The Legal News.

Vol. VIII. NOVEMBER 28, 1885. No. 48.

The hearing of cases during the November Appeal Term at Montreal proceeded somewhat slowly, and the list, which comprised 104 cases, was only diminished by 21 during ten days. Judgment was rendered in 23 cases, and the Court stands adjourned to December 30.

There is much consideration for political lawyers in England, for we see that many applications having been made to the Lord Chancellor for postponement of the hearing of House of Lords appeals, on the ground that many of the leading counsel retained to appear in them were absent on electioneering campaigns, his lordship decided that the hearing of these appeals should be adjourned until after the general election.

Lawyers have come to the front in the election campaign in unusual number. In all 193 offer themselves to the electors as candidates for seats in Parliament. Of these 180 are barristers and 13 are solicitors. Ninety-nine are of Liberal politics and ninety-three of Conservative politics, the rest professing neither faith. Eighteen lawyers announce their candidature in Middlesex, and twelve in Surrey, making thirty candidates for metropolitan constituencies. The number of lawyers in the field is about half as many again as in 1880.

Newspapers would do well to be careful in admitting to their columns the angry and one-sided effusions of disappointed suitors and counsel. A Quebec paper, for example, prints a letter purporting to come from Mr. Rattray, in which unwarrantable statements are made with reference to one of the Judges of the Court of Queen's Bench. The judgment will be found on page 10 of the present volume, and speaks for itself. It will be observed that it is the judgment of the majority of the Court, including the Chief Justice. The Supreme Court may or may not be right in reforming that judgment; but assuming that the last decision is right, it does not seem to give Mr. Rattray much to boast of. After a silence of years, and after his employment had ceased, he made up a large account for services, of which the final judgment allows him about one-fourth.

## *SUPERIOR COURT—MONTREAL.**

*Insurance (Fire)—Risk—Material concealment—Nullity.*

Held:—That the concealment by the insured of the fact that the risk had been refused by another company, in consequence of two fires having occurred previously on the same premises under suspicious circumstances, is a material concealment, and renders the contract void.—*Minogue* v. *Quebec Fire Assurance Co.*, In Review, Johnson, Bourgeois, Gill, JJ., Oct. 31, 1885.

*Sale—Refusal by purchaser to accept thing sold—Resale at purchaser's risk—C. C.* 1554.

Held:—Where a person who purchased a bankrupt stock from the assignee, and made a payment on account of the price, subsequently refused to accept the goods, or to pay the balance of the price, on a pretence which he failed to prove; that the sale was dissolved, and that the vendor was entitled to resell the goods, after legal and customary notice, at the risk of the purchaser.—*Desmarais* v. *Picken*, In Review, Johnson, Plamondon, Bourgeois, JJ., Oct. 31, 1885.

*Verdict—Libel—Damages—New trial—Procedure.*

Held:—1. That the Court has no power to increase the award of damages by the jury.

2. In cases tried with a jury, it is the verdict of the jury, and not the opinion of the Court, which is to determine the amount of damages in actions for personal wrongs. This rule is peculiarly applicable in libel and slander suits. Insufficiency of damages is not, therefore, a proper ground for ordering a new trial in such cases, where it does not appear that the jury were improperly influenced or led into error.

3. Where the jury have given the plaintiff some damages (however insignificant), the defendant cannot move that judgment be

* To appear in full in Montreal Law Reports, 1 S. C.

entered for the plaintiff on such verdict.—*Dixon* v. *The Mail Printing Co.*, In Review, Johnson, Doherty, Gill, JJ., Oct. 31, 1885.

*Pharmaceutical Association—48 Vict., ch. 36, s. 8—Partnership contrary to law.*

HELD:—That section 8 of 48 Vict., ch. 36 (Q.), which says that all persons who, during five years before the coming into force of the Act, were practising as chemists and druggists in partnership with any other person so practising, are entitled to be registered as licentiates of pharmacy, does not apply to a certified apprentice under the Act of 1875 who had formed a partnership with his brother, a licensed druggist, and had carried on business in his brother's name from 1878 to 1885; that such contract of partnership, being in violation of the Act of 1875, was null and void, and the Act of 1885 did not legalize such partnership.—*Brunet* v. *L'Association Pharmaceutique de la Province de Québec*, In Review, Torrance, Gill, Loranger, JJ., (Gill, J. diss.) Oct. 31, 1885.

*Judicatum solvi—Motion—Délai.*

JUGÉ:—1o. Que lorsque le demandeur pendant l'instance laisse la province de Québec, le défendeur peut demandeur le cautionnement *judicatum solvi*, et que la motion pour l'obtenir peut être faite en tout temps, même après l'expiration des quatre jours qui suivent la connaissance qu'aurait eu le défendeur du départ du demandeur.

2. Que le délai de quatre jours pour demander le dit cautionnement ne s'applique que lorsque la demande est faite par exception dilatoire et non par motion.—*Cyr* v. *Bryson*, Mathieu, J., 19 septembre 1885.

*Forclusion—Exhibit—Permission de plaider—Frais—Preuve.*

JUGÉ:—Que lorsqu'un défendeur est forclos de plaider et laisse le demandeur procéder *ex parte* à sa preuve, sur le principe qu'un des exhibits de la demande n'est pas produit, il ne peut obtenir, dans le cas où cet exhibit n'est pas une pièce au soutien de la demande, mais qu'un état détaillé, la permission de plaider qu'en payant tous les frais encourus par son défaut, et la preuve faite pourra servir au demandeur.—*Lavallée* v. *Letourneux*, Taschereau, J., 16 octobre 1885.

*Acte électoral fédéral—Action qui tam—Affidavit.*

JUGÉ:—Que dans une action pénale intentée en vertu de l'Acte des élections fédérales, le demandeur doit produire préalablement un affidavit, comme dans une action *qui tam*, indiquant clairement les causes de la demande et énonçant la pénalité réclamée.—*Legris* v. *Cornellier*, Jetté, J., 22 septembre 1885.

*Billets promissoires—Exception dilatoire—Garantie—Endosseur.*

JUGÉ:—Que l'endosseur d'un billet promissoire poursuivi conjointement et solidairement avec le faiseur, ne peut opposer à l'action une exception dilatoire demandant qu'il ne soit tenu de plaider qu'après que le faiseur aura été par lui assigné en garantie et mis en demeure de plaider à l'action.—*Durocher* v. *Lapalme et al.*, Taschereau, J., 16 octobre 1885.

## COUR DE CASSATION (FRANCE).

15 avril 1885.

M. BÉDARRIDES, *Président.*

JUIF et CHAMBARD.

*Aveu—Indivisibilité—Créance non contestée.*

JUGÉ:—*Que les règles sur l'indivisibilité de l'aveu ne s'appliquent pas aux faits dont l'existence a toujours été reconnue par les parties.*

Les faits sont suffisamment expliqués dans le jugement qui suit:

"La Cour....

"Sur le moyen unique du pourvoi tiré de la violation de l'art. 1356 C. civ.:

"Attendu que les règles relatives à l'indivisibilité de l'aveu doivent être appliquées, non aux faits tenus pour constants par les deux parties, mais aux faits qui, méconnus par l'une d'elles, doivent être établis par celle à laquelle incombe le fardeau de la preuve;

"Attendu que Chambard ayant poursuivi Lazare Juif en paiement d'un solde de compte, celui-ci a formé une demande reconventionnelle; que le litige, en dernier lieu, a porté uniquemment sur une somme de 5,000 francs comprise dans la demande reconventionnelle, somme dont Lazare Juif se prétendait créancier et dont Chambard niait être débiteur; que Lazare Juif a vainement essayé de prouver l'existence de cette créance;

qu'il n'a pu l'établir ni par titres, ni par témoins, ni par présomptions ; que l'arrêt attaqué constate que Lazare Juif et Chambard ont "toujours été accord" pour reconnaître que le compte actif de ce dernier devait s'élever à 1,490 fr., si les 5,000 fr. réclamés par Lazare Juif n'étaient pas admis ;

"Attendu que si l'arrêt ajoute que, la demande de Lazare Juif étant écartée, il s'ensuit nécessairement que Chambard a justifié, "par l'aveu même de Lazare Juif," que ce dernier est son débiteur de 1,490 fr., cette expression n'implique pas que l'arrêt ait entendu puiser une preuve légale de cette dette dans un aveu judiciaire, un telle preuve n'étant pas nécessaire, puisque la dette était tenue pour constante par les deux parties ; que l'arrêt ne relève pas, d'ailleurs, les circonstances et les termes dans lesquels Lazare Juif aurait fait en justice une déclaration constituant un aveu judiciaire, et que le pourvoi ne les précise pas davantage ; que l'arrêt se fonde, pour accueillir la demande principale, sur ce qu'elle n'a jamais été contestée, et pour rejeter la demande reconventionnelle, sur ce qu'elle n'est pas prouvée ; qu'en statuant ainsi, la Cour d'appel n'a pas basé décision sur la foi due à l'aveu judiciaire et n'a donc pu violer les règles de l'art. 1356 du Code civil ;

"Rejette, etc." (1)

(Mtre G. Lémaire, rapporteur).

(J. J. B.)

## QUEEN'S BENCH DIVISION, (ENGLAND)

Oct. 29 and Oct. 30, 1885.

REGINA v. DE PORTUGAL.

*Extradition — Fugitive Criminal — Fraudulent Misappropriation of Securities — Agent — Larceny Act*, 1861.

*The Solicitor-General* (*R. S. Wright* and *Danckwerts* with him) showed cause against a rule *nisi* obtained by J. M. A. de Portugal, a prisoner awaiting his extradition to France, for his discharge from the Clerkenwell House of Detention, on the ground that he had committed no offence known to the law of England within section 10 of 33 & 34 Vict. c. 52.

The prisoner was entitled under a written agreement to receive a large sum of money if he succeeded in obtaining a certain contract in France for the prosecutor. In the course of the negotiations for such contract the prisoner was entrusted with a cheque and a bill of exchange. The prosecutor alleged that he had given him express verbal orders to open an account at one of two banks with the cheque, and written instructions as to the bill of exchange. The prisoner, however, misappropriated the greater part of the proceeds of the one and the whole of the proceeds of the other. Criminal proceedings having been taken against him in Paris for fraud and false pretences he escaped to this country, and was arrested under the Extradition Act.

He was committed on a warrant charging him with an offence in the terms of section 75 of the Larceny Act, 1861 (which apply to a banker, merchant, broker, attorney, or other agent.)

*Tickell*, in support of the rule, contended that prisoner was not an agent within this section, that the securities had not been entrusted to him within the meaning of the second part of it, and that he (the prisoner) had had no authority to transfer them within the meaning of it.

The COURT (MATHEW, J., and SMITH, J.) held that 'other agent' meant a person entrusted with money in a personal capacity and *ejusdem generis* with banker, broker, &c., and that prisoner was not an agent within section 75.

Rule absolute.

## *THE LIQUOR LICENSE QUESTION BEFORE THE PRIVY COUNCIL.*

The argument in the matter of the validity of the Liquor License Act, 1883, and the act amending the same, and the petition of the Marquis of Lansdowne, Governor-General of the Dominion of Canada, was heard on the 11th instant, before the Lord Chancellor, Lord Fitzgerald, Lord Monkswell, Lord Hobhouse, Sir Barnes Peacock, Sir Montague Smith, and Sir Richard Couch. This was a matter which, under the provisions of an Act of the Dominion of Canada (47 Vic., c. 32), had been, on the petition of the Governor-General of Canada, referred to the Judicial Committee in order to obtain a decision whether two Acts of the Dominion—namely, the Liquor License

(1) Voir dans le même sens : *Douai*, 13 mai 1836 (S. 36. 2. 450) ; *Larombière, Obligations*, art. 1356, No. 18 ; *Aubry & Rau*, t. VIII, § 751, *note* 30.—(J. J. B.)

Act, 1883 (46 Vic., c. 30), and the amending Act (47 Vic., c. 32)—were or were not, in whole or in part, valid.

*Sir Farrer Herschell, Q. C.*, the *Hon. G. Burbidge, Q. C.*, (the Deputy Minister of Justice of Canada), and *Mr. Jeune*, were counsel for the Dominion of Canada; for the Provinces of Ontario, Quebec, Nova Scotia and New Brunswick, there appeared, *Mr. Horace Davey, Q. C.*, and *Mr. Haldane*, with whom were the *Hon. Mr. Church, Q. C.*, for the Province of Quebec, the *Hon. M. W. Tyrwhitt Drake, Q.C.*, for British Columbia, and the *Hon. Mr. Fraser, Q. C.*, for the Province of Ontario.

In the year 1878 the Dominion of Canada passed the Canada Temperance Act, which Act was in the case of *Russell* v. *the Queen*, on appeal to Her Majesty in Council, held to be within the legislative power of the Dominion of Canada to enact. The Liquor License Act, 1883, was an Act for establishing a system of licenses for the sale, both wholesale and retail, of intoxicating liquors within the Dominion of Canada. The preamble of the Act sets forth that it was desirable to regulate the traffic in the sale of intoxicating liquors, and it was expedient that the law respecting the same should be uniform throughout the Dominion, and that provision should be made in regard thereto for the better preservation of peace and order. By the 26th section of the Act to amend the Liquor License Act the following provision was made:—" Whereas doubts have arisen as to the power of Parliament to pass the Liquor License Act, 1883, and the amendments thereof contained in this Act,—it is therefore enacted that until the question of the competence of the Parliament of Canada to pass the said Act and this Act be determined, as hereafter provided, no prosecution for the infringement or violation of the said Liquor License Acts shall be instituted against any holder of a license for selling liquor granted to him under the authority of any statute passed by any of the provinces, so long as such license under such authority is in force." It was also provided that, for the purpose of having the question determined as soon as possible, the Governor-in-Council might refer to the Supreme Court of Canada for hearing and determination the question as to the competence of Parliament to pass the acts in question, in whole or in part, and that the Court should hear and determine the same and certify their opinion to the Governor-in-Council; and if, in their opinion, a part or parts of the acts only were within the competence of the Parliament, then they should certify to the Governor-in-Council what part or parts were within such competence. It was further provided that the Lieutenant-Governor of any of the provinces might, with the consent of the Governor-in-Council, on behalf of the province of which he is the Lieutenant-Governor, become a party to the case, and in the event of any province becoming a party, it should be entitled to be heard by counsel on the argument. The case laid before the Supreme Court of Canada consisted of a reference to the acts and of the question, " If the Court is of opinion that a part or parts only of the said acts are within the legislative authority of the Parliament of Canada, what part or parts of the said acts are so within such legislative authority?" The provinces of Ontario, Quebec, New Brunswick, British Columbia, and Nova Scotia became parties to the case, which came on for hearing on September 23, 1884, before the Supreme Court of Canada, constituted by Chief Justice Sir William Ritchie and Justices Strong, Fournier, Henry, and Gwynne. The decision of the Supreme Court was given on January 12, 1885, and was to the effect that both the acts in question were *ultra vires* of the legislative authority of the Parliament of Canada, except so far as these acts respectively purported to legislate respecting the licenses mentioned in section 7 of the Liquor License Act, which were called vessel licenses and wholesale licenses, and except, also, so far as the act respectively related to the carrying into effect of the provisions of the Canada Temperance Act, 1878. Mr. Justice Henry was of opinion that the acts were *ultra vires* in whole. Subsequently the Governor-General petitioned Her Majesty in council to refer the matter to the Judicial committee of the Privy Council to report thereon to Her Majesty, and the case consequently came on for hearing before their Lordships.

*Sir Farrer Herschell* argued the case for the

Dominion of Canada, and submitted that the acts were within the legislative power of the Dominion Parliament. He contended that on the true construction of the British North America Act, 1867, more especially sections 91 and 92, the provisions of the acts in question were within the legislative powers of the Parliament of Canada. He argued that it was perfectly within the legislative powers of the Parliament of the Dominion of Canada to pass acts for the regulation of a particular trade, having for their object the peace, order and good government of the country, and that such acts would apply to the whole Dominion. The provisions of the acts in questirn regulating the liquor traffic, it was submitted, fell within the class of subjects comprised within the designation, "The regulation of trade and commerce," and the designation "laws respecting the peace, order and good government of Canada," or one or other of such designations in the British North America Act, 1867. Moreover, it was argued, power was not given by the British North America Act to the provincial legislatures to enact such provisions as were contained in the acts in question. Further, it was contended that the reasons given in a judgment of the Judicial committee in the case of "Russell and the Queen," applied to the present case, and also that to hold that the provisions of the acts in question, were *ultra vires* of the Parliament of Canada would be incompatible with the decisions given in cases on appeal to Her Majesty in council from Canada, and with the judgments of the judicial committee in such cases.

*Sir Farrer Herschell's* argument lasted all day, and at its end their lordships adjourned.

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Nov. 12, 1885.

The hearing of this case was resumed this morning. This was a matter which, under the provisions of an act of the Dominion of Canada (47 Vict., chap. 32), had been on the petition of the Marquis of Lansdowne, Governor-General of the Dominion of Canada, referred to the Judicial Committee of the Privy Council, in order to obtain a decision whether two acts of the Dominion, namely the Liquor License Act, 1883, (46 Vict. cap. 30), and the amending act (47 Vict. chap. 32), were or were not in whole or in part valid.

The question was whether the two acts were or were not in whole or in part valid as being within the legislative power of the Dominion Parliament. The circumstances in which the question came to be referred to the Judicial Committee of the Privy Council for decision are published above.

Mr. *Burbidge, Q.C.*, said he had nothing to add to the argument of Sir Farrer Herschell on behalf of the case for the Dominion.

Mr. *Horace Davey* argued the case on the part of the different provinces, and submitted that the act in question was altogether *ultra vires;* and while he supported the opinion of the Court below, he contended that the act was also *ultra vires* in points which they held were within the power of the Dominion Parliament—namely, as to vessel licenses and wholesale licenses. The whole question turned on the construction of the 91st and 92nd sections of the British North America Act. The 91st section gave power to the Queen to make laws for the peace, order, and good government of Canada in relation to all matters not coming within the classes of subjects assigned exclusively to the provinces. If he could show that the act in question was among the classes of subjects assigned exclusively to legislatures of provinces—that was to say, if it came within section 92 of the British North America Act — then the Dominion Parliament could not, under its general authority to make laws for the peace, order and good government of Canada, make a law in respect to that matter. He submitted that the enumerated matters in sec. 91 were subject to the words "matters not coming within the classes of subjects assigned exclusively to the provinces." These classified subjects were inserted for greater certainty and governed the whole of the section. For example, they might make regulations as to trade and commerce, but such regulations must not infringe upon the exclusive power of legislation over matters mentioned in section 92, and regulations made under section 91 must be such as would not interfere with the exclusive jurisdiction given to the legislatures of the provinces. The learned counsel, in a lengthy argument (in the

course of which he cited the case of "Hodge and the Queen"), submitted that the acts in question were *ultra vires in toto*, because their provisions related either exclusively to matters of a local nature, exclusively to property and civil rights, or exclusively to municipal institutions in the above-mentioned provinces. He also argued that the provisions of the acts related entirely to matters falling within sec. 92 and not within sec. 91 of the British North America Act, and that for these and other reasons the acts in question were not within the legislative power of the Parliament of Canada to enact.

Mr. *Haldane* followed upon the same side, and drew their lordships' attention to decisions in different cases, which he contended materially supported the contention on the part of the provinces.

*Sir Farrer Herschell*, in reply, contended that because a law operated locally and its benefits were felt locally, it did not show that it was an act merely of a local nature. Because power was given to municipal institutions to make regulations it did not prevent the Dominion Parliament having the power to legislate for the whole country. The real test was whether it was a Dominion purpose. It was competent for the Dominion Parliament to make laws for the general welfare of the country, notwithstanding that municipal institutions had the power to make certain regulations. It was competent for the Dominion Parliament to make regulations in respect of trade and commerce for the peace, order and good government of Canada. The learned counsel cited the case of "Russell and The Queen" in support of his arguments, and submitted that the acts in question were within the legislative power of the Dominion Parliament, and that the true construction of the North America Act, especially of sections 91 and 92, showed that the acts in question were within the legislative power of the Dominion Parliament as regulating a particular traffic, the object being for the peace, order and good government of Canada.

At the conclusion of the arguments, the Lord Chancellor intimated that their lordships would consider the matter, and would report thereon to Her Majesty.

## *THE DOMICILE OF HOMELESS BACHELORS.*

In the case of *Patience* v. *Main*, 54 Law J. Rep. Chanc. 897, reported in the November number of the *Law Journal Reports*, Mr. Justice Chitty had to decide a question of domicile in a case of great difficulty and interest. In October, 1882, there died at a private hotel in Charlotte Street, Fitzroy Square, London, a gentleman named James Patience. He was a person of very retiring disposition, who had no friends. He was deaf, and never went into society. In his room was found an envelope on which was endorsed the words in his handwriting: 'The enclosed two letters are from my late brother, the Rev. J. Patience, minister of the parish of Ardnamurchan, N.B. He died, I think, in the year 1827. I had then living a sister named Catherine, married to a Mr. Fletcher, who occupied a farm near Tobermory, in the Isle of Mull. She died, I am informed, in 1854, and left a numerous family of sons and daughters. I have had no communication with any of my relations for many, many years, and I must accuse myself of this long silence.' The indorsement was dated August, 1860, and although he appears at that time to have had twinges of conscience in regard to his seclusion from his relatives, he does not seem to have taken any step to reveal himself between that date and twenty-two years later, when he died. At all events, he left no will, and his relations, who were all Scottish, claimed to have his property distributed according to the Scotch law of Distributions, which is more liberal in including the descendants of collaterals than the English statute. This question depended on the domicile of the dead man. He was entitled to the rank of colonel in the Queen's army, but his army agent did not know that he was Scotch by birth. It turned out, however, that this was the fact. He was born in 1792 in Rossshire. In 1810 he obtained his commission, and went with his regiment to the West Indies. From that time to 1860 he was employed in various parts of the world, but mainly abroad, and at the latter date he sold out. After selling out, he lived in England all the rest of his days, a homeless bachelor, going from London to Margate, and thence to Folkestone, Hastings, and other places, taking up

his abode in boarding-houses, hotels, or lodgings. The only evidence that his eyes ever reverted to Scotland, his place of birth, was contained on the envelope referred to.

Out of this colorless biography, the law had to construct a domicile, and it is not to be wondered at, in the case of a man whose local habitation had been constantly shifting, and who never seemed to prefer one place to another, but to be indifferent to all, that the law should fall back upon presumption. This Mr. Justice Chitty has done, holding that his domicile was Scotch, because he was born there, notwithstanding the fact that when he had once left that country he had never put foot in it again. In arriving at this conclusion the learned judge passes in review such meagre authority as there is on the subject. As he had spent eighteen of the first years of his life in Scotland, so he had spent twenty-two of the last years of his life in England. The interval could be said to present no possible local preference, so that the choice lay between these two domiciles. The learned judge following Lord Cairns in the Scotch appeal of *Bell* v. *Kennedy*, L. R., 1 H. L. Sc. 307, lays down that, in order to overcome the presumption, he must have made his home in England 'with the intention of establishing himself there and ending his days in that country.' We doubt whether many men ever consciously form the resolution to end their days anywhere in particular: but Lord Cairns' words express with sufficient accuracy the weight of proof necessary to establish a change of the domicile of origin. Could it be inferred from the character of his residence in England that he had cut himself off from Scotland altogether. Mr. Justice Chitty cites Lord Cranworth in *Whicker* v. *Hume*, 28 Law J. Rep. Chanc. 396, as showing that the fact of a man 'lying,' as he expresses it, 'at single anchor' in lodgings only is a circumstance in arriving at a conclusion, but not conclusive against a new domicile. Lord Cranworth instances the cases of men who live all their lives in the Inns of Court. In the Scotch case of *Arnott* v. *Groom* it was said that 'a life so unsettled argued that sort of fluctuation of mind' which was insufficient to destroy the domicile of origin. The difficulty about this view is that few people have any mind at all about their domicile. It is the last thing they think about. Lord Jeffrey, on the other hand, would not admit that it was necessary to have some particular spot or some fixed establishment to constitute a new domicile. Moreover, in *Doucet* v. *Geoghegan*, L. R. 9 Chanc. Div. 441, the late Master of the Rolls approved of the view of Dr. Lushington, that length of residence raises the presumption of intention to acquire domicile, and that this presumption was not rebutted by an expression of intention or anything short of actual removal. Several other cases were referred to, in which it was laid down that residence is a very different thing from domicile, but that from it may be inferred intention. The conclusion at which Mr. Justice Chitty arrived was that the residence in England 'showed a fluctuating and unsettled mind, and that the fact of residence alone, although for twenty-two years, without any other circumstance to show the intention, is insufficient to warrant me in coming to the conclusion that Colonel Patience intended to make England his home.' He accordingly decided in favor of the Scotch domicile.

That part of the judgment of the learned judge which is most open to criticism is where he says that there were no other circumstances to show intention except the residence. There was one circumstance which the learned judge does not refer to, but which it seems to us is a necessary element in the case, even if not conclusive of the question. When Colonel Patience returned from 'wandering on a foreign strand,' where did he go? Not to Scotland, but to England. Perhaps in his person was answered the poet's question whether there lives

> a man with soul so dead,
> Who never to himself hath said,
> This is my own, my native land?

He was, at all events, dead to the attractions of Scotland, a land which is very far from being generally supposed to repel her sons. Not only did he not return to the arms of his native country, but he studiously avoided it for twenty-two years, although he was perfectly aware all the time that in distant Tobermory he had many nephews and nieces, the children of his sister Catherine. Mr. Justice Chitty appears to be right in laying down

that residence alone, even for twenty-two years, will not destroy the domicile of origin; but we venture to doubt whether he is right in deciding that a man who for fifty years has wandered over the world, and returns not to his native land, but to another country, where he remains till his death, does not show an intention of abandoning his domicile of birth and taking a domicile of adoption.—*Law Journal* (London).

## *GENERAL NOTES.*

At the Liverpool County Court there was a dispute with a dressmaker about the fit of a certain bodice. The plaintiff, who refused to take it, alleged it was too short, and too much padded. The dressmaker stated that bodices were now cut short on the hips, and as to the padding it was necessary, on account of the lady being deficient in the place where the padding was placed. The plaintiff did not desire to have her figure improved by the dressmaker, she was quite satisfied with it as it was. The question of misfit or fit appeared to be incapable of decision, till at length the dressmaker claimed that it should be put on. The plaintiff at length consented to do so, and adjourned for that purpose. On her return the judge and Court proceeded to criticize the fit. The judge at last made a suggestion—such a suggestion, just like a man—that surely the fault of the bodice being too short might be remedied by bringing the dress higher up: but then his honor appears to have forgotten all about the ankles. The matter was, however, at last settled.—Gibson's *Law Notes* (London).

In the Hoyt will case, Gen. Butler, while addressing the Surrogate in opposition to a motion to strike out certain medical testimony, provoked a laugh at the expense of Senator Evarts, his adversary. "Why, your Honor," said he, "at this time the testator's malady had proceeded so far that his mind was almost entirely gone. He could not carry on an intelligent conversation. He could not even talk politics; and no one knows better than my learned friend, (turning to Senator Evarts) that it takes very little intellect to talk politics."

At a trial over which Mr. Justice Maule presided, great doubt was expressed as to whether a little girl who had been called as a witness knew the nature of an oath. To silence controversy, the judge asked the child if she knew where she would go if she told a lie. The witness meekly replied, "No, sir." To which the judge added, "A very sensible answer. Neither do I know where you will go to. You may swear the witness."—*Whitehall Review*, (London.)

Houghton, with all his high gifts, had, like most really noble men, a good deal of the woman in his nature, not only of the gentle, the merciful woman, but also of the woman excelling man by her ready initiative, by her swift sagacity transcendent of the reasoning process, and now and then by her nimble, her clever resort to a charming little bit of stage artifice. My laundress had come to me one day in floods of tears because her little boy of eleven years old, but looking, she said, much younger (being small of stature), had wandered off with another little boy of about the same age to a common near London, where they found an old mare grazing. The urchins put a handkerchief in the mouth of the mare to serve for a bridle, got both of them on her back, and triumphantly rode her off, but were committed to Newgate for horse-stealing! My laundress (not wanting in means) took measures for having her child duly defended by counsel, but I thought it cruel that the fate of the poor little boy should be resting on the chances of a solemn trial, and I mentioned the matter to Milnes [Lord Houghton]. He instantly gave the right counsel. 'Tell your laundress to take care that at the trial both the little boys—both, mind—shall appear in nice clean pinafores.' The effect, as my laundress described it to me, was like magic. The two little boys in their nice 'pinafores' appeared in the dock and smilingly gazed round the court. 'What is the meaning of this?' said the judge, who had read the depositions and now saw the 'pinafores.' 'A case of horse-stealing, my lord.' Stuff and nonsense!' said the judge with indignation. 'Horse-stealing, indeed! The boys stole a ride.' Then the 'pinafores' so sagaciously suggested by Milnes had almost an ovation in court, and all who had to do with the prosecution were made to suffer by the judge's indignant comment.—*Fortnightly Review.*

PRISONERS AS WITNESSES.—In the course of summing up in *Regina* v. *Jarrett*, on November 7, Mr. Justice Lopes made the following observations:—'All the parties who are accused, except Jacques, have availed themselves of the privilege of giving evidence. I rejoice that they have done so, because it has enabled them to place before you every fact and every circumstance which could in any way exonerate them from the offence with which they are charged. I cannot help alluding to the fact that the Attorney-General has refrained from objecting to evidence which, if objected to, I think I must have held inadmissible. Statements made by one of the accused parties to the other have frequently been introduced into this case. No objection was taken to that course, and I did not feel it my duty to interfere. I am glad no objection was made, because it gave a greater opportunity to the accused. I allude to these matters for this reason: that this being one of the first cases tried under the new Act, I should not like what has been done in this case to be construed into a precedent, and that it should be supposed that in cases tried under this Act, when persons tender themselves as witnesses, statements of this kind are to be allowed. Jacques might have been put into the witness-box, but Mr. Mathews, with great judgment, said that no observation adverse to him had been made, because he was ready to admit all the evidence given, and had nothing to contradict, and why, therefore, should he go into the box if he had nothing to contradict? As Jacques has not chosen to go into the witness-box, it is not a fair suggestion to say if he had gone into the box there might have been extracted from him that which would have implicated him.'