir Antoine Aimé Dorion, Chief Justice of the Court of Queen's Bench, is too recent and too terrible for me or, indeed, for any of the other officers of the court to proceed with the discharge of our duties. Antoine Aimé Dorion is dead and Canada is called upon to mourn the loss of one of her greatest sons. Full of years and full of honors, after a long, busy and useful life, he has been called back to his God to receive, I have no doubt, the well earned greeting, "Well done good and faithful servant, enter thou into the joy of thy Lord." A long life of useful labor is finished, a long career of trust and honor has been suddenly terminated, a long record of painstaking devotion to duty engraved upon the hearts and memories of the Bench, the Bar and the public is at an end. Called early in life to take part in the political and constitutional struggles which this country has witnessed, promoted almost at once to a foremost place in these struggles; always devoted, fearless and ready in his work, the records of the old Canadian Parliament and of the Dominion of Canada bear testimony to his assiduity as a parliamentarian and his devotion and ability to the interests of his country. Foremost of the political party with which he was allied, he fought its battles with devotion and skill and won for himself his title of the Bayard of Parliament, *sans peur et sans reproche.* Always learned, courteous and considerate, after twenty years of parliamentary struggle he left that sphere for the judicial bench without one enemy and without one word to rankle in the hearts of his colleagues (adversaries as well as friends) whom he was leaving. For seventeen years Sir A. A. Dorion has filled the position of Chief Justice of this court, and these seventeen years are as a monument to his memory, preserved in the records of the court and enshrined in the hearts and memories of the Bar. Sprung from a generation which furnished to the Bar of this province some of its brightest and best minds, Sir A. A. Dorion was not one whit behind the greatest or the best of them, and when, at a later period and when, perhaps, another generation shall form the estimate of the rank to be assigned to our great lawyers, the name of our beloved Chief Justice will not be found below that of any other. In learning, in assuidity, in gentleness, in consideration for others, in short, in all that goes to make up the good man and the great judge he was unsurpassed. His judgments will remain as a record of his learning, industry and impartiality: and his gentleness and kindness to all, and especially to the youngest and least experienced of the Bar will also remain a lasting testimony to his goodness of heart and of his consideration for the feelings of others; whilst his forbearance and evenness of temper will ever bear witness to a great mind, which had been so skilled in the knowledge of the frailities of human nature that he was always prepared to be tolerant of the shortcomings of others. In the death of Sir Antoine Aimé Dorion the bench of Lower Canada has lost one of the brightest legal minds which ever adorned it, the tableau of

the Bar one of its most fearless and earnest lawyers, the public one of its greatest and most candid minds, and the people of Canada one of their most beloved sons, and his children and other relatives a fond, indulgent, loving and beloved member. Trustfully, earnestly and confidently I say *requiescat in pace.*"

Appropriate references to the event were also made in every court throughout the Province. On Wednesday June 3, his funeral at Montreal was attended by an immense concourse of the Bench, the Bar and court officials in their robes, followed by a long train of private citizens.

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*COURT OF QUEEN'S BENCH—MONTREAL.**

Nuisance—Tannery.

Held:—That where the person complaining of the offensive smell caused by chemicals used in a tannery, and which emptied into a drain passing by his property, was thoroughly acquainted with the condition of things before he purchased, having been five or six years employed in the tannery, and where, moreover, it appeared that he had promoted the covering of the drain, and thereby caused an aggravation of the nuisance, an action of damages against the proprietor of the tannery would not be maintained. *McGibbon & Bédard*, Dorion, C. J., Monk, Tessier, Cross, Baby, JJ., Sept. 25, 1886.

Judgment—Rectification of clerical error in judgment.

Held:—That an accidental omission which occurs in the draft of a judgment rendered in appeal may be corrected, even after the record has been transmitted to the Court below. *McGibbon & Bédard*, Dorion, C. J., Monk, Ramsay, Cross, Baby, JJ. (Ramsay, J., *diss.*), Nov. 20, 1886.

Aliment—Obligation Arising From Marriage—Art. 167, *C. C.*

Held:—1. That a person is bound to maintain his mother-in-law who is in want, she not being re-married, and the daughter through whom the affinity exists being still alive.

2. The son-in-law may be sued alone for the alimentary debt, without his wife being in the cause.—*Turnbull & Browne*, Dorion, C. J., Tessier, Bossé, Doherty, JJ., Nov. 27, 1890.

Pledge—Rents Transferred as Security—Discharge of Debt by Transferee—Art. 1972, *C. C.*

D. bought certain real property for which he agreed to pay an annual sum during the lifetime of the vendor, and as security for the payment of this annual sum the vendor reserved the right to collect the rents of the property, the purchaser undertaking to make up any deficiency which might occur. By his last will the vendor discharged D. from all debts which he might owe him (the testator) at the time of his death.

Held:—That the rents of the property were merely pledged to the vendor for the payment of the annual sum above mentioned, and that D. remained the owner of the rents. Hence, although it appeared that he was indebted to the vendor on account of the annual payments at the time of the vendor's death, yet, being discharged from this debt by the will, he was entitled to the rent due by the tenant of the property at the time of the vendor's death; and the vendor's executors, who had collected this rent, were ordered to refund it to D.—*Jetté & Dorion*, Dorion, C. J., Cross, Baby, Bossé, JJ., March 20, 1890.

Right of Redemption—Refusal to Retrocede—Tender Not Followed by Consignation—Right to Revenues of Property.

Held:—Affirming the judgment of Davidson, J., M. L. R., 4 S. C. 233, That a vendor, seeking to give effect to a right of redemption, and who makes a tender to the purchaser, not followed by consignation, does not thereby acquire a right to the revenues of the property pending the contestation, if the purchaser refuses to retrocede, although the result of the contestation is that the purchaser is ordered to retrocede, but is allowed $40 additional for improvements. A consig-

* To appear in Montreal Law Reports, 6 Q. B.

nation, to be effective, should be made, *partie appelée*, at a place and time and with a person duly designated to the holder of the property. —*Fournier & Leger*, Dorion, C. J., Baby, Church and Bossé, JJ., May 21, 1890.

Jury Trial—Verdict—Jury Unable to Answer Question—Art. 414, C. C. P.

Held:—Where the jury, in answer to a question submitted to them at the trial, reply "impossible to say," such answer is not a compliance with Art. 414, C. C. P., which requires that the verdict be explicitly affirmative or negative upon each fact submitted, and there is a right to a new trial.—*Royal Institution & Scottish Union and National Ins. Co.*, Dorion, C. J., Cross, Baby, Bossé, JJ., May 23, 1890.

Prohibition to Prevent Execution of Judgment—Discretion—Appeal—Circuit Court.

Held:—Affirming the judgment of Gill, J., M. L. R., 5 S. C. 417, Where there has been no plea to the jurisdiction, and no demand has been made for a writ of prohibition while the case was pending before the Court which rendered the judgment complained of, the Superior Court, or a judge thereof, has discretionary power to grant or refuse a writ of prohibition to prevent the execution of the judgment; and a Court of appeal will not interfere with the exercise of this discretion unless the absence of jurisdiction be apparent on the face of the proceedings.

[Question whether the Circuit Court is a Court of inferior jurisdiction not passed upon.]—*Corporation de la paroisse de Ste. Geneviève & Boileau*, Dorion, C. J., Tessier, Cross, Bossé, Doherty, JJ., May 21, 1890.

APPEAL REGISTER—MONTREAL.

Friday, May 15, 1891.

Bourgeois & Chouillou.—Motion for leave to appeal from interlocutory judgment.—C. A. V.

Canada Railway News Co. & Montreal News Co.—Motion to dismiss appeal.—C. A. V.

McCaffrey & Ontario Bank.—Petition for leave to appeal from interlocutory judgment. —C. A. V.

Canadian Bank of Commerce & Stevenson.—Appeal from judgment of Superior Court, Montreal, Loranger, J., Sept. 14, 1889. Hearing on merits resumed and continued.

Saturday, May 16.

McCaffrey & Bank of Ontario.—Petition for leave to appeal from interlocutory judgment rejected with costs.

Bourgeois & Chouillou.—Motion for leave to appeal from interlocutory judgment rejected with costs.

Banque du Peuple & Archambault.—Motion for leave to appeal from interlocutory judgment.—C. A. V.

Archbold & Delisle.—Petition for leave to appeal from interlocutory judgment.—C. A. V.

Canadian Bank of Commerce & Stevenson.—Hearing resumed and continued.

Monday, May 18.

Canadian Bank of Commerce & Stevenson.—Hearing concluded.—C. A. V.

Hathaway & Chaplin.—Appeal from judgment of Superior Court, Montreal, Tait, J., May 31, 1890. Heard.—C. A. V.

Vincent & Poupart.—Appeal from interlocutory judgment of Superior Court, Montreal. Heard.—C.A.V.

McGreevy & Beaucage.—Appeal from interlocutory judgment of Superior Court, Montreal, Davidson, J., March 13, 1891. Heard. —C. A. V.

Clarke & McDonald.—Appeal from judgment of Superior Court, Montreal, Tait, J., June 23, 1888. Heard.—C. A. V.

Tuesday, May 19.

Banque du Peuple & Archambault.—Petition for leave to appeal from interlocutory judgment. Dismissed with costs.

Archbold & Delisle.—Petition for leave to appeal from interlocutory judgment. Dismissed with costs.

Canada Railway News Co. & Montreal News Co.—Motion to dismiss appeal granted, the judgment being interlocutory, and the appeal taken *de plano*.

Lefebvre & Magnan.—Motion for new security.—C. A. V.

Great Eastern R. W. Co. & Lamb.—Motion for dismissal of appeal. Rejected, without costs.

Canada Atlantic R. Co. & Sauvé.—Appeal from judgment of Court of Review, Montreal, May 4, 1889. Heard—C. A. V.

Magor & Kehlor.—Appeal from judgment of Superior Court, Montreal, Davidson, J., March 19, 1890. Heard.—C. A. V.

Horsman & Darling.—Appeal from judgment of Superior Court, Montreal, Gill, J., June 14, 1889. Heard.—C. A. V.

Wednesday, May 20.

Hill & Ferreri.—Heard.—C. A. V.

Curwin & Cooke.—Heard on appeal from judgment of Superior Court, Terrebonne, Taschereau, J., May 25, 1889.—Appeal dismissed with costs.

Bazinet & Gadoury.—Appeal from judgment of Court of Review, Montreal, March 9, 1889. Submitted on factums.—C. A. V.

Villeneuve & Kent.—Heard on appeal from judgment of Superior Court, Montreal, de Lorimier, J., Dec. 30, 1889.—C. A. V.

Accident Insurance Co. & McFee.—Part heard, on appeal from judgment of Superior Court, Sherbrooke, Brooks, J., Nov. 30, 1889.

Thursday, May 21.

Accident Insurance Co. of N. A. & McFee.—Hearing concluded.—C. A. V.

Dickson & Galt.—Appellant not appearing, appeal dismissed.

Huot & Black.—Two appeals. Judgment of Superior Court, Montreal, Tellier, J., Jan. 23, 1889.—C. A. V.

McBean & Marshall.—Heard on appeal from judgment of Superior Court, Montreal, Gill, J., Oct. 4, 1889.—C. A. V.

Commercial Mutual Building Society & London Guarantee & Accident Co.—Appeal from judgment of Superior Court, Montreal, Davidson, J., Nov. 27, 1889. Part heard.

Friday, May 22.

Canada Railway News Co. & Montreal News Co.—Petition for leave to appeal from interlocutory judgment granted.

Commercial Mutual Building Society & London Guarantee & Accident Co.—Hearing concluded.—C. A. V.

Lyons & Cushing.—Settled out of Court.

Glasgow & London Ins. Co. & Leclaire.—Heard on appeal from judgment of Superior Court, Montreal, Jetté, J., Jan. 11, 1890.—C. A. V.

Atlantic & N. W. R. Co. & Betournay.—Heard on appeal from judgment of Superior Court, Montreal, Gill, J., Nov. 30, 1889.—C. A. V.

Cie Chemin de Fer à Passagers & Dufresne.—Part heard on appeal from judgment of Superior Court, Montreal, Loranger, J., Dec. 26, 1889.

Saturday, May 23.

Ontario Bank & Riddell.—Petition of *mis en cause* for leave to appeal from interlocutory judgment. Petition rejected.

Lefebvre & Magnan.—Motion for new security rejected without costs.

Hill & Ferreri.—Appeal allowed for costs.

Nordheimer & Hutchison.—Appeal dismissed.

Vincent & Poupart.—Judgment reversed with costs.

Canada Atlantic R. Co. & Sauvé.—Confirmed.

McGreevy & Beaucage.—Reversed.

Laurentides Pulp Co. & McIntosh.—(Quebec case.) Reversed, Tessier, J., diss.

Compagnie Chemin de Fer à Passagers & Dufresne.—Hearing concluded.—C. A. V.

Tuesday, May 26.

Atlantic and N. W. Co. & Judah.—Motion for leave to appeal to Privy Council. Granted.

Connecticut Fire Insurance Co. & Kavanagh.—Heard an appeal from judgment of Superior Court, Montreal, Wurtele, J., Nov. 14, 1889.—C. A. V.

Wednesday, May 27.

Montreal Elevating Co. & St. Lawrence Grain Co.—Judgment confirmed.

Rowe & Leahy.—Confirmed.

Horsman & Darling.—Confirmed.

Dubois & Corporation of Ste. Rose.—Heard on appeal from judgment of Superior Court, Montreal, Wurtele, J., Nov. 15, 1889.—C. A. V.

Scottish Union Co. & Citizens' Insurance Co.—Appeal dismissed, no proceedings having been had for a year.

Mandeville & Dorion.—Same entry.

Canada Paper Co. & Crilly.—Same entry.

Flatt & Perland.—Heard on appeal from judgment of Superior Court, Montreal, Wurtele, J., Dec. 31, 1889.—C. A. V.

The Court adjourned to Thursday, June 25.

FIRE INSURANCE.

(*By the late Mr. Justice Mackay.*)

CHAPTER XIII.

FRAUDULENT FIRING.

[Continued from p. 176.]

In *Soye* v. *Merchants' Insurance Co.*[1] a house was insured, became unoccupied, was left vacant, and was burned. (The key of it had been left with a neighbor in order that the house might be looked at by applicants for it.) Some evidence was produced that a window was sometimes open, but as to condition on day of the fire it was not spoken to. The fire was by incendiaries doubtless, or people *rodeurs*. The company was condemned; it appealed and the appeal was dismissed. It was held that the insured was not bound to leave a keeper in the house when the policy did not stipulate for that. But the Court seems not to have determined the legal effect of such negligence as leaving an uninsured house open knowingly and grossly negligently. *Semble* gross negligence might free the insurance company.

In the *Catlin* case[2] the insurers agreed to pay in case of loss or damage from fire happening from any cause "except design in the insured," etc. It was held that the insurers were liable for all losses not by design, and mere negligence of the plaintiff therefore could not hurt him.

Story seems to say that cases may be where the jury ought to be charged to say, 1st, whether the plaintiff is in fraud; or, 2nd, whether he is guilty of gross negligence presumptive of fraud. Yet Story, J., said:—"I "do not say that the defendants would be "liable for every loss occasioned by the gross "personal negligence of plaintiff; for it might, "under circumstances, amount to a fraudulent loss."

A gas burner is left without a new globe or shade, the original one having been broken. A fire happens. The insurance company cannot escape if the fire be accidental.[3]

[1] La. Annual Rep. of 1851.

[2] 1 Sumner 446.

[3] How far is the following to be admitted?—Nemo est in culpa faciendo id quod si factum non fuerit idem eventus futurus esset. No. 87, 1st Disc. Casaregis. See Misrepresentation, *ante*.

§ 283. *Effect of wilful firing as to mortgage creditor.*

Unless there be a condition when a mortgage creditor insures his debtor's house, that the debtor wilfully firing his house the insurer shall be free, the insurer must pay though the debtor be guilty of arson; that is, if the insurance contract is from the insurer directly to the mortgage creditor. So it has been held in France; Pouget, p. 1103. Generally, in France, the mortgage creditor insuring is not affected by the *déchéances* of the insured.

CHAPTER XIV.

OF WAIVER.

§ 284. *Condition against waiver.*

"The non-fulfilment of any one of these said conditions or stipulations shall entail the forfeiture to the insured, or his assigns, of all benefit under this policy. And none of the conditions of this policy, either in whole or in part, shall be deemed to have been waived by or on the part of this company, unless the *waiver* be clearly expressed in writing, signed by the company's resident secretary for Canada, and delivered to the insured or to the lawful agent or representative of the insured."

The above is a condition of the Queen (English) Company.

American policies contain sometimes this condition: "No condition, clause or covenant herein contained shall be altered, annulled or waived, except by writing endorsed upon the policy."

§ 285. *Waiver of preliminary proofs.*

Waiver of preliminary proofs may be made by the company-assurer paying a sum to the assured on account of a loss.[1]

The insurance company may also be held to have waived right to object to defects in preliminary proofs by putting their refusal to pay on a particular ground.

The principle is admitted in other matters, as in Campbell's Rep., Trover. Time is often waived in sale cases by the purchaser's con-

[1] 14 Barbour, Supreme Court (N. Y.) Rep. 206. See Angell. See also *Chapman* case, 1 Camp. 134, 274, *contra*.

[2] 25 Wendell, 375; 16 Wend. 385; *Tayloe* v. *Merchants' F. Ins. Co.*, 9 Howard, 111.

duct, as where the vendor is to show clear title by such a date. Babington on Auctions, p. 34; 1 Parsons' Sel. Eq. Cases.

Receipt of rent by a landlord after breach of covenant creating a forfeiture does not operate a waiver, unless the landlord knew of the breach when he received the rent. *Keeler* v. *Davis*, 5 Duer's Rep. Did the landlord know or not is a proper question to be put to the jury. See notes to p. 70, Story on Agency, 7th ed. *Whyte* v. *Western Ass. Co.*

"PETIT MAL."

One of the most frequent pleas urged in favor of prisoners being tried for murder or manslaughter is that of insanity. The varieties of insanity are numerous, and one was disclosed at the assizes lately which, perhaps, has not been much noticed outside medical circles—that is, the complaint of *petit mal*. This, it appears, is really a short attack of epileptic insanity, and a person might have only one or two attacks in his lifetime, and no traces of this might be left on his system; further, a person might be having his dinner and suffer under such an attack without being aware of it. As to the effect of this complaint of *petit mal* as regards criminal actions, a man might in a moment of seizure do anything without knowing what he was doing, and it was quite possible for him to seize another person by the throat and cut it without being aware of what he was doing. It was impossible in one medical examination to say whether a man suffered from *petit mal*. These views were expressed during the trial of a man for the murder of his sweetheart. The counsel for the defence further referred to the malady. The medical evidence with regard to *petit mal* was that a man could attack those who were nearest to him, those he loved best—in fact, that the attack might be made under any kind of excitement—and the person committing it might know nothing of what he had done. He put it to them that the prisoner suffered from this complaint, and that being so, what greater excitement could be given to a young man than a refusal on the part of her he loved? In fact, in his letter to his father and mother, he said: "I should not have been where I now am if it had not been for my nasty temper," and, further, when the girl said, "Save me," he answered, "I will save you. Keep still where you are while I fetch help." The explanation of the reason why he told a lie as to an assault on them was also reasonable. He wrote: "I knew if I told the truth they would not let me look at her, and I wanted to see her face again." All this was fully indicative of the condition of mind similar to that under which a patient would be who suffered from *petit mal*. One of the medical men had said that if this disease showed itself it would most likely become apparent when the patient reached the age of puberty, and that was exactly the time at which the hereditary taint of insanity showed itself in the prisoner. The learned judge, in his summing up, pointed out that a certain care was needed not to weaken the criminal law by acquitting persons of criminal acts merely because they were of weak mind. If that were done half the criminal population in the country would be committing crime with a probability of going unpunished. It was not sufficient to prove a man to be of weak mind. Of course, with regard to a man like the prisoner, in whom there was no doubt of the hereditary taint, the consideration of the Crown, if necessary, would be properly exercised. The usual death sentence was passed. This case is one which those who are interested in medical jurisprudence might well make a note of.—*T. F. Uttley in London Law Journal.*

GENERAL NOTES.

George IV. asked Dr. Gregory what was the longest *sederunt* after dinner he had ever heard of on credible authority. The doctor answered, 'The longest I know of was at the house of a learned Scottish judge, Lord Newton. A gentleman called at his house in York Place, Edinburgh, at a late hour, and was informed that his Lordship was at dinner, Next day the same gentleman called at an early hour, and being again informed that the judge was at dinner, expressed surprise that the dinner of that day should be so much earlier than the dinner of the day before. "It is the very same dinner," replied the servant; "his lordship has not yet risen from table."