THE

LEGAL NEWS.

VOL. XVI. NOVEMBER 15, 1893. No. 22.

CURRENT TOPICS AND CASES.

A case occurred very recently in Ontario where a burglar was shot in the act of plundering. It may be well for burglars as well as householders to know that there is good authority for such treatment of midnight depredators. Before the Manchester Assizes, a few weeks ago, one Higgins was tried for shooting a burglar. The facts were as follows: An innkeeper was charged with having at Manchester, on September 5, feloniously shot at Owen Riley with intent to do him some grievous bodily harm. At 2.10 a.m. on the day in question a police-constable, hearing a whistle, went to the Victoria Hotel, kept by the prisoner, whom he found standing on the steps. He said he had shot Riley, whom he had found in his house. On being charged, he stated that at 1.50 a.m. he was awakened by his wife, and, after listening for a time, heard a noise downstairs. He took his revolver, went downstairs, called 'Who is there?' and getting no answer opened the door. Riley was crouching down, the room being nearly dark. Being frightened, and not knowing how many burglars might be in the house, he fired and hit Riley in the chest. In a subsequent statement he said that he had only intended to frighten the man he saw, and was very sorry for what

had happened. Owen Riley was called as a witness, having previously pleaded 'Guilty' to the charge of burglary. He said that the defendant had shot him from inside the kitchen door, and that there was a light in the room. Counsel for the defence submitted that even on the assumption that Higgins had shot Riley intentionally he could not be convicted, as he was acting reasonably in defence of his life and property when a felony had been committed. Mr. Justice Grantham ruled that there was no evidence against the prisoner of shooting with a felonious intention. He said that the prosecutor, having, by his own account, broken into the house and searched it for what he could steal, the prisoner, coming into the room as he did, was entitled to shoot at him. He therefore directed the jury to acquit the prisoner, who was thereupon discharged.

We notice a statement that the Georgia House of Delegates has voted down a proposition to increase the salary of the judges of the Superior Court from $2,000 to $2,500. The motive for this misplaced economy does not appear. It can have no connection, we presume, with the fact that lynch law has so largely replaced the ordinary methods of justice in the Southern States.

A peculiar question of the law of assault is before the Supreme Court of Massachusetts. The defendant is a milkman who had been accustomed to leave milk at an early hour at the plaintiff's house. At intervals he had entered the plaintiff's sleeping-room for the purpose of collecting his bill while his debtor was in bed. The evidence does not show that the plaintiff was reluctant to settle the claims against him. The method of collection was merely a usage to which he submitted. But after a while he grew tired of it, and notified the milkman to discontinue the practice. One morning, however, the defendant, wanting his money and not finding the

plaintiff up, made his way again to the room, and aroused plaintiff by shaking his shoulder. Then the defendant presented his bill. It happened that the customer had just fallen asleep after a night of sickness, and he showed his resentment by bringing suit for assault against his creditor. The lower Court entered judgment for the defendant, but the plaintiff is not satisfied, and wishes it to be settled once for all whether a milkman can awaken a customer and demand his dues at an unseemly hour.

A propos of lotteries and bazaars, Mr. Justice Monroe recently told a good story illustrative of the gambling spirit of the age. His lordship visited a bazaar. A little girl—ten or twelve years of age—asked him to buy a ticket. He said to her, 'Do you know, my dear girl, were I to buy and you to sell a ticket we should bring ourselves within measurable distance of the law, and if we were brought before the magistrates we might be treated as rogues and vagabonds.' The little girl looked at the great lawyer for a moment, surveying him from the crown of his head to the sole of his foot, taking his measure, as he thought, and then, with sublime audacity, said: "Well, sir, shall I say one ticket or two?" The result of the appeal was not disclosed by the narrator of the incident.

THE LATE MR. JUSTICE TASCHEREAU.

The late Hon. Jean T. Taschereau, ex-judge of the Supreme Court of Canada, who died at Quebec, November 9, aged 78, was a son of the late Jean T. Taschereau, Sr., in his lifetime one of the puisne judges of the Court of Queen's Bench of Lower Canada. His mother was Marie Panet, daughter of Hon. Jean Panet, first speaker of the House of Assembly for the province of Quebec, an office which he held for twenty consecutive years. The deceased was born in the city of Quebec, on December 12, 1814. He was educated at the Quebec Seminary, where he greatly distinguished himself in different branches, taking prizes

in mathematics, Latin, etc. He studied law in his native city with Messrs. Stuart and Black; was called to the bar of Lower Canada in 1836, and subsequently followed several law courses in Paris, France. He practised his profession with great success for more than twenty years. He was created a Q. C. in 1860, and received the title of LL.D. from Laval University in 1855. On September 3, of the last mentioned year, he was appointed an assistant judge of the Superior Court of Lower Canada, to replace a judge of the Superior Court at Quebec during the sittings of the Special Court appointed under the act for the abolition of feudal rights in Lower Canada. On June 8, 1860, he was appointed an assistant judge of the Superior Court of Lower Canada, to replace the Hon. Justice Morin, who was appointed on the commission for codifying the laws. On August 11, 1865, he was appointed a puisne judge of the Superior Court of Lower Canada as successor to the Hon. A. N. Morin, deceased. On February 11, 1873, he was appointed a puisne judge of the Court of Queen's Bench, Lower Canada, and on October 8, 1875, was appointed a puisne judge of the Supreme Court of the Dominion. The latter office he resigned on account of ill-health, on October 19, 1878, after being on the bench for nineteen years.

EXCHEQUER COURT OF CANADA.

OTTAWA, November 6, 1893.

Coram BURBIDGE, J.

THE QUEBEC SKATING CLUB, suppliants, and THE QUEEN, respondent.

Contract—Breach of—Promise to promote legislation by Minister of the Crown—Effect of—Ordnance land—Control and disposition of.

Held:—1. No Minister or Officer of the Crown can bind it without the authority of law.

2. An order of the Governor-General in Council pledging the government to promote legislation does not constitute a contract for the breach of which the Crown would be liable in damages.

3. The Minister of the Interior cannot lease or authorize the use of ordnance lands without the authority of the Governor in

Council. R. S. C., c. 22, sec. 4; R. S. C., c. 55, secs. 4 & 5, discussed. *Wood* v. *The Queen*, 7 Can. S. C. R. 631; *St. John Water Commissioners* v. *The Queen*, 19 Can. S. C. R. 125, and *Hall* v. *The Queen*, 3 Ex. C. R. 373, referred to.

G. C. Stuart, Q.C., for suppliants.
W. D. Hogg, Q.C., for respondent.

June 26, 1893.

Coram BURBIDGE, J.

CARTER et al. v. HAMILTON.

Patent — "The Paragon Black-leaf Cheque Book" — Validity — Want of novelty—Infringement.

The plaintiffs obtained letters-patent on the 15th February, 1882 (registered in the patent office at Ottawa as No. 14182), for "The Paragon Black-leaf Cheque book composed of double leaves, one-half of which is bound together while the other half folds in as fly leaves, both being perforated across so that they can readily be torn out; the combination of the black-leaf bound into the book next to the cover, and provided with the tape bound across its end, the said black-leaf having the transferring composition on one of its sides only." The objects of the invention, as stated in the specification, were to provide a check-book in which the black-leaf used for transferring writing from one page to another need not be handled and would not have a tendency to curl up after a number of leaves have been torn out. The first of such objects was to be obtained by the use of the tape which enabled "the black-leaf to be folded back or raised without soiling the fingers," and the second by binding the black-leaf in with the other leaves but next to the cover, in which position there "would be less likelihood of the black-leaf becoming crumpled up than if it were placed in the centre and the leaves removed from the stub on either side."

The defendants had a patent for and manufactured a counter-check-book in which a margin was left on the carbon leaf by which it could be turned over without soiling the fingers. With the exception of the tape for turning the leaf it was established that the plaintiffs' patent had been anticipated, and it was also proved that prior to the issue of the plaintiffs' patent, a patent had been granted in the United States for the process of manu-

facturing carbon for use in manifold writing with clean margins so that the paper could be handled without soiling the fingers.

Held:—That if the plaintiffs' patent was constructed to include the use of clean margins on carbon paper, as applied to counter-check-books, it failed for want of novelty; but that if the patent was limited, as it was thought it should be, to the means described therein for turning over such carbon leaves without soiling the fingers, that is, to the use of the tape, the defendants did not infringe the patent by using a clean margin for the like purpose.

W. Cassels, Q.C., and *Edgar* for plaintiffs.

Johnston for defendants.

NOVA SCOTIA ADMIRALTY DISTRICT.

March 16, 1893.

MACDONALD (C. J.), L. J. A.

THE SANTANDERINO.

Collision—Arts. 18 *and* 21 *of the Navigation Act, R. S. C., c.* 79, *sec.* 2—*Undue rate of speed for steamer in public road-stead—Negligence in taking precautions to avert collision—Responsibility for collision where such occurs.*

The steamship S. was proceeding up the harbour of Sydney, C. B., at a rate of speed of about 8 or 9 miles an hour. When entering a channel of the harbour which was about a mile in width, her steam steering-gear became disabled and she collided with the J., a sailing vessel lying at anchor in the roadstead, damaging the latter seriously. It was shown that the master of the S. had not acted as promptly as he might have done in taking steps to avoid the collision when it appeared likely to happen.

Held,—that even if the breaking of the stearing-gear—the proximate cause of the collision—was an inevitable accident, the rate of speed at which the S. was being propelled while passing a vessel at anchor in a roadstead such as this, was excessive, and, in view of this and the further fact that the master of the S. was not prompt in taking measures to avert a collision when he became aware of the accident to his stearing-gear, the S. was in fault and liable under Article 18 of sec. 2 of R. S. C., c. 79.

Held,—also, that the provisions of Article 21 of sec. 2, R. S. C., c. 79, should be applied to road-steads of this character, and that

inasmuch as the S. did not keep to that side of the fairway or mid-channel which lay on her starboard side, she was also at fault under this article, and responsible for the collision which occurred.

W. B. A. Ritchie for plaintiffs.

A. Drysdale for defendants.

BRITISH COLUMBIA ADMIRALTY DISTRICT.

April 28, 1893.

SIR MATTHEW B. BEGBIE, C. J. (L. J. A.)

THE SHIP "CUTCH."

Maritime law—Collision—Responsibility for, where uninjured ship declines to assist helpless one—The Navigation Act, R. S. C., c. 79, secs. 3 and 10.

Under the provisions of section 10 of the Navigation Act [R. S. C., c. 79) where a collision occurs, the ship neglecting to assist is to be deemed to blame for the collision in the absence of a reasonable excuse.

Two steamships, the C. and the J. were leaving port together in broad daylight, and a collision occurred between them. The J. received such injury as to be rendered helpless. The C. did not assist, or offer to assist, the disabled ship, but proceeded on her voyage. The excuse put forward by the master of the C. was that the J. did not whistle for assistance, although the evidence showed that he must have been aware of the serious character of the damage sustained by her. He further attempted to justify his failure to assist by the fact that other ships were not far off; but it was shown that these ships were at anchor and idle.

Held,—that the circumstances disclosed no reasonable excuse for failure to assist on the part of the C. and that the consequences of the collision were due to her default.

Held,—also, that the C. was in fault under Art. 16 of sec. 2 of the Navigation Act for not keeping out of the way of the J., the latter being on the starboard side of the C. while they were crossing.

Pooley, Q.C., for plaintiffs.

E. V. Bodwell and *P. Æ. Irving* for defendant.

October 2, 1893.

Coram BURBIDGE, J.

HALL v. THE QUEEN.

Parol contract between Crown and subject—R. S. C., c. 37, s. 23—Effect of its provisions where contract executed—Quantum meruit.

Held,—The provisions of the 23rd section of R. S. C., c. 37, do not apply to the case of an executed contract; and where the Crown has received the benefit of work and labour done for it or of goods or materials supplied to it or services rendered to it, by the subject, at the instance and request of its officer, acting within the scope of his duties, the law implies a promise on the part of the Crown to pay the fair value of the same.

A. P. Pousette, Q.C., for plaintiff.

W. D. Hogg, Q.C., for defendant.

LE BILL DE JUDICATURE.

Un représentant de l'*Evénement* a eu avec M. Casgrain l'entrevue suivante au sujet du bill de judicature :

Q.—M. Casgrain, avez-vous lu l'article de M. A. Globensky, de Montréal, au sujet de votre bill sur la réorganisation des tribunaux ?

R.—Oui ; et comme M. Globensky paraît avoir fait une étude profonde de la question, son article m'a fort intéressé, comme je l'avais été du reste par le rapport par lui fait au barreau de Montréal.

Q.—Pouvez-vous donner une réponse aux derniers arguments de M. Globensky ?

R.—Naturellement je ne puis, dès maintenant, vous faire l'exposition complète de la question ni donner toutes les raisons qui militent en faveur de mon projet. Lorsque je présenterai la mesure à la Chambre je les donnerai plus au long.

Q.—La principale objection de M. Globensky paraît être basée sur le fait que votre projet de loi tend à détruire le système de décentralisation judiciaire établi en 1858 par sir George Cartier ?

R.—C'est là le principal cheval de bataille de tous ceux qui, pour une raison ou pour une autre, sont opposés à la mesure, mais je déclare que personne ne peut lire le projet de loi sans être con-

vaincu qu'il ne touche aucunement au principe de la décentralisation judiciaire ; je vais plus loin, je dis que la décentralisation qui se fera en vertu de mon bill sera plus grande que celle qui existe maintenant. La décentralisation judiciaire ne dépend pas de la résidence des juges de la cour supérieure dans chaque district, mais elle dépend de l'audition des causes, de la reddition des jugements, enfin, de l'administration de la justice dans chaque district. Avant 1857, la cour supérieure ne siégeait que dans sept districts : à Montréal, Québec, Sherbrooke, Trois-Rivières, Ottawa, Kamouraska et Gaspé. En 1857, la loi de sir Georges Cartier créa dix-huit juges de la cour supérieure, qui devaient exercer leurs fonctions dans les différents districts qui furent alors créés. Depuis ce temps, l'on a augmenté le nombre des districts, ainsi que le nombre des juges de la cour supérieure, donnant à chaque district un juge de la cour supérieure qui y administre la justice. Je ferai remarquer, dès maintenant, que la loi qui oblige les juges à résider dans les limites de leur district est presque une lettre morte. Aujourd'hui il n'y a pas de juges résidant dans les districts de Saguenay, Rimouski, Joliette, Beauce, Richelieu et Pontiac. Mon projet de loi ne change aucunement les limites des districts qui existent actuellement. Les causes qui y prennent naissance et qui y sont jugées maintenant, le seront encore. Pas une cause, pas une motion, même la moins importante, qui y est plaidée et jugée maintenant, sera plaidée ou jugée ailleurs. La seule différence, c'est qu'au lieu d'avoir un seul tribunal pour toutes les causes, il y en aura deux, divisés d'après le montant en litige.

Pour les causes de moins de $400, il y aura un tribunal qui s'appellera la cour de district, présidé par un juge de district, résidant au chef-lieu de chaque district ; pour les causes au-dessus de $400, il y aura la cour supérieure composée de quinze juges ; il est vrai que la résidence de ces derniers juges sera fixée à Montréal et à Québec, mais ils iront à tour de rôle, dans chaque district pour y entendre et juger les causes au-dessus de $400. Ainsi, comme vous le voyez, je ne touche en rien au principe de la décentralisation tel qu'établi par sir George Cartier, et je le pousse même plus loin, car je donnerai des juges de district à des endroits comme la grande région au nord de Montréal, au nord de Québec et à d'autres endroits qui n'ont pas encore cet avantage.

Q.—Quel est l'avantage de diviser ainsi la cour supérieure en deux, donnant une juridiction à certains juges dans les causes jus-

qu'à $400, et à d'autres juridiction dans des causes au-dessus de cette somme ?

R.- Les trois-cinquièmes, à peu près, des causes sont pour un montant au-dessous de $400. Toutes les causes, aujourd'hui, dans lesquelles le montant en litige dépasse $100 peuvent être portées en appel à la cour du Banc de la Reine ; la conséquence, c'est qu'aujourd'hui, le rôle de la cour d'Appel est tellement chargé que, si vous inscrivez une cause en appel, vous êtes obligé d'attendre deux ans avant de pouvoir la plaider. Je propose d'améliorer ce système. Les jugements de la cour de district pourront être portés en appel devant la cour de Révision, laquelle sera composée, comme elle l'est maintenant, des juges de la cour supérieure. Ce tribunal sera donc un tribunal d'appel proprement dit, et on ne l'appellera plus, comme on l'appelle maintenant, un tribunal de *confirmation*. Pour les causes où le montant en litige excèdera $400, appel sera porté devant la cour du Banc de la Reine — on atteindra ainsi un double but — on diminuera le nombre des appels à la cour du Banc de la Reine, on diminuera également les frais, on donnera aux juges de la cour supérieure et de la cour de district, tout le temps nécessaire pour entendre et étudier les causes qui leur sont soumises, et on débarrassera la cour du Banc de la Reine de l'énorme fardeau qui pèse actuellement sur elle, lui donnant ainsi une efficacité plus grande.

Q.—Quels sont à peu près les frais d'une cause portée en appel devant la Cour du Banc de la Reine ?

R.—Pour la moindre cause de $100 quand il y a bien peu de preuve à imprimer, les frais sont de $300.

Q.—Quels seront les frais d'un appel d'un jugement de la Cour de district devant la Cour de Révision ?

R.—Une centaine de piastres au plus.

Q.—Mais on objecte que pour les matières sommaires, les brefs de prérogatives, les décisions à l'enquête, etc., on sera obligé dans les districts ruraux, d'attendre dans les causes au-dessus de $400 que le juge de la Cour Supérieure vienne pour le terme ?

R.—Ceci est une matière de procédure dont je n'ai pas parlé dans le projet de loi tel que soumis à la dernière session, mais pour qu'il n'y ait pas de malentendu, cette année, j'ai inclus une clause donnant, sur toutes ces matières, juridiction aux juges de districts, sauf appel, soit à la Cour de Révision, soit à la Cour du Banc de la Reine, soit aux deux successivement.

Q.—Vous dites que la loi, fixant la résidence des juges est une

lettre morte. Croyez-vous que les juges de district résideront dans leurs districts ?

R.—Oui. Aujourd'hui l'ouvrage est inégalement distribué entre les juges et ceux-ci, qui pour la plupart ont été choisis parmi les avocats des villes, trouvent toujours, dans le surcroît de l'ouvrage dans les villes, un prétexte d'y passer la plus grande partie de leur temps, et même d'y résider. Par mon bill l'ouvrage est plus également divisé, ce prétexte n'existe plus, les juges de district étant choisi plus particulièrement parmi les avocats de la campagne, n'auront aucun intérêt ni aucun prétexte de résider ailleurs qu'à la compagne, et je puis vous dire, en passant, qu'il y a, dans presque tous les districts ruraux, des avocats éminents qui figureront avec avantage à côté de nos juges.

Q.—Vous remarquez, M. le Procureur, que M. Globensky et ceux qui combattent votre projet de loi, disent que les avocats et les justiciables sont satisfaits du système actuel ?

R.—Oui, et je suis de plus en plus étonné chaque fois que j'entends faire cette assertion. Depuis que je suis au Barreau, j'entends des plaintes contre le système qui existe actuellement. Dès 1880, M. le juge Pagnuelo écrivait sur la réforme judiciaire des lettres restées célèbres, et dans lesquelles il disait que depuis dix ans déjà l'opinion demandait des changements radicaux. Vers le même temps, feu M. le juge Loranger écrivait dans le même sens. L'honorable M. Laflamme qui est une autorité sur la matière écrivait la même chose: M. Lareau, l'hon. M. Langelier et quelques autres dont j'ai l'opinion à mon département. Voyez ce qui se passe à Montréal ; j'oserais dire que la moitié des affaires judiciaires de toute la province sont faites à Montréal, par conséquent Montréal, à ce point de vue, a une très grande importance et mérite d'attirer l'attention de celui qui veut rendre efficace l'administration de la justice dans la province; or, ce qui y arrive actuellement est intolérable.

Comme je l'ai déjà dit, une inscription en appel veut dire deux ans d'attente avant que l'on puisse avoir une décision. On m'informe positivement qu'une cause inscrite aux enquêtes et mérites ne peut être entendue que neuf mois après l'inscription; est-ce là la célérité que réclame les opinions modernes sur l'administration de la justice; on a beau dire que cela dépend des juges, l'on a essayé de toutes les façons par une législation morcelée, de remédier à ces abus, l'on n'a pas réussi et les efforts que l'on a faits

me prouvent qu'il n'y a qu'un changement radical qui puisse y porter remède. A Sherbrooke encore, le juge de la cour supérieure est surchargé d'ouvrage, tandis qu'il y a 10 ou 12 juges dans d'autres districts qui n'ont certainement pas trois mois d'ouvrage pendant toute l'année. J'ai déjà signalé la plainte que l'on fait entendre contre la cour de révision telle qu'actuellement organisée. Voilà des faits qui vous prouvent que le système qui existe actuellement, ne rencontre plus les besoins des justiciables.

Q.—Les avocats se plaignent-ils du système actuel ?

R.—Un certain nombre, oui ; d'autres sont satisfaits. Mais je prétends que l'on doit plutôt considérer les intérêts des justiciables que les intérêts des avocats.

BREACH OF PROMISE OF MARRIAGE.

The result of the case of *Shepherd* v. *White*—tried before Mr. Justice Hawkins and a special jury last week—is calculated to diminish the anxiety with which intelligent men have for some time regarded the abuses of actions for breach of promise of marriage. The injured plaintiff was a parlour-maid in the service of a lady at Finsbury Park, while the faithless Lothario was an old gentleman of feeble mental power, boarding under the roof and living under the practical tutelage of his *inamorata's* mistress (who was his sister) and her husband. There was no doubt that a promise of marriage (conditional on the consent of the defendant's sister being obtained) had been made; and although the defendant's gifts of conversation did not rise above the level of disjointed observations on the carts that were passing and repassing the window of his boarding-house, and although even on the momentous morning which was to determine the fate of the action against him, he talked of nothing but the family cat and the omnibus by which he was to be conveyed to the Law Courts, it is tolerably clear that he possessed the modest degree of capacity necessary in law to the formation of a valid contract of marriage. The plaintiff's technical right to relief was, therefore, complete—if we except the condition as to the consent of the defendant's sister. But the jury, taking into consideration the lightness of the defendant's mental calibre, and the possibility that his chief attractiveness in the eyes of the plaintiff lay in the

fact that he was worth about 300*l.* a year, awarded her one farthing damages — a verdict to which Mr. Justice Hawkins promptly gave its legitimate effect by depriving her of costs. In spite of the doubt recently expressed by Lord Coleridge in the case of *Austin* v. *Harding*—a still more flagrant abuse of the action of breach of promise, happily defeated by the application of the rule laid down by the Court of Appeal in *Finlay* v. *Chirney*, L. R. 20 Q. B. Div. 494—whether this legal remedy ought to be continued, at least in its present unrestricted form, there are cases in which the heavy damages and the incidental exposure obtainable by a direct action for breach of promise are effective weapons in the hands of justice, and we are not quite convinced that they could with advantage be laid aside. The suggestion made in a contemporary that every promise of marriage should be required to be in writing, and should be subject to a stamp duty of 1*l.* would not meet such cases as *Austin* v. *Harding* and *Shepherd* v. *White* at all. We have more confidence in the efficacy of a few verdicts for the defendant, or for the plaintiff with a farthing damages, followed by the penalty of deprivation of costs.—*Law Journal.*

BURNING AT THE STAKE.

Lynching is bad enough in any view; but the lynching of a negro accused of murder, at Bardwell, Kentucky, recently, would have been worse than it was if the wretched man had been put to death by burning, as was at first seriously proposed, instead of by hanging.

It is difficult to see what the community gained by the proceeding, even assuming that the person put to death was unquestionably the guilty man. He would undoubtedly have been executed in due season according to law if the populace had not interfered.

A queer feature of the uprising which resulted in this lynching was the cool and comparatively calm way in which preparations were made to burn the accused man at the stake. There seems to have been in the minds of the people an idea that their deed, although lawless, would be less reprehensible if they proceeded with order and deliberation.

But the legislature of Kentucky itself could not make burning at the stake a lawful punishment even for the most fiendish of

crimes. The Constitution of that State would have to be changed first. That instrument expressly declares that excessive bail shall not be required, nor excessive fines or cruel punishments inflicted.

It may not be generally known that even in the colony of New York there was a time when criminals were burned at the stake. In the year 1707 an Indian slave and a negro woman were tried for murder by a special commission in this colony. Both were convicted, and the man was executed by hanging and the woman by burning. In 1712 twenty-one slaves were executed in the colony for being concerned in an insurrection which resulted in the killing of a number of white persons, and some of the convicts were put to death by burning. Still later, as a result of what was known as the negro plot of 1741 and 1742, thirteen negroes were burned at the stake. Finally, in 1772, or in the following year, a black who had been convicted of an assault upon a woman was burned at the stake in Johnstown, which place was at that time the county seat of what was then Tyron county, named after the ancestor of the admiral who recently lost his life in the Mediterranean. These and other examples of cruel punishments were given in an interesting opinion which was delivered thirty years ago in the General Term of the sixth judicial district, by Judge William W. Campbell, of the Supreme Court of this State, for the purpose of showing, as he said, that there had been good cause for the prohibition in the Constitution against cruel and unusual punishments.

Most people will probably be as much surprised to learn that burning at the stake was ever a legal method of inflicting the death penalty in New York as they would be to learn that there was a time in England when poisoners were lawfully boiled to death. Such however is the fact.—*New York Sun.*

JUSTICE IN FRANCE.

There is no country where more extraordinary scenes are to be witnessed in courts of justice than in France. The other day a military prisoner was being tried by court-martial upon a charge of theft, and in due course he was asked by the president whether he had anything to say in his defence.

"Yes, mon Colonel," he replied, and pointing to the captain

who had been conducting the prosecution, "I ask that a truss of hay be voted for that donkey." The remark startled the members of the court to such a degree that it took them some moments to recover their equanimity, whereupon they sentenced the prisoner to six months' imprisonment for theft and to ten years' detention, with hard labor, for insulting a member of the court.

A similar incident took place a few days previously at the Palais de Justice. A poor fellow, having just heard himself condemned to five months' imprisonment for an offence described as vagrancy, but which merely consisted in pursuing his calling as a street musician, was wrought up to such a pitch by the severity of his punishment, and by the prospect of his wife and children being left without support for so long a time, that he vociferated just as he was being led away: "You are nothing but executioners: it is abominable. The big judge has had his eyes closed during the whole trial." By order of the court the prisoner was brought back to the dock, and five minutes later the poor wretch heard himself sentenced to five years' penal servitude for having insulted the court.

This recalls to mind an incident in the career of Gambetta prior to the overthrow of the empire. He was in the act of addressing the court in behalf of a prisoner, when suddenly he perceived that the presiding judge was visibly dozing. He paused for a moment, and then bringing down his fist with a terrible thump on the desk in front of him, he shouted in his most resonant and clarion-like voice: "As I was saying before the awakening of the court." This apostrophe was immediately punished by the indignant judge suspending the young lawyer from practising his profession for a period of two months.

Less energetic, yet equally effective, was the well-known and popular academician and lawyer, Maitre Rousse, who, having likewise observed that the presiding magistrate was indulging in a nap, suddenly stopped talking. The prolonged silence, which lasted for four minutes, had the effect of awakening the judge, and as soon as he opened his eyes Maitre Rousse made a profound bow and resumed his speech, as follows: "As I was saying, messieurs de la cour, at your last audience," laying special stress on the word "last." The reproof was so delicate that everybody smiled, even including the judge himself.—*Boston Journal.*

GENERAL NOTES.

WOMEN AT THE BAR.—Eight of the 110 female lawyers of the United States have acquired the right to practise before the Supreme Court of that country.

WHY HE LOST.—A learned judge, while at the bar, unexpectedly lost a case for a client who was a justice of the peace, and in his own opinion a very learned one. The judge was at a loss how to explain the cause satisfactorily to him when they met, but he did it as follows: "Squire, I could not exactly explain it to an ordinary man, but to an intelligent man like you, who are so well posted in law and law phrases, I need only say that the judge said that the case was *coram non judice.*" "Ah!" said the client, looking very wise and drawing a long breath, "if things got into that fix I think we did very well to get out of it as easy as we did."

HINTS TO STUDENTS.—The late Sir Andrew Clark, in addressing his students on one occasion, said he presumed those present would like to know from him what conditions he thought were essential to make a man a successful physician. Here are the opinions he expressed on this point: "Firstly, I believe that every man's success is within himself, and must come out of himself. No true, abiding and just success can come to any man in any other way. Secondly, a man must be seriously in earnest. He must act with singleness of heart and purpose; he must do with all his might and with all his concentration of thought the one thing at the one time which he is called upon to do. And if some of my young friends should say here, 'I cannot do that—I cannot love work,' then I answer that there is a certain remedy, and it is work. Work in spite of yourself, and make the habit of work, and when the habit of work is formed it will be transfigured into the love of work; and at last you will not only abhor idleness, but you will have no happiness out of the work which then you are constrained from love to do. Thirdly, the man must be charitable, not censorious—self-effacing, not self-seeking; and he must try at once to think and to do the best for his rivals and antagonists that can be done. Fourthly, the man must believe that labor is life, that successful labor is life and gladness, and that successful labor, with high aims and just objects, will bring to him the fullest, truest and happiest life that can be lived upon the earth."