THE

LEGAL NEWS.

VOL. XVII. JULY 16th, 1894. No. 14.

CURRENT TOPICS.

Parliament has once more concluded its business without doing anything to increase the remuneration attached to the judicial office. But there seems to be a disposition to treat the members of the Supreme Court with a consideration not accorded to the provincial appeal courts. A resolution introduced on the 25th June by the Minister of Justice reads as follows: "That if any judge has held the office of judge of the Supreme Court of Canada for fifteen years, or the said office and that of judge of the Exchequer Court, or the said office and that of judge of one or more of the superior courts or of the courts of vice-admiralty in any of the provinces of Canada, for periods amounting together to fifteen years or upwards, and if such judge has attained the age of seventy years and resigns his office, he shall during the remainder of his life continue to receive his full salary, which shall be payable to him in the same manner as it was payable at the time of his resignation; provided, however, that nothing herein shall apply to a judge who has held the office of judge of the Supreme Court of Canada for a period less than five years." This proposition would enable almost the entire Supreme bench to retire without loss of any portion of their emoluments. It is doubtful whether such an inducement should be held out. It

would certainly facilitate the creation of vacancies in the court whenever the Government of the day was specially anxious that one should exist, but that is hardly a good reason for offering a special inducement to the judges generally to withdraw from work for which they may be thoroughly competent, to be replaced by others perhaps not more competent, and at a double charge to the country. The two-thirds pension allowed to judges of other courts seems to be a better system.

Another change which more immediately concerns the Montreal and Quebec districts, is contained in the following section of a bill introduced on the 3rd July: "The last paragraph of section 4 of the *Act respecting the Judges of Provincial Courts*, chapter 138 of the Revised Statutes, is hereby repealed and the following substituted therefor: "If the Chief Justice of the Superior Court resides at Quebec, the judge residing at Montreal who is appointed by the Governor-in-Council to perform the duties of Chief Justice in the district of Montreal as it is comprised and defined for the Court of Review, or, if the Chief Justice resides at Montreal, the judge residing at Quebec who is appointed by the Governor-in-Council to perform the duties of Chief Justice in the district of Quebec as it is comprised and defined for the Court of Review, in addition to his other salary, $1,000 per annum." The terms of the section repealed were: "The senior puisné judge residing at Quebec, if the Chief Justice resides at Montreal, or the senior puisné judge residing at Montreal, if the Chief Justice resides at Quebec, in addition to his other salary, $1,000." The amendment precludes the senior puisné judge from succeeding to the position and salary of acting Chief Justice unless specially appointed, a change which on general principles is desirable; but in the present instance it is regrettable, inasmuch as the senior puisné judge at Montreal is peculiarly qualified for the position of acting Chief

Justice, the duties of which he has actually discharged for the past two years.

In several particulars there was a resemblance between Lord Coleridge and our own Chief Justice, whose decease preceded by a few weeks that of his English contemporary. They were both remarkable for easy and graceful eloquence and decided literary and philosophical leanings. There appears to be also in each case a difficulty in assigning them their precise position as lawyers. The *Law Journal*, referring to the English Chief Justice, says: "The estimates which have been formed and published of Lord Coleridge's quality as an advocate and a judge, in the course of the last few days, have been numerous and bewildering. One inspired critic has been pleased to assert that the late Lord Chief Justice was merely a master of dignified and graceful platitudes; that his cross-examinations at the Bar were notoriously futile; and that his law on the Bench was 'always interesting and sometimes accurate.' This is not a character sketch, but a caricature, and a very ungenerous and unworthy one. On the other hand, we have been told by high authority, and with equal confidence, that Lord Coleridge and Lord Mansfield will occupy about the same place in the legal firmament. It is to be feared that this estimate is coloured by the warmth and sorrow of an *éloge*. It is useless to compare Coleridge with Cairns or Jessel even, much more with the master intellect of the creator of English commercial jurisprudence. That he had high legal aptitudes is certain, but that he did not care or trouble to cultivate them to the extent which would entitle him to be ranked among supreme lawyers, is equally true. The verdict of legal posterity on the late Chief Justice will probably be a compound of the views which lie between these two extremes. Lord Coleridge was not the equal of Sir Henry Hawkins as a cross-examiner. We are satisfied that Sir Henry would

have broken the Claimant down, which Lord Coleridge certainly did not. But no student of his forensic duels can doubt that he was a skilful handler of the foils. His speeches contained less 'grit and iron' than those of Cockburn; but he was unquestionably a more polished advocate; and so on through the whole gamut of forensic and judicial attributes. On one point Lord Coleridge's supremacy will not be challenged—he was the most eloquent speaker whom the Bar, in this century at least, has produced."

SUPREME COURT OF CANADA.

13th March, 1894.

Nova Scotia.]

MACK v. MACK.

Trustee—Administrator of estate—Release to, by widow and next of kin—Misrepresentation—Rescission of deed of release—Laches.

M., administrator of his brother's estate, obtained from the widow and next of kin of the testator a release of all their respective interests in the real and personal property of the deceased, representing to them that if the property was sold at auction it would be sacrificed, and the most could be made of it by his having full control. The testator died in 1871, and from that time until his own death in 1888 M. held the property as his own, and did nothing with it as executor either by passing accounts in the Probate Court or attempting to wind up the estate. During that period he wrote a number of letters to the testator's widow, in most of which he stated that he was acting for her benefit in regard to the property and would see that she lost nothing by his having it, and in 1881 he paid her $1,000. Prior to this payment, it would appear from his letters that the widow had repented handing over the estate, and kept urging him to give her a statement of his dealings with the property, and early in 1881 he wrote that it would take two years more to enable him to know how the business stood, but no such statement was given, and after his death the widow brought an action against his executors asking for an account of the estate and M.'s dealing therewith and payment of her share, and to have the said

release set aside. The defendants set up the release as an answer to the claim, and also pleaded that plaintiff was precluded by *laches* from maintaining the action.

Held, affirming the decision of the Supreme Court of Nova Scotia, Gwynne, J., dissenting, that the release should be set aside; that the widow in signing it was ignorant of the state of her husband's business and was dominated by the stronger will of M.; and that M. after the release had admitted his liability to her as trustee, and promised to account to her for the property without regard to his legal title, and paid money to her on account of such liability.

Held, further, that the plaintiff was not precluded by delay in pressing her claim from taking these proceedings; that the delay was due to M. himself, who, by his promises to render a statement of the affairs of the estate, had induced her to refrain from taking proceedings; and that M. by his correspondence had elected to divest himself of his legal title and must be treated as a mere trustee for the widow, and there is no statute of limitations to bar a *cestui que trust* from proceeding against his trustee for breach of an express trust, nor is there in Nova Scotia any prescription in favour of an administrator or executor against a beneficiary bringing suit for his share of an estate, except in the case of a legatee.

Appeal dismissed with costs.

Borden, Q.C., for the appellant.

Newcombe and *McInnes*, for the respondents.

Exchequer Court—Admiralty.] 13th March, 1894.

S. S. SANTANDERINO v. VANVERT.

Admiralty—Collision—Defective steering gear—Prompt action—Questions of fact—Appeal on.

The S.S. "Santanderino" was entering Sydney harbour, where the barque "Juno" was lying at anchor, about 200 yards to the right of the centre of the channel. She was making eight or nine knots, with a slight list to port, and the Juno was on her starboard bow. As she came near the Juno her head fell off to port, and in porting the helm she came too much to starboard,

and in putting the helm to starboard to put her straight on her course it was found that the wheel would not work. She was then 200 to 250 yards from the Juno and on her port quarter. The third officer, who was at the wheel, told the master that it would not work, and the master sent the second and third officers below to see what was the matter and inform the engineer, at the same time telegraphing to stop the engine. He then ordered the port anchor to be let go, the engine to be reversed and then to be reversed at full speed, but before that could be done the steamer struck the Juno on the port side.

In an action for damages caused by this collision it appeared that the defect in the steering gear was caused by the breaking of a small pin called the taper pin, which caused a longer pin to drop out and prevented an eccentric rod, by which the motion was imparted, from working. The judge in Admiralty found that the steering gear was constructed under a proper patent and was in good order when the steamer left Liverpool for Sydney, but that the collision was due to want of prompt action on the part of the officers of the steamer when it broke down.

Held, affirming the decision of the Judge in Admiralty (3 Ex. C. R. 379), Sedgewick and King, J J., dissenting, that though it was doubtful that the evidence was sufficient to support this conclusion, it was not so clearly erroneous that an appellate court would reverse it, the decision depending only on a question of fact. Appeal dismissed with costs.

Newcombe & McInnes, for the appellants.

Borden, Q.C., for the respondents.

QUEEN'S BENCH DIVISION.

LONDON, June 18, 1894.

LAWS v. READ. (29 L. J. 386).

False Imprisonment—Action for—Army Act, 1881 (44 & 45 *Vict.*, *c.* 58), *s.* 156, *subs.* 1, 2, 4—*Offence of purchasing from soldiers —Accused taken into custody—Police protected.*

This was an appeal by a sergeant of police, defendant in an action of false imprisonment, against the judgment of a County Court judge in favour of the plaintiff.

Section 156 of the Army Act, 1881, imposes penalties on pur-

chasing from soldiers regimental necessaries, equipments, stores, &c., and subsection (2) provides that 'where any such property . . . is found in the possession or keeping of any person, such person may be taken or summoned before a Court of summary jurisdiction . . , ;' while subsection (4) enacts that 'a person found committing an offence . . . may be apprehended without warrant and taken, together with the property which is the subject of the offence, before a Court of summary jurisdiction. . . .'

On November 19, 1893, a soldier asked Laws (the plaintiff), a youth of seventeen, to buy a military overcoat for 5*s.*, saying that he had a right to sell it, and would have another as soon as he returned to his regiment. The plaintiff bought the coat. On the evening of Saturday, November 25, the defendant, a sergeant of police, spoke to the plaintiff on the subject, and the plaintiff admitted that he had bought the coat of a soldier and had it at his lodgings, and produced it. The defendant then took him into custody, and the plaintiff was locked up at eight o'clock that night till eleven o'clock next day (Sunday), when he was released on bail. He was subsequently brought before a Court of summary jurisdiction and fined 10*s.* and costs. The plaintiff then brought his action in the County Court, claiming 20*l.* damages for false imprisonment. The learned County Court judge held that the defendant had not justified his arrest of the plaintiff, who could not have been 'found committing' the offence of buying the coat as the purchase had taken place six days before. His judgment was for the plaintiff, with 5*l.* damages.

The COURT (CAVE, J., and COLLINS, J.) held that the judgment below must be reversed. The plaintiff had been found in possession of the coat, and the defendant, therefore, had a right to take him before a Court of summary jurisdiction. Police officers had discretion under the statute to take offenders into custody, and were not liable to an action of this kind, although such discretion be exercised unwisely or even harshly. Upon principle the defendant was right in what he did, although he might have adopted the more lenient procedure of issuing a summons.

Appeal allowed.

COURT OF APPEAL.

LONDON, June 23, 1894.

Before LINDLEY, L. J., LOPES, L. J., DAVEY, L. J.

CARTER v. KIMBELL, (29 L. J. 398.)

False imprisonment—Reasonable suspicion.

Motion for new trial.

This action was brought for damages for false imprisonment. The plaintiff was the owner of a watch which was numbered 26,939, and might properly be described as a 'gent.'s silver English lever watch'; it had one of its hands broken. The defendant was a pawnbroker. The plaintiff had more than once pawned his watch with the defendant. On October 24, 1893, the watch being then out of pawn, the plaintiff sent it over to the defendant's shop by a friend named Harding to raise some money on it. While the defendant was examining the watch he had before him a police notice containing a list of articles which had recently been stolen. The notice requested that any person offering any of the articles thereunder mentioned in pledge or for sale might be detained (35 & 36 Vict. c. 94, s. 34) and a constable sent for, or any information transmitted to the nearest police station. Among the articles described in the notice was the following: 'Gent.'s silver English lever watch, 26,939,' which was stated to have been stolen on September 5, 1893. On observing the identity of the numbers the defendant interrogated Harding, who said that he got the watch from the plaintiff. The defendant then sent Harding to fetch the plaintiff, who came to the defendant's and explained, as the fact was, that the watch had been left him by his uncle. The defendant thereupon gave the plaintiff into custody, and he was taken to the police station.

The action was tried before POLLOCK, B., and a special jury on May 31. It was admitted by the plaintiff at the trial that the defendant had acted *bona fide*, but it was said that he had no reasonable suspicion, within section 34 of the Pawnbrokers Act, 1872, such as would justify him in detaining the plaintiff. That section provides that 'in any case where, on an article being offered in pawn to a pawnbroker, he reasonably suspects that it has been stolen or otherwise illegally or clandestinely obtained,

the pawnbroker may seize and detain the person and the article, or either of them, and shall deliver the person and the article, or either of them, as soon as may be into the custody of a constable." The learned judge considered that there was no evidence to go to the jury, and gave judgment for the defendant.

The plaintiff now applied for a new trial on the ground of misdirection.

Their LORDSHIPS refused the application. They held that the plaintiff's admission that the defendant had acted *bona fide* was almost conclusive to show that the defendant had a reasonable suspicion that the article had been stolen or clandestinely obtained. If the question had been left to the jury, and they had found for the plaintiff, the verdict could not have been sustained. Their lordships, however, desired to express no opinion as to the correctness of *Howard* v. *Clarke*, L. R. 20 Q. B. Div. 558, so far as it laid down that the question of reasonable suspicion under the Act was for the judge.

COURT OF APPEAL.

June 21, 1894.

Before LINDLEY, L. J., LOPES, L. J., DAVEY, L. J.

GUILD v. CONRAD, (29 L. J. 398.)

Statute of Frauds, s. 4—Promise to make good the debt, default, or miscarriage of another—Indemnity—Guarantee.

Motion for new trial.

The plaintiff having agreed to extend a bill credit to a foreign firm in which the defendant took an interest up to a certain limit, on the terms of the defendant giving a written guarantee to the plaintiff for the amount, the foreign firm exceeded the limit, and the plaintiff declined to accept any more of their bills without a further agreement. The defendant then gave to the plaintiff a verbal undertaking, which the Court held upon the evidence was not an undertaking to pay the plaintiff if the foreign firm did not pay, because there was no expectation on the part of either party that the foreign firm would be able to pay, but was an undertaking to provide funds to enable the plaintiff to meet the bills of the foreign firm in any event. To an action upon this

undertaking the defendant pleaded that it was a promise to make good the debt, default, or miscarriage of another within section 4 of the Statute of Frauds, and required to be evidenced in writing. MATHEW, J., held that it was a promise to indemnify, to which the statute did not extend. The defendant applied for a new trial on the ground of misdirection.

Their LORDSHIPS refused the application. *Thomas* v. *Cook*, 8 B. & C. 728, decided that the statute did not apply to a promise to indemnify. That case had been followed in many cases, of which the two latest were *Wildes* v. *Dudlow*, L. R. 19 Eq. 198, and *In re Bolton*, 8 Times Rep. 668, and notwithstanding *Green* v. *Cresswell*, 10 A. & E. 455, it was still good law. There was a material difference between a promise to pay a creditor if the principal debtor made default and a promise to indemnify against a liability, without regard to the question whether anybody else made default or not.

MARRIAGE AND DOMICILE.

The following opinion given by Mr. David Mills, M.P., has been communicated for publication :—

4 July, 1894.

DEAR SIR,—I have considered with care the marriage articles signed by L. N. Mercier and Demoiselle E. Blais, which were drawn up and signed in the province of Quebec. At the time these articles were signed, Mr. Mercier was a resident of Ontario and Miss Blais was a resident of Quebec.

It would seem the parties contemplated residing after marriage in the province of Ontario. Apart from any contract or agreement between the parties expressing a contrary intention, the effect of marriage upon the proprietary rights of the wife depends upon the law of the husband's domicile under the law of England, and, in this respect, the law of Ontario is the same. The matrimonial domicile is that of the husband at the time of marriage, unless there is a *bona fide* intention at the time of marriage to acquire another domicile immediately after, and this intention is known to the wife. In that event the proprietary rights of both will be adjudged by the domicile about to be acquired.

DeSerre v. *Clarke*, L. R. 18 Eq., p. 588.

Colliss v. *Hector*, L. R. 19 Eq., p. 334.

Harvey v. *Farnie*, 8 Ap. Cas., p. 43.

But this rule does not prevent the parties by contract adopting some other law as the one regulating their proprietary rights, and in this case that has been done. These marriage articles are drawn in Quebec, and in conformity with the requirements of the law of Quebec, and clearly contemplated a settlement in conformity with the law of that province.

I think the law as laid down in *Ex parte Sibeth*, 14 Q. B. D. 417, is strictly applicable here. There the husband was trustee for the wife, and as such, was in possession of her separate property. The husband was at the marriage a domiciled Englishman. The wife was a Prussian subject residing at Cologne, where the Code Napoléon was in force. The marriage contract was executed by husband and wife in the form required by the Code Napoléon. The Master of the Rolls, Brett, said the marriage contract must be construed according to the law of Prussia. The same rule is laid down in Hernando v. Sawtell, 27 Ch. D., p. 284, and in Chamberlain v. Napier, 15 Ch. D., p. 614.

It is true that as to forms and solemnities required in the transfer of immovable property, the instrument must conform to the law of the place where the property is situated; compliance with the *lex actus* is insufficient. Adams v. Clutterbuck, 10 Q. B. D. 403. There is nothing in these articles contravening that rule. I think this marriage settlement is one that the courts of Ontario will uphold and enforce.

Yours very truly,

DAVID MILLS.

P. A. CHOQUETTE, Esq., M.P.

JUDICIAL DECISIONS IN THE UNITED STATES.

Mr. John F. Dillon, the well-known author, has recently written a work entitled "Our Law in its Old and New Home." In the course of it he makes the following valuable observations upon United States case law:—

The character of many recent American reports has deteriorated from several causes. To two of these I shall now allude, because they arise from mistaken views and practices of the judges themselves, and are, therefore, readily remediable.

Most of our appellate courts are crowded with causes, and the effect upon the judges is, that they too often feel it to be an ever-

pressing, paramount, all-absorbing duty to clear the docket. This mistakenly becomes the chief object to be attained—the primary, instead of a quite subordinate, consideration. In the accomplishment of this end, the judges are as impatient of delay as was the wedding-guest in the Rhime of the Ancient Mariner. Added to this, a majority of the appellate judges generally reside elsewhere than at the capital or place where the courts are held, and the desire is constantly felt to bring a laborious session to an end as speedily as possible, in order that they may rejoin their families, and do their work in the fatigue-dress of their libraries, rather than under the necessary restraints of the term. They begrudge the time necessary for full argument at the bar. They dislike to hear counsel at length. They prefer to receive briefs. As a result, two practices have grown up too generally throughout the country, which have, as I think, done more to impair the value of judicial judgments and opinions, than perhaps all other causes combined.

The first is, *that the submission of causes upon printed briefs is favored, and oral arguments at the bar are discouraged, and the time allowed therefor is usually inadequate.*

On this subject I hold very strong opinions; but also hold that no opinion can be too strong. As a means of enabling the court to understand the exact case brought thither for its judgment; as a means of eliciting the very truth of the matter both of law and fact, there is no substitute for oral argument. None! I distruts the soundness of the decision of any court, of any novel or complex case, which has been submitted wholly upon briefs. Speaking, if I may be allowed, from my own experience, I always felt a reasonable assurance in my own judgment when I had patiently heard all that opposing counsel could say to aid me; and a very diminished faith in any judgment given in a difficult cause not orally argued. Mistakes, errors, fallacies and flaws elude us, in spite of ourselves, unless the case is pounded and hammered at the bar. This mischievous substitute of printer's ink for face-to face argument, impoverishes our case-law at its very source, since it tends to prevent the growth of able lawyers, who are developed only in the conflicts of the bar, and of great judges, who can become great only by the aid of the bar that surrounds them. What lawyer will prepare for a thorough argument at the bar when he knows that he will not have the time to present it. It was not thus until a recent period. Nor are

these views at all novel. Lord Coke refers to the benefits of oral arguments in language the most solemn and impressive. In cases of difficulty, he says: "No man alone with all his uttermost labors, nor all the actors in them, themselves by themselves out of a court of justice, can attain unto a right decision, *nor in court without solemn argument, where I am persuaded Almighty God openeth and enlargeth the understanding of those desirous of justice and right.*" This, I declare unto you, I do verily believe.

Formerly, whenever a new or difficult question arose, the judges of England invited argument and reargument, *always in open court;* and in the earlier days of the law. the matter was not only debated at the bar by the counsel for the parties, but was afterwards discussed by the judges openly at a time prefixed in the presence of the barristers and apprenticed: "A reverend and honorable proceeding in law, a grateful satisfaction to the parties, and a great instruction to the studious hearers." Truth is not apt to enter where she is not received with welcome and hospitality.

If our case-law is not to go on deteriorating, we must revive the former appreciation of the value of oral arguments. It is these that must be favored, and it is the submission wholly on briefs that ought to be discouraged.

The other practice among some, I fear many, of our appellate courts, which injuriously affects our case-law, *is the practice of assigning the record of causes submitted on printed arguments to one of the judges to look into and write an opinion, without a previous examination of the record and arguments by the judges in consultation.*

This course ought to be forbidden, peremptorily forbidden, by statute. What is the most difficult function of an appellate court? It is, as I think, after the record is fully opened, and the argument understood, to determine precisely upon what point or points the judgment of the case ought to rest. This most delicate and important of all judicial duties ought always to be performed by the judges in full conference *before* the record is delivered to one of their number to write the opinion of the court, which, when written, should be confined to the precise grounds thus pre-determined. In respect to oral arguments, the time allowed therefor, the willingness to hear counsel, and full conferences among the judges in the presence of each other prior to decision or assigning the record to a judge to write the opinion, the Supreme Court of the United States is a model for every appellate tribunal in the country.

When the ideal of legal education shall be the mastery of principles, so that the first impulse of the lawyer in cases not depending upon local legislation will be to find the "principle" and not the "case" that governs the matter in hand; when arguments at the bar shall be mainly directed, first to an ascertainment of the peculiar and controlling facts of the case under consideration, and then to pointing out the principles of law which apply to this precise state of facts, each of which operations requires the disciplined exercise of intellectual qualities of a high order; when the bench shall be constituted of the flower of the bar, and appellate judgments shall not be given without a previous conference of the judges at which the grounds of the judgment shall be agreed upon before the record is allotted for the opinion to be written; when opinions shall be rigidly restricted, without unnecessary disquisition and essay-writing, to the precise points needful to the decision, we shall have an abler bar, better judgments, and an improved jurisprudence, in which erroneous and conflicting decisions will be few, and reduced to the minimum.

GENERAL NOTES.

CHILDREN'S NAMES.—The clergy have long exercised a quasi-paternal authority over the selection of the Christian names of their parishioners' children. But it is curious to find a registrar of births refusing to give way to a father's demand to have his child's name registered as 'Roseanne,' and insisting that it should be 'Rose Anne,' although he was told that a legacy depended on the child being registered as desired. The father took his grievances to Mr. Haden Corser, who intimated that there was a remedy by *mandamus*, but we should hardly think that the official will be so ill-advised as to bring this writ down upon him, or to dictate further to the British public as to the way they are to spell their names.—*Law Journal (London.)*

STYLE.—If a man were to give another an orange (remarked a wag) he would merely say, 'I give you this orange'; but when the transaction is intrusted to the hands of a lawyer to put it in writing, he adopts this form: 'I hereby give, grant and convey to you all and singular my estate and interest, right, title, claim and advantage of and in the said orange, together

with all its rind, pulp and pips, and all right and advantage therein, with full power to bite, cut, suck, and otherwise eat the same, or give the same away, as fully and effectually as I, the said A B C, am now entitled to bite, cut, suck, or otherwise eat the same orange, or give the same away, with or without its rind, skin, juice, pulp and pips, anything hereinbefore or hereinafter, or in any other deed or deeds, instrument or instruments of what nature or kind soever to the contrary in any wise notwithstanding.'

LAW OF THE BALL ROOM.—The *Australian Law Times* discusses the question whether or not a young lady, who breaks her leg at a dance, can maintain an action against her partner on the ground that it was caused by his clumsiness. The writer is inclined to think that a man who asks a girl to dance does not undertake to return her to her chaperon in as good order and condition as he receives her,—"Act of God and the Queen's enemies excepted,"—but that at most his liability is that of a gratuitous bailee, not extending beyond gross negligence; or, looking at the case from another side, that there is no implied warranty on his part that he is reasonably fit for the purpose for which he offers himself as a partner for a dance, as there is no sufficient consideration moving from her to him to support such a warranty. A further point raised is whether or not she did not voluntarily assume the risk of his unfitness. The writer adds that these questions were very fully gone into "in the somewhat analogous case of the bailment of a cab-horse, *Fowler* v. *Locke*, L. R. 7 C. P. 272, 9 C. P. 751, note, 10 C. P. 90."

LAWYERS' CLERKS IN FICTION.—Mr. Spray, hon. treasurer of the United Law Clerks' Society, says the *Daily News*, has made diligent search in the novels of Scott and Thackeray, but has not found, among all their personages, a single example of a lawyer's clerk. And he has been led to doubt whether any writer of note before Dickens has repaired the omission. Dickens, however, has made ample amends. He knew lawyers' clerks well, and has presented us, so Mr. Spray finds, with no fewer than sixteen of them, all with different characteristics, not to speak of others casually alluded to. Mr. Swiveller, who does not remember? And John Wemmick, and Lowten, and Mr. Guppy, and Uriah Heep? In one respect, Mr. Spray is afraid that lawyers' clerks have made no progress since Charles Dickens's days—that is, in

the matter of remuneration. The spread of education and the higher standard of education attained by the people of this country, keep, we are told, the market overstocked with the material out of which lawyers' clerks may be formed. The lad whose parents cannot afford to apprentice him when he leaves school, now competes with the class whose parents (foolishly, as Mr. Spray thinks) are too proud to put their sons to a trade. And so to-day it requires greater effort, and a higher intelligence than ever before, for a clerk to obtain a post in a lawyer's office.

CORONER'S INQUESTS.—A medical contemporary recently drew attention to the disagreeable and sometimes dangerous nature of the duty which the law imposes upon a coroner and his jury through the necessity of their viewing the body on which an inquest is held. This proceeding, which from time immemorial has formed part of every inquisition of death, is still obligatory under the Coroner's Act, 1887, except when the High Court orders an inquest to be held, either because the coroner has refused to hold one, or because, for some such reason as fraud, rejection of evidence, irregularity or insufficiency of inquiry, it is desirable in the interests of justice that another inquest should be held. In neither of these cases is it necessary, unless the Court should otherwise order, to view the body. The reason for the view in ancient times is obvious; it was to assist the jury in coming to a conclusion as to the cause of death. "On the view of the bodies," says the statute *De Officio Coronatoris* (4 Edw. I., ss. 1, 2), "it is to be seen whether they were drowned, or slain, or strangled, by the sign of a cord tied straight about their necks, or by marks on any of their limbs, or any other hurt found upon the bodies." In modern days the view is, for this purpose, nothing but a formality; for, when there is any doubt regarding the cause of death, modern juries rely, not on their own examination, but on medical evidence. At any rate, so far as a view may be requisite for the purpose of identification, there is no need for the jury to take part in the proceeding.—*Law Journal* (*London*).

THE COST OF A WITNESS.—Mr. Justice Hawkins, whilst hearing a case in the Queen's Bench Division, remarked to a witness: 'You seem very fond of talking. Let me tell you that time here is very valuable, and while you are talking it costs about half-a-crown every minute. Someone will have to pay it.'