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PARAPHERNALIA.

IS it necessary to trick out judges in extraordinary costume, to surround them with numerous and deferential officials, and to accompany their movements, into and out of court, with jabbered proclamations, in order that the vulgar crowd may be properly impressed with their dignity and filled with due respect for the administration of justice? Such questions are not only being raised and discussed in England and the United States, but the oft predicted subversion of the realm has again been promised, if any change be permitted—promised for England if ceremony be dispensed with, and for the United States if it be introduced.

To Canadians, whose judges occupy an intermediate position, having perhaps enough, but not too much, ceremony, the discussions appear ludicrous in the extreme.

In England there has been far too much of stately ostentation. The judges share with the bishops the homage paid to those who are felt to have peculiar relations with the other world. Each judge is provided with a marshal—a kind of a master of ceremonies whose business it is to arrange the processions, to enforce observance of the traditional solemnity, and to excite and foster feelings of awe

and reverence. He is also charged with the duty of cheering the drooping judicial spirits, after a few hours of court work have worn them out. Until recently, two clerks were well paid for standing between each judge and familiarity. These three officials formed the judge's constant body-guard, on circuit as well as at home. In the outer towns where education had not sufficiently deified the judges, the sheriff, with his cocked hat and sword, and his gorgeously attired officers, escorted his lordship from station to hotel, hotel to church or court, and back again, and wherever else duty or custom might call him. The opening of the court had to be preceded by attendance at church, and the commencement of business by the repetition of various proclamations, rushed over by men whose principal endeavour seemed to be to lower the record, both in minutes and inspirations. There were the ancient "O yez! O yez! O yez!": then the judge's commission was read, and afterwards, at some length, the heralds denounced vice and immorality—why these, instead of mice and mosquitoes, history alone can tell.

In the United States, the extremity of republican plainness has been in vogue. With the exception of the Supreme Court at Washington, the judges appeared on the bench as on the street—minus, of course, their hats. They have had no distinguishing dress.

But what momentous changes have taken place! A radical parliament in England has recently had the hardihood to curtail the train of each judge by one of the clerks, and to dispense with the reading of the proclamations as useless waste of time. It had been argued that English judges could be dignified apart from the trappings of office, but their first attempt was a dismal failure, and it at once became apparent how completely dependent they were, for their dignity, upon the extra clerk and the proclamations. Robbed bees could not have made more fuss, and nothing could have been more ridiculous than Mr. Justice Manisty's whine to the grand jury at Newcastle. We are indebted to

The Law Journal, (Eng.,) for an account of the proceedings:—

"At the Guildhall, the learned judge having taken his seat on the bench, the Clerk of Assize (Mr. Edward Bromley), in lieu of reading the commission and the proclamation against vice and immorality, simply said: 'I produce in Court the Commission of Assize, Nisi Prius, Association, Oyer and Terminer, and general gaol delivery for the county and city of Newcastle; and the Hon. Sir Henry Manisty, Knt., one of the judges of the High Court of Justice, and others of his fellows, are appointed, under this commission, to hold this assize.'

The learned judge asked what was to be done next.

The Clerk suggested that it was for his lordship to direct what should be done. That was all he (the clerk) had to do.

The learned judge was understood to say that he did not know whether such a duty did devolve upon him. He had not the slightest notion of his duty at that moment. He thought the best thing to do was to ask the sheriff to return the precepts.

The grand jury was then sworn.

The Clerk having called the jury and sworn them,

His lordship said: You don't think it necessary to go through the form of counting them?

The Clerk: There is no one to count them. My duty is simply to call them, and there is now no person to count them.

The learned judge, in charging the grand jury, said that we lived in a time of change. So far as he could judge there was scarcely anything that was what it ought to be in the opinion of those whose duty it was to regulate the affairs of this country. They had witnessed that day the abandonment of certain forms. He was addressing them,

the grand inquest—nineteen of them. Probably many of them might think that was a small matter, there being nineteen instead of twenty-three; but if they began to take the limbs off the body, there were plenty of people ready to take the body to pieces also. Depend upon it, if they wished to maintain the grand jury as one of the institutions of the country, they must show their readiness and willingness to maintain it in its entirety. Dislocation was very often the commencement of death. It was not often that any very serious duty had to be performed by them; but if they let that institution go and a time came when it would have been a most influential factor in the country, those who lived to see it would be very sorry. That was the case with many other things. Once undone, they could not go back and recall them. Depend upon it, they should think well before they gave up any institution. Referring particularly to the changes made in the arrangement of the assizes, he said the clerk of the assize and his fellows were now called upon to perform duties which the grand jury never saw performed by them before.

This was one of the results of persons controlling and regulating matters they had not been accustomed to. The judges had been parties to it because they could not help themselves. But the clerk of the assize complained, and he was sorry to say he was not the only person perhaps who had a right to complain. Certain regulations which were thought desirable could only be got by cutting off and taking away other officers. The judge was to have one clerk instead of two. If his clerk was ill—as often was the case, and he had one very ill at that moment—he must find another out of his own pocket. But he was only to have one clerk; and as they went on with those changes, so would the Treasury get a little money into their purse. Attempts were made to do away with the marshals; and he would just like to ask the grand jury, Would any of them like to be sent to hard labor—and it was hard labor—for hours and hours every day, and then go into a solitary room

and not have a human being to speak to? He called it—he would not say what. Those attempts they succeeded in resisting, and they were allowed to have a companion."

Every one will be delighted, we are sure, to know that for a time Mr. Justice Manisty is to have a companion. Companions are necessities. Fancy disrobing and putting on your street coat in "a solitary room!" It is enough to turn us away from the profession.

On the other hand, the democratic sentiments of the good people of the United States have been severely shocked by the assumption of gowns by the judges of the New York Court of Appeals. Wrath and disruption have been denounced against the impious innovators, and sarcasm and wit have been exhausted, but with no effect. The judges wear their gowns, and the sun, nevertheless, still smiles, and the world does not cease to turn gently round.

We give specimens from each side of the controversy. "Homespun," in *The Central Law Journal*, wrote as follows:—

"The American idea, is that the respect paid to public functionaries should not be due to a livery or uniform. On whom is the gown to have this awe-inspiring effect? On Wm. M. Evarts perhaps, or Charles O'Connor, or George F. Edmunds. How absurd. Possibly the sight seekers at the Capital, coming unexpectedly into the little room where these judges preside, find the gowns quite a "raree" show, which inspires their curiosity to learn from their *ciceroni* or the obliging ushers, the names of the justices, but no lawyer who keeps in mind the real principles of American citizenship, but regrets to find anywhere in his country a court deriving respect from a uniform. If the livery is necessary for the information of the ignorant, then why not put all other officials in livery. The livery ought not to be necessary for the information of the judges themselves; they are to be judges in gowns or out. The American idea is to badge the servitors, the men who would not be known as such without the badge. We put postmen in uniform, but

not the Postmaster General; we uniform the brakemen, but not the railroad presidents. If we are to have gowns, we should gown the constables or the attorneys, and let the judges be known, as kings and ambassadors, by the simplicity of their attire as gentlemen, without livery or uniform."

As against this attack we would like to set a portion of Mr. David Dudley Field's address to the New York Court of Appeals :—

"A badge of office has been worn by judges the world over. A custom so general must have a foundation in reason. It is possible, no doubt, for a rude sort of justice to be dispensed without ceremony or sign of office. We can imagine judges at one end of a table and lawyers at another, all sitting and covered, debating cases across the table, while a promiscuous crowd of visitors surges through the room, and it might happen for a while that the guilty would be punished, the innocent released, and the spoiler deprived of his spoil; but we think the scene must end in general confusion and contempt. The simplest rule of ceremony requires judges, counsel, and audiences to be uncovered; the judges to sit apart on raised seats, and the counsel to stand while addressing the court or examining witnesses. To this has been lately added, that the court and the bar exchange salutations as the judges take their places. Should there be any more ? The answer depends upon a consideration of what would be the most becoming in the dress, language, and demeanor of those who participate in the administration of justice. We think that some insignia of office would befit the high judicial functions which you exercise, and that none can be found so appropriate as the robe, so unostentatious and conformable to the usage of our forefathers. The robe has been worn by judges from time immemorial * * * The judges of the Supreme Court of the United States have never entered the chamber where their august functions are performed, without wearing their robes of office. Marshall, Story and Nelson wore them. The garb is no more a badge of monarchical than of

republican office. Indeed, insignia of office more befits a republican than a monarchical country, for while in the latter they represent the majesty of the throne, in the former they represent the majesty of the people. These insignias tend to inspire respect, and to gratify sentiment, and it is sentiment after all, which sways the world. * * * If our highest court of justice is ever to have any insignia of office, there can be, as I have said, none better than the robe; none simpler or more graceful and convenient. It is the easiest to put on and the easiest to lay aside; it requires no other change of dress; it is simpler than the uniform which the officers of the army and navy wear; simpler than the costume which society exacts on many occasions."

BURNING AND BURYING.

RELIGION and morality or, at all events, a vague sentimentalism that supports itself by no better argument than that, "It does not seem right," appears to get mixed up with almost every question. A dread of doing anything in a new way rules the vast majority and would impose absolute uniformity upon all were it not for those lawless iconoclasts who insist upon making trouble with their perverse individuality. If they will not be led by the example of their forefathers, if they dare to introduce change in time honored custom, then they must be coerced by the law and their ideas stretched or contracted until they reach the general standard. At least so argued the prosecutor in *Queen* v. *Price*, *L. R. 12 Q. B. D. 247*. The prisoner instead of placing the body of his dead child in the ground, where after undergoing all stages of putrefaction it would finally lose all identity and return to native dust, adopted the method of disposition known as cremation—by burning, he

anticipated the inevitable result a score of years and saved the body from worms and abomination. For this he was indicted. "It did not seem right to dispose of a body in such a manner. It should have been decently buried."

Surely the question is one of expediency and not of morality or religion. If burial secured resurrection and burning ruined the deceased's expectations then it would be cowardly and unpardonable to injure a dead, and therefore helpless, individual. But this apart, and no one worth arguing with will urge the disturbance of resurrection, what has right or wrong to do with cremation? None of the commandments affect the question, nor do we think that there is any Scriptural injunction upon the point. It is then a question of expediency—of risking the poisoning of the living by the dead or of losing the evidence of the poisoning of the dead by the living.

In the case referred to Mr. Justice Stephen stated the law to be as shown in the following extracts from his charge:—

"After full consideration I am of opinion that a person who burns, instead of burying, a dead body, does not commit a criminal act, unless he does it in such a manner as to amount to a public nuisance at common law. There are some instances, no doubt, in which courts of justice have declared acts to be misdemeanours which had never previously been decided to be so, but I think it will be found that in every such case the act involved great public mischief or moral scandal. It is not my place to offer any opinion on the comparative merits of burning and burying corpses, but before I could hold that it must be a misdemeanor to burn a dead body, I must be satisfied that not only that some people, or even that many people, object to the practice, but that it is, on plain, undeniable grounds, highly mischievous or grossly scandalous. Even then I should pause long before I held it to be a misdemeanor, for many acts involving the grossest indecency and grave public mischief—incest, for instance, and, where there is no

conspiracy, seduction or adultery—are not misdemeanours, but I cannot take even the first step. * * * * There are, no doubt, religious convictions and feelings connected with the subject which everyone would wish to treat with respect and tenderness, and I suppose there is no doubt that as a matter of historical fact the disuse of burning bodies was due to the force of those sentiments. I do not think, however, that it can be said that every practice which startles and jars upon the religious sentiments of the majority of the population is for that reason a misdemeanor at common law. The statement of such a proposition, in plain words, is a refutation of it, but nothing short of this will support the conclusion that to burn a dead body must be a misdemeanor. As for the public interest in the matter, burning, on the one hand, effectually prevents the bodies of the dead from poisoning the living. On the other hand, it might, no doubt, destroy the evidence of crime. These, however, are matters for the Legislature and not for me. * * * * Though I think that to burn a dead body decently and inoffensively is not criminal, it is obvious that if it is done in such a manner as to be offensive to others it is a nuisance of an aggravated kind. A common nuisance is an act which obstructs or causes inconvenience or damage to the public in the exercise of rights common to all Her Majesty's subjects."

CONVEYANCERS.

IN the interests of the community we protest against granting permission to practise as a conveyancer to every one who can scrawl with a blunt pen. So long as ignorance is legally labelled knowledge, so long will the public be deluded and despoiled. A government has no more right to call a man, who knows nothing of conveyancing, a conveyancer, than a merchant has to put up packages of sand and call them sugar. In both cases the public is deceived and wronged.

From a professional point of view solicitors in the country suffer by the competition of men who, having nothing to sell but their penmanship, charge many times its value in filling up blanks at a dollar or two apiece. But, on the other hand, they frequently secure a heavy bill of costs out of litigation induced by the penman's ignorance, which goes a long way to compensate them for loss of conveyancing.

A striking example is at hand. A. agrees to give B., as security for C.'s debt, a mortgage upon Blackacre, and to assign two other mortgages, upon other properties of which he is mortgagee. A penman is employed to "do the writings," and, having perhaps heard that by the Statute of Uses two or three conveyances can be worked into one deed, he pulls out a form of assignment of mortgage, and having, with the help of the printed words and the length of the spacings, made fair guesses at what he should do, takes advantage of a remaining clean spot to insert the following: "and that, for the better security of the said mortgagee, the mortgagor also mortgages to the mortgagee two mortgages, as follows, viz.: one mortgage made by W. to B., the mortgagor of this mortgage, which said mortgage bears date, &c., and was registered, &c., which said mortgage is for the sum of, &c. And another mortgage, made

by W. to the aforesaid mortgagor, which said mortgage bears date, &c., and was registered, &c., and for the sum of, &c. Both of the aforesaid mortgages become due and payable eight months from the date from which they were executed."

The mortgagee very likely paid $1.50 for this precious production, and will probably pay $200 before he gets it put right; if, indeed, by some technicality he is not, in the end, defeated, and has to lose his security and pay the lawyers on both sides of the litigation.

The Government may reply that the client selected his own conveyancer, and must pay the penalty of a wrong or bad selection. But the Government labelled the man "conveyancer," and the client acted upon the faith of the label. Governments undertake to license steamboats to carry passengers, and to see that the boats are reasonably safe for the purpose. The public depends upon the license for safety, and the responsibility of its issue cannot be got rid of by telling a blown-up individual (or his widow) that he need not have gone on the steamer unless he liked.

The Government may also say that a license issues only after examination of the candidate. If that be so, how do mere penmen obtain their licenses? Such an answer would be very unsatisfactory to a blown-up party, and why should it be any more satisfactory to the mortgagee we have been telling about? Both would question the character of the examination, and everyone would agree with him that it must have been a farce.

JUDGES' SALARIES.

HAVING now secured an additional judge, the bar should not rest satisfied until adequate salaries are provided for occupants of the bench. There is no reason why Manitoba judges should receive salaries smaller than those given to the judges of Ontario and Quebec. In Ontario the salaries are nominally the same as in Manitoba, but while the circuit allowance there is $100 for each town, the judges here are allowed $5 a day and railway fare. Out of the Ontario allowance the judges can easily add $1,000 or $1,200 to their incomes, while the Manitoba pittance is not sufficient to cover actual expenditures. Quebec judges are still more fortunate than their Ontario brethren. The judicial salaries there are as follows:—

Chief Justice	$6,000
Eleven Puisne Judges, each	5,000
Thirteen Puisne Judges, each . . .	4,000
Two Puisne Judges, each	3,500

Three things are to be considered in adjusting salaries: First, cost of living, for judges should be able to maintain in society the dignity of their position; second, ability and standing of the men; and, third, the character and importance of the work to be done. Tested by any of these standards, Manitoba judges are entitled to equal pay with any other judges of equal rank. Living is more expensive here than in the older Provinces. Our judges are Ontario men, and are therefore of the highest attainable ability. If they had happened to have practised in Manitoba we would not, of course, expect that they would get more than half pay—they would not be fit for the position. And as to the work to be done, it is of the same class as that disposed of in the other Provinces, with this additional responsibility that having no Court of Appeal the judges

should exercise the most careful and scrupulous vigilance in order that the expense of Supreme Court appeals should not be of frequent occurrence.

Comparison with the salaries given in other colonies shows that our judges are paid less than judges in any other part of Her Majesty's dominions. The following table is said to be correct:—

Victoria	906,225	$17,500	$15,000
N. S. Wales	840,614	13,000	10,000
Queensland	248,255	12,500	10,000
S. Australia	303,195	10,000	8,500
New Zealand	517,707	8,500	7,500
Tasmania	122,479	7,500	6,000
Cape Colony . . .	1,249,824	10,000	8,750
Natal	400,676	7,500	6,000
Jamaica	580,804	12,500	not given.
British Guiana . . .	257,473	12,500	7,500
Hong Kong	1,094,804	12,500	8,500
Straits Settlements . .	350,000	12,000	8,400
Ceylon	2,758,529	11,250	9,000
Windward Islands . .	285,000	10,000	not given.
Fiji	12,500	10,000	do.
Trinidad	153,128	9,000	6,000
Leeward Islands . . .	118,000	7,500	6,000

SPECIAL EXAMINERS' FEES.

WHATEVER doubt there may be as to the constitutionality of the statute relating to law stamps, there can be no question that twenty-five per cent. of the fees paid to Special Examiners is imposed illegally. Their fees are as follows:—

For appointment	$1 00
" original depositions, per folio . .	0 20
" copy	0 10
" oath	0 20

Of these fees the Examiner retains seventy-five per cent. and disburses the rest in the purchase of law stamps, which he affixes to the original depositions.

By section 92 of the B. N. A. Act, Provincial Legislatures are empowered to raise revenue by direct taxation. They have no power to raise money by indirect taxation. The money paid for the stamps just referred to goes to the Provincial Government and forms a part of the general revenue of the Province, and is not applied to any particular object. It is not a fee of office. It cannot be said that out of such receipts the Government has to pay the Examiners. It is a mere tax. Is it, then, a direct or an indirect tax? If the former it may be very unjust, but not illegal; if the latter, there is no reason why its payment should be continued.

The case of *Reed* v. *Mousseau*, *8 Sup. C. R.* 408, seems to be conclusive upon this point. The Quebec Legislature, by the Act 29 Vic., c. 8, for the first time imposed a tax of ten cents on the fyling of every exhibit in a cause. The tax was payable by means of stamps and was to form part of the consolidated revenue of the province. This act was repealed by 43 and 44 Vic., c. 9, and the same tax was re-imposed and other provision made for its payment into the consolidated revenue. On appeal to the Supreme Court,

four judges held that the Act was *ultra vires*. The other two judges held that it was valid, but their judgments rest upon grounds which could not be urged in favor of the Manitoba tax. All the judges agreed that the tax was indirect.

The profession are extremely patriotic, and the Provincial Government is no doubt in need of all the money they can secure, but the profession have a greater regard for justice for their clients, and must in their interest refuse to disburse their money illegally.

BRIEFS FOR TWO COUNSEL.

MR. Justice Pearson is reported, in *The Law Journal* (Eng.) *for 31st May, p. 345,* to have used the following language in the case of *Llanover* v. *Homfray:* "I beg to state most distinctly, I regret very much that there seems to be a disposition at the present time to cut down the costs of two counsel. I have heard it stated by other judges—and I entirely agree with it—that if this is to be done, I neither know how the leading counsel are to do their business properly, nor do I know how the junior counsel (and I say so with all respect to them) are to learn their business. As far as I am concerned, except in cases where really no leading counsel ought under any circumstances be retained, I am certainly not disposed to cut down two briefs on taxation."

NEW ORDERS.

THE following new orders have been promulgated:—

1. General orders of this court on its equity side 179, 180, 405, 406, and general order 38 of the 17th of February are hereby repealed.

2. General order of the Court in its equity side 248 is hereby amended by striking out the words "to the presiding Judge in Chambers on any day that he may set in Chambers," also the word "decree" wherever the same occurs; and also the words "and the presiding judge may then hear, or adjourn into court or otherwise dispose of such matters on such terms as he thinks proper."

3. Terms for the hearing of cases, including examination of witnesses, are to be held five times a year, on such days as the Court may from time to time appoint.

4. A judge will sit in court every Wednesday, except during vacation, for the purpose of disposing of the following business in equity—injunctions, motions for decree, hearings pro confesso on bill and answer on further directions, petitions, demurrers and appeals from any order, report, ruling or other determination of the Master.

5. Appeals from the referee in chambers and such chamber applications in equity as cannot be disposed of by the referee, may be brought on for hearing upon any day before the judge presiding in chambers.

Dated 26th August, 1884.

(Signed,) LEWIS WALLBRIDGE, C. J.
J. DUBUC, J.
T. W. TAYLOR, J.
R. SMITH, J.