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The BARRISTER

A. C. MACDONELL, D.C.L., Editor.

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The Barrister.

VOL. II. TORONTO, AUGUST, 1896. No. 8

EDITORIAL.

Bicycle Exemptions.

The proposal by Mr. Stratton to introduce a bill in the Ontario Legislature to exempt bicycles from seizure under execution requires cautious treatment. It is a fundamental principle that a man's property is liable for the payment of his debts, and any inroads upon this principle have been merely in the interests of humanity and to preserve to the debtor sufficient to ward off immediate destitution and such means as he may have for earning a livelihood. There is always a danger that this consideration for the debtor affords an opportunity for fraud whereby the creditor is deprived of his due; and any movement making for an extension of the allowances now made to debtors should be very carefully considered. There is, of course, something to be said on both sides of the question. We understand that it is being urged that the wheel is being used extensively by all classes of people during the course of daily work, thus doing without horses and street cars. To many men the bicycle is as indispensable in their calling as a spade is to the gardener. It is in this view of the matter, as we understand it, that legislation is called for; and it is not argued that those who use wheels for mere pleasure have any just claim to the exemption. If this is the sum total of the matter, we think there is not much need of legislation, as a wheel in use under the circumstances, would be exempt in any event as an implement of trade. The words of subsec. 6 of sec. 2, R. S. O. ch. 64, enumerating the exemptions are: "Tools and implements of or chattels ordinarily used in the debtor's occupation to the value of $100." If we are correct in the impression that the object of the proposed legislation is to protect those who honestly use the wheel in the course of their business, then the law at present is sufficient. If the idea is to ex-

empt bicycles in the hands of everyone, whether used for pleasure merely or not, we think the movement in the wrong direction. But the exemption where the wheel is used, say, by a doctor instead of a horse, or by a bank messenger in the course of his employment, is very different.

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Our English Exchanges.

It looks as if our professional friends in England were suffering a great deal from unlicensed practitioners, curbstone lawyers and magisterial incompetence and arrogance. We sometimes have thought the lot of members of the Law Society in Ontario was hard enough, and certainly we always entertained a vague idea that in England (like the green pastures far away) everything was smooth and beautiful, and every lawyer swelled it in a wig and had any number of briefs marked with a retainer of an average 50 guineas. But it would seem this is all the veriest moonshine. We find our contemporary, *Law Notes*, each month driving a terrible pen against a perfect swarm of cheap debt collectors, who boldly address one's clients, and not only attempt to seduce the said clients from their old and proper loyalty, but who even carry the war into Africa, by making odious comparisons and vulgar allusions to the gentlemen of the Bar. One vile curbstoner states in his circular, with great gusto, that his "reputation for the last fifteen years in Meath County Court weighs with his Honour, who has expressed his opinion of my straightforwardness," and goes on, with much flippancy, to say, "In administration orders you will invariably notice that I generally floor them." This is too much for the editor of *Law Notes*, and he turns with more satisfaction to refer to the way the Wolverton police magistrates called down a presumptuous builder who made an application under the license laws on behalf of a tavern-keeper. In another column it is seen that the Chairman of the Stroud Police Court is far from orthodox properness, and he, too, seems insensible to the respect due the Bar. The superintendent of police over there is something like our staff-inspector—quite incapable of being anything but a petty Czar. This dreadful person is practically the prosecutor, and during a recent trial quite naturally gives *Law Notes* a legal shock by persistently climbing up to the magistrate and whispering. But that is not all. When the solicitor for the defence complains, the magistrate fumes, and tells him he is to apologize, and that "in some Courts he would be committed for contempt." These are only a few examples given; and, as if they were not enough to make strong men weep, *The Law Journal* has noticed that, while the

public have just unveiled statues to Cardinal Newman, Matthew Arnold and Bobbie Burns, no one "keeps or cares for the centenary of Blackstone, or drinks to the memory of Mansfield, or goes a pious pilgrimage to the tomb of Hale." However, *The Law Journal* takes some consolation out of the decision in *Ex parte Whyte*, reported in this number of *The Barrister*. Our friends in England can rely on *The Barrister's* sympathy in their woes. We know something about these woes ourselves, and can only recommend continued resistance to invasion of professional rights.

* * *

Law in Alberta, N. W. T.

We notice there is an agitation in Alberta, N.W.T., for further judicial appointments. We have been reading *The Alberta Tribune* on the subject, and we noticed generally throughout the paper that there was much that had the smack of law about it. The fact turns out that the *Tribune* is edited by a practising lawyer. Though not a city paper, the *Tribune* seems to be edited as well as many papers in the large population centres, and treats many public questions in a very able manner. There is nothing that a lawyer is not well fitted for, and we extend our congratulations to the *Tribune* on having a lawyer as editor.

* * *

Editorial Notes.

To maintain uniformity and consistency in judicial decisions often causes great hardship. A case in point is that of *Re Veuve Monnier, Ex parte Bloomenthal*, to be found in our English Reports for this month. The unfortunate in this case having advanced £1,600 to an incorporated company, which subsequently is wound up, is made to lose more than the difference between what he advanced and what he will draw from the winding-up proceedings. It seems he took the company's acceptance and as collateral security a certificate for 16,000 $1 preference shares. The Courts now decide that he is a contributory and must pay the calls on the shares. This is enough to vex a saint, to say nothing of a sinner.

* * *

The Prevalence of Perjury.

The subject of perjury is engaging the attention of the legal world of Chicago. A series of interviews have been published, shewing a consensus of opinion among Judges of the Circuit and Superior Courts of Cook County that the crime is of everyday occurrence. This is about identical with the general opinion regarding Division Court evidence in Ontario. Many causes are assigned for the evil in Chicago, but the only one that seems to have much weight in it is the perfunctory and unintelligible way in which the oath is often administered. We think it is positive that there is less perjury in the High Court than in

the Division Court. There must be a reason for this. Then a great many witnesses will be more "free and easy" in the Division Court box than when testifying in the High Court. We think that there is an impression among the class of witnesses referred to that the Division Court is an unimportant tribunal, without power to visit punishment on those who misbehave. If flagrant cases of Division Court perjury were followed up by prosecutions, a good effect might be accomplished.

* * *

The German Code.

The German nation should be happy now, as she has at last succeeded in codifying her laws, after thirty years' pottering at it. Things seem to have been chaotic, from a legal standpoint, in that great country. About 7,000,000 people in the Rhenish provinces have been under the French civil code of 1804. Then the Duchy of Baden had its own provincial law, and in the greater part of Prussia the Prussian provincial law of 1794 prevailed, while Saxony had a code of her own since 1863. Now the law is unified throughout the whole empire.

* * *

The Crusade against Lawyers.

Let the Patrons of Industry and all others who assail the legal profession read the experience of the London Chamber of Arbitration, an institution intended to supplant the lawyer:—

"The London Chamber of Arbitration is hoisting signals of distress. The virtuous stand which it made at the outset of its career against 'solicitor and client' costs has now been abandoned, in the face of hostile representations on the part of the mercantile community, and henceforward a defeated disputant before the chamber may be required to pay the piper in full. But the chamber has had to make a still more humiliating recantation. Founded to give emphatic expression to lay discontent with lawyers and all their works, it now feels itself compelled to strengthen its indirect appeal to the public for business by dwelling on the facts that lawyers are among the arbitrators, and that the services of a learned Queen's Counsel as assessor are at the disposal of litigants. It will not do. The London Chamber of Arbitration derived whatever vitality it possesses from the temporary torpor into which the regular Courts had fallen. But Sir James Mathew and his colleagues have changed all that, and now the chamber should sing its *Nunc Dimittis* in the proud consciousness that it has at least helped to arouse the Judges and the legal profession generally to higher activities."

The position of an honourable and able legal profession is impregnable, and those who rush against it always fall back worsted in the contest.

HUMOR OF CANADIAN BENCH AND BAR.

Years ago Chief Justice McLean was trying a case, when a woman was put in the box to give evidence. It became apparent to everyone that the witness was in the family way. Being Scotch, she objected, in accordance with the Gælic superstition, that it would injure the child to take the oath. His Lordship, seeing the woman's scruple, said to Mr. Hilliard Cameron, the counsel, "Well, Mr. Cameron, you see the objection." Mr. Cameron—"Yes, my Lord, I see the objection; but I hope your Lordship will notice that I did not raise it."

* * *

It is reported that the late County Judge Sinclair was the terror of the judiciary when he was himself practising at the Bar, by reason of his voluminous citations of cases. Once a fire occurred near a law office in the town where Mr. Sinclair practised, and the books of the law office referred to, for fear of the fire, were piled up in the courthouse, and, being a large library, pretty well filled the corridors. The next morning the County Court Judge went to the courthouse to hear an argument in which Mr. Sinclair was engaged, and, not knowing of the books being removed there because of the fire, instantly exclaimed, "My God, see the cases that man Sinclair is going to cite to me!"

* * *

In the old Court of Errors and Appeal, a well-known Q.C. was arguing in his best style, but he was not able to impress the Chief Justice favourably. At last the latter turned to another Judge of the Court and said, "Brother ———, do you think Mr. ——— is sound?" The reply came, "Yes; all sound."

THE LAWYER'S WORK IS NEVER DONE.

The necessity of constantly learning his work anew is amongst the troubles of the lawyer. No sooner does he become tolerably familiar with any branch of the law than alterations, often on a large scale, are made, and, even if the past has not to be forgotten, fresh information has to be acquired. This is especially the case with the rules of procedure. It is, therefore, without a pang that the profession will learn that the announcement—somewhat too definitely made—of the all but immediate promulgation of the new and revised edition of the Rules of the Supreme Court is the expression of a pious hope rather than of a certain fact. Whether that hope will be realised this year remains to be seen; if not, the disappointment will be borne with fortitude.—*Law Journal* (Eng.).

GLIMPSES INTO OLD UPPER CANADA LEGISLATION.

Vol. 1, O. S. 1823-1829

All those things which are now held to be of the greatest antiquity were at one time new; and what we to-day hold up by example will rank hereafter as a precedent—Tacitus.

PAPER 1; BROOKE v. ARNOLD.

Those things which belong to the misty past, and which bring our thoughts back to men and things long gone by, always seem to possess a charm and to claim a respect not accorded to the things of the day. Age seems to impart a sanctity and an authority in most things. But perhaps in the legal world this does not apply to authority. Indeed, as everyone knows, a modern decision is often more relied on than one of great age, though many will often find the perusal of a decision delivered long since a more agreeable task, simply because of the interest that attaches to the doings of other generations. Most lawyers will find a certain interest, bordering on fascination, in rummaging among ancient documents, old reports and all the quaint oddities that will always be found in the records of past generations. It is thought that some accounts of old Upper Canadian litigation might be strung together in a manner not uninteresting to the Bar of Ontario. It has become a much-faded book now, that was in 1829 the first volume of Reports published in this province. A fly-leaf among the first pages refers to some typographical errors, and these are corrected in a handwriting that would now be considered old-fashioned. The ink has now become yellowed with age, and has become visible through, on the other side of the page. The book is dedicated to Sir Peregrene Maitland, then Governor. Mr. Thomas Taylor, the reporter, has written a very interesting preface. From it we learn that Mr. Taylor was appointed under the Provincial Statute 4 Geo. IV., c. 3, and he assumed his duties in Trinity Term, 1823. At that time there was but one Court of superior jurisdiction in the province, namely, the King's Bench, which had been constituted by 34 Geo. III., c. 2. At the time of the printing of the volume this Court was presided over by Chief Justice William Campbell and two puisne Judges, Hon. Levius P. Sherwood and Hon. John Walpole Willis. Between the time of the constitution of the Court and this period the occupants of the Bench had been Chief Justices Osgoode, Alcock, Elmsley, Scott and Powell, and Judges Cochrane, Thorpe, Russell, Scott, Powell and Boulton. But those whose decisions appear in this volume, with which we are more concerned, were Chief Justice Campbell and Judges Boulton, Sherwood and Willis. Mr. Taylor tells us that there were at this time about 75 lawyers in the province. Before proceeding to examine any particular case in detail, it would be well to bear in mind the circumstances of the country at the time. Mr. Read, in his valuable work, says of Judge Boulton, who sat on the Bench from 1818 to 1830, "The Judge used to drive on the circuit in

his day under great difficulties, always carrying an axe and a rope for emergency; often having to cut through trees fallen across the road and having to swim his horses across the Trent when going on Eastern Circuit." It will be sufficient to add that during this period the total population of the whole province was only about 120,000.

An early case of interest, equally because of the historic name of one of the parties as well as because of its intrinsic legal value, is *Brooke* v. *Arnold*, tried on 19th July, 1823. The plaintiff declared in assumpsit as indorsee of a promissory note made by the defendant, one Thomas Arnold. It is not very clearly set forth, but the original payee would seem to have been one John Arnold. On 6th September, 1819, John Arnold made an indorsement in blank and then delivered the note to Allan Napier McNabb. The result of this was of course to make Thomas Arnold indebted to Mr. Allan Napier McNabb in the amount of the note. But this was not the first business connection between the defendant and Mr. McNabb. They had already had some business in 1817, the result of which was that Mr. McNabb delivered a bond in favour of the defendant in the penal sum of £450, conditioned for the payment in three instalments of the sum of £265 5s. 0d. Now, when John Arnold delivered the note to Mr. McNabb, there was still due on the bond from Mr. McNabb to Thomas Arnold, the defendant, a sum considerably larger than the amount of the note and interest. It was not surprising, therefore, that these two gentlemen should agree to something in the nature of a "saw-off," to use the modern vernacular, or a "set-off," in more dignified language. This much was alleged by the defendant, and more, that plaintiff had notice of all these facts before the note came into his hands, which was long after its maturity. This last fact is referred to by the defendant in his plea in scathing terms. It reads, "And long after the said note became due and payable . . . McNabb and the plaintiff, well knowing the premises, but wickedly contriving, etc., etc., and to force the defendant unjustly to pay said sum of money, and to defraud him of his right to set-off against the sum due from McNabb, did agree together for the delivery of the said note to the plaintiff to enable him to sue thereon." The plaintiff did not deny the facts as given above, but demurred to the plea. Mr. Balwin supported the demurrer, and Mr. Boulton, Solicitor-General, appeared for the defendant. The Chief Justice, Hon. William Campbell, delivered the following terse judgment: —"This is an action of assumpsit, and the plea much out of the common. It cannot be concealed that McNabb had possession of the note upon which this action is brought, and that the contents of it were due to him as assignee of the payee; that he had former transactions with Arnold, the defendant, with whom he entered into an agreement that the amount of this note should be set off against the second instalment of a bond of which Arnold, the defendant, was obligee and McNabb the obligor; that this took place before the note was negotiated to Brooke, the plaintiff, and that of this agreement Brooke had notice;

the equity or right of set-off which Arnold, the defendant, had would follow the note in the hands of Brooke; with a knowledge of that right he could not claim payment: it is admitted by the demurrer that he had that knowledge; it was also admitted that the note was transferred about two years after it came into the hands of Mr. McNabb; under these circumstances, I consider that the plea is good. Judgment for the defendant."

CANADIAN BAR SOCIETY TO BE ORGANIZED.

We rejoice to learn that active measures are being taken to organize a Bar Association for the Dominion. When *The Barrister* first made its appearance, in December, 1894, we immediately initiated a movement in this direction, and for several months, in addressing our readers through our editorial columns, we continued to take the same text each month. It appeared, however, that the subject was not one in which the profession took any great interest, and though we have never changed our views as to the desirability of a Bar Association for Canada, we have allowed the matter to take a less prominent place in the columns of *The Barrister*. Now, when a movement has at last taken form, it is in Nova Scotia, and from the report of a meeting held in Halifax on 27th July, the success of the proposal seems well assured. An elaborate report of the meeting has been sent to us, and we hasten to express our enthusiastic endorsation of the idea. We print hereunder in full the report sent us, including a condensation of a paper read by Mr. J. T. Bulmer. We cannot improve upon the reasons there given for a Dominion Bar Association. No doubt there will be more heard in the premises shortly, and in the meantime we recommend our readers to a careful consideration of the matters set forth in the following report of the meeting referred to:—

"A special meeting of the Halifax Bar Society was held yesterday to receive the report of the committee appointed at the annual meeting to ascertain the views of leading members of the Canadian Bar as to the propriety of founding a Canadian Bar Association. The report approved of the project, and submitted letters from the leaders of the Bar in all the provinces of the Dominion, warmly commending the project, except Manitoba. The two law societies in British Columbia have passed resolutions endorsing it. A paper was read by J.T. Bulmer setting forth the advantages of the proposed society, and pointing out the work done by the American Bar Association and the Incorporated Law Society of England. He said that provincial societies have exerted a good influence on the profession, but they are not doing the work of a national association. There are in Canada 10,000 lawyers without any bond of union or association, and in their ranks are to be found the most cultivated and public-spir-

ited men in the Dominion. In place of having a consolidated law report giving all the cases worth reporting, with a digest index, and reports constructed on a scientific principle, we have eight independent sets, and about as many digests, constructed without reference to any principle, and costing over a hundred dollars a year. Legal education was in a most unsatisfactory condition, and in all the provinces below the standard in Nova Scotia. It was not much use trying to raise the standard in Nova Scotia with the low averages about us of New Brunswick, Prince Edward Island, Quebec and Ontario. By the 94th section of the British North America Act provision is made for the enactment of uniform laws relating to property, civil rights and procedure. As yet no move has been made by the Dominion Parliament to carry out this wise and beneficent intention of the founders of the Confederacy, notwithstanding that we have five different systems of procedure in most of the provinces, and it is said nine in one of them. No government will take hold of this question until the legal profession has blazed the way. There are enough lawyers in this country to found one of the most powerful co-operative societies; yet, while they are called on to help keep running every other society, they have none of their own. Nine Legislatures are pouring out acts and thirty or forty courts sitting trying to make sense out of them. The result of all this is that law is now in the same state of confusion that chemistry was in before Lovoisin gave order and system to it. Many other matters, such as law reform, judicial administration, remedial procedure, uniformity of laws, etc., require to be considered, and the profession ought to realize that they are on the eve of a most constructive period in the history of Canada. No man was so fitted to guide and govern the forces of modern society as the lawyer. But for them society a hundred times would have dispersed like dew drops and gone back into the disorganization out of which it was evolved.

"The society discussed the matter at great length, and finally adopted a resolution unanimously approving of the proposal. A committee was appointed having full power to make all preliminary arrangements, composed of C. S. Harrington, Q.C., R. E. Harris, Q.C., F. T. Congdon, W. B. Ross, Q.C., D. McNeil, Hector McInnes, Wallace McDonald, J. T. Bulmer, B. Russell, Q.C., R. L. Borden, Q.C. The committee will meet at once, and it is hoped that Sir Charles Russell, the Chief Justice of England, now in this country, will be able to attend in Montreal or Ottawa the first meeting of the society. The meeting for organization is expected to be held the first or second week in September."

SCRAPS OF LEGAL SMALL TALK.

Odds and Ends of Law.

The interesting case of the Priest, and evidence of matters disclosed in the confessional, arose in Montreal recently. The Reverend Cure Gill refused to answer questions put to him in Court because he claimed the information desired had been given him under the seal of the confessional. The Superior Court upheld him on the ground of privilege.

* * *

Apropos of the application of Miss Clara Brett Martin for call to the Bar in Ontario, we notice that an attempt in one of the States of the American Union to have female juries has proved a failure, as the ladies found the details of some cases too much for their female delicacy, while the whole scheme after being actively practised revolted the public mind.

* * *

We are a little puzzled with some of our English contemporaries. The way they hop on the Judges who offend against the strictest standard of propriety, takes the breath out of one used to Canadian civility to the Bench. One journal last week remarked that the House of Lords has been repealing the Court of Appeal in many recent cases, and adds, "We must admit to thinking that a little severe snubbing for one of the Appeal Courts is good."

* * *

We also find Mr. Justice Cave being brought to task and being smartly reprimanded. His Lordship had said he did not understand how the plaintiff could have been such a fool as not to take the £105 out of Court. Thereupon the editor of *Law Notes* says, "We object to a Judge calling one of the parties a fool." Then follows a remark to the effect that it is impossible to obtain "a learned Bench," however, an incorruptible one is possible. The matter is then dropped with a parting shot as follows: "We plead for a little dignity added to the incorruptibility."

* * *

We find in the *Albany Times* the report of a case of a very breezy lady, who insisted on having a breeze. She was travelling on a train and complained that the air in the car was bad. The conductor tried to open the window in the usual way but was unable to do so, and he refused to get a crowbar to pry it open, whereupon the suffering woman smashed the glass with her parasol. The conductor then had her taken into custody on a charge of insanity. A doctor examined her and pronounced her rational. Her defence was that she had paid for her transportation and was entitled to fresh air with it. The justice thought so too, and discharged her. It is possible that this precedent may cause all the railroad companies considerable trouble. If it be good law that when car windows are not in working order, the passenger may smash the glass, better care will be taken to see that all the windows in the cars can be readily moved up and down.

* * *

The best thing we have seen for some time is the story of a Judge who, after listening for

two days to arguments as to the construction of a statute, quietly remarked, "That statute has been repealed." Another Judge with less patience had a case for $2 come before him, and on seeing that it was likely to last long, promptly said that he would pay the $2 himself.

* * *

That there is more glory than money for the lawyer seems to be very true. In England the President of the Incorporated Law Society places the average income of a solicitor at £200 per annum. We have heard it said that in Ontario the average is lower. But as the subject is not of the pleasantest we do not feel inclined to make any minute calculations.

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There is more comfort in a paragraph contained in *The Law Journal* (Eng.), of 6th June, giving the figures of the number of causes pending at present in the Courts there. These figures show that there are at present 1,571 causes, which is 219 in excess of the number for the corresponding period of last year. The *Law Journal* believes that the decline of legal business has been arrested, or at least that there are strong grounds for so believing.

It may not be unseasonable to mention the movement which has been going on in England to allow pleadings to be delivered during Long Vacation. The matter was pushed so far that a resolution was passed in its favour, but the Law Society refused to sanction it. There is a good deal to be said in favour of such a change. Those who favoured it did not propose to have trials or any active proceedings. Only the loss of time to anxious litigants was to be obviated. However, the proposal has been rejected in England, it may yet obtain in Ontario.

* * *

We have been reading of a Judge making himself disagreeable to counsel before a jury. This is a subject upon which a good many occupants of seats on the Bench can take home to themselves. We have witnessed many exhibitions of impatience, peevishness and irritability before juries, where the cause for such conduct was most trifling, but the result on the jury very grave and serious. The question is, are Courts of Justice and trials for the benefit of the litigants or to suit the pleasure of the Judge?

THE VOICE OF LEGAL JOURNALISM.

Extracts from Exchanges.

The New Woman.

She has long since been admitted to the Bar in most of the States. The married women's statutes have emancipated her from the disabilities of coverture as to her property rights, and the policy of these statutes practically emancipates her person from the control of her husband. She now sues for the seduction of her husband, as freely as the husband for her seduction. The bicycle has completed what the legislatures and Courts have left undone, by clothing her in the manly cos-

tume, and exhibiting her to the world in the character for which she has long pined—as a two-legged animal.

But it has remained for Judge Gibbons, of the Circuit Court of Cook county, Illinois, to teach her that with the benefits of manhood, she must accept the burdens which accompany it. The learned and progressive Judge holds that where she files a bill for divorce against her husband, and has money in her trousers pockets and he has none, she must allow him temporary alimony until the final hearing, and furnish him funds for counsel fees. The opinion is a learned one, and is reported in the May number of the *Chicago Law Journal*. We see the Court winking its left eye as it closes its opinion with the maxim that "What is sauce for the goose is sauce for the gander."—From *Virginia Law Register*.

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The Legal Dead Remain Unhonoured.

The Burns centenary is sending a wave of enthusiasm over the Scottish land. A memorial window has just been dedicated in St. Saviour's, Southwark, to Massinger and Fletcher, whilst statues to Arnold and Newman have been unveiled. Poet and philosopher, scholar and divine are all receiving their tribute of admiration and honor, but what of the sages of the law? Who keeps or cares for the centenary of Blackstone, or drinks to the memory of Mansfield, or goes a pious pilgrimage to the tomb of Hale? Enthusiasm, popular or professional, is sadly lacking. How different ancient Rome! Laymen and lawyer alike delighted to honour the jurisconsult. "Without doubt," says Cicero, "the house of an eminent lawyer is the oracle for the whole city." Rome thought more nobly of her law and her lawyers. To the Roman law was the science of sciences, the first pursuit in every well-ordered commonwealth. To the English layman—too often to the English lawyer—the practice of the law is, to use Sir Frederick Pollock's phrase, merely "a trade or solemn jugglery." The commemoration of the mighty masters of our jurisprudence, too long neglected, would do more than anything to dissipate unworthy conceptions of our law.—*Law Journal* (Eng.).

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The Torrens System.

The first actual transfer of land at Chicago under the Torrens system was made a few days ago, and affords an opportunity for comparison of the old and the new way. Under the former mode there would have been a charge of $25 to $100 for examination of title, lawyers' fees to pay, a risk of flaw in the title would also have existed, and to guard against this, many purchasers would have had the title guaranteed by a company which insures such risks. Under the Torrens plan, the purchaser paid $3 to the county treasurer for having the transfer entered on the books, and the state guaranteed the title. The previous outlay on the part of the seller was $15 for examination of title, $6 for the indemnity fund held by the state, and $2 for the certificate.—*Albany Law Times*.

Dr. Johnson on Law.

"All laws," said Dr. Johnson, "are made for the convenience of the community; what is legally done should be legally recorded, that the state of things may be known, and wherever evidence is required evidence may be had. For this reason the obligation to frame and establish a legal register is enforced by a legal penalty, which penalty is the want of that perfection and plentitude of right which a register would give. Thence it follows that this is not an objection merely legal; for the reason on which the law stands being equitable, makes an equitable objection."

Speaking of advocacy, Dr. Johnson said: "This you must enlarge on when speaking to the committee. You must not argue there as if you were arguing in the schools: close reasoning will not fix their attention; you must say the same thing over and over again in different words. If you say it but once, they miss it in a moment of inattention. It is unjust, sir, to censure lawyers for multiplying words when they argue; it is often *necessary* for them to multiply words."—*The Brief.*

* * *

The Act of God.

Those who desire to be educated in the meaning of the legal expression "Act of God" would do well to consider Nugent v. Smith (1 C. P. D. 423), which apparently had not been done by the defendant's advocate in a recent County Court case before Mr. Lumley Smith, Q.C. An elderly lady, in passing down Newcastle Street, Strand, was knocked down and injured by a board which a high wind blew upon her. The defence was practically that the accident ought be called an "Act of God," seeing that He sent the wind which blew down the board and caused the injury. His Honor pointed out that a nail or two, or something to keep the board in its place, would have been an "act of prudence" with which Providence would have been well pleased. "God helps those who help themselves," and boards not properly fixed up may fairly be expected to blow down in windy weather. The injured lady recovered £15. — *Law Students' Journal.*

* * *

A Lawyer's Love Letter.

Come, Chloris, come and let me haste
To look into those pleading eyes,
And blame thou not this arm that tries
To circle that permissive waste.

Come, enter an appearance ere
Time files the statement of his claim,
And execution for the same
Do issue on thy golden hair.

To me thy heart's estate assign;
If thou produce no evidence
And dost abandon thy defence,
Then Order XIV. makes thee mine.

Feme covert I will render thee
Instead of *feme sole* as thou art,
And then thou shalt possess my heart,
For mine and not *pur auter vie.*

In truth I want thee to demise
Thy heart on lease for life to me,
And covenant that the lessee
Will not assign until he dies.

This writ of my attachment may
Perchance endow my love with
nerve,
And she may on my rivals serve
Notice to quit for Lady Day.

If but I dare interrogate,
Would she deliver a reply?
Reply, no doubt, but what if I
We e told my nuisance to abate?

What is the use of putting trust
In one whose *autrefois acquit*
Is pleaded to the felony
Of arson of my heart to dust?

Alas! that hope and black de-
spair
Like cross-remainders intertwine.
The case is just upon the line;
What if at last the judges pair?
—*Law Journal*, London.

* * *

The Tribunal of Professional Opinion.

Canning used to say that a crowd was wiser than the wisest man in it; is not this, indeed, the first article of our democratic faith? And what is true of the uncultured multitude is still more true of a trained body like professional opinion, be it medical, musical, artistic or legal. If this professional opinion among lawyers pronounces against any view of law or practice, we may be pretty certain that this theory or practice is wrong. It is not merely that professional opinion means strong sense, legal training, experience, *esprit de corps*, and jealousy for the reasonableness and consistency of the law, but that it is made up of bodies of experts on every branch of the law—shipping law, trade-mark law, bankruptcy, company law—take which you will, there is a compact body of specialists whose combined opinion, backed by the general authority of the profession, must outweigh the judgment of any court, however competent or dignified. The profession is a keen critic, and, like Lord Campbell, has its drawer of not a little judicial "bad law." It is an open secret, for instance, by this time that the House of Lords is likely to reverse the decision of the Court of Appeal in Broderip v. Salomon; but long before the Olympian wisdom of the law lords was sought, that decision had been brought to the bar of professional opinion and condemned. What ground the House of Lords may take up it would be premature to foreshadow, but all private companies, no less than public ones, will experience a sense of relief if that case is relegated to the volume of cases overruled, distinguished, or reversed.—*Law Journal* (Eng.).

* * *

Living Yet Legally Dead.

A peculiar case is pending before the Supreme Court in the Eighth judicial district of New York. One Olin Fuller mysteriously disappeared in June, 1892, and did not reappear until a few months ago. Every effort was made to find him but without success. In the meantime his father, who was wealthy, died, without having made a will. At the time of the settlement of the estate in the Surrogate's Court, the son was still missing, his relatives and friends had given him up as dead, his decease was officially declared, and his father's estate went to the son's wife and daughter. Upon his return he was desirous of reclaiming his inheritance, but as he was dead in the eyes of the law, he was unable to do so. He commenced proceedings in the Supreme Court to have his life restored.—Chicago Law Times.

BOOK REVIEWS.

Commentaries on the Laws of Ontario, being Blackstone's Commentaries on the Laws of England adapted to the Province of Ontario. By R. E. Kingsford, M.A., LL.B. Vol. I. (The Carswell Co., Ltd., Toronto.)

We must admit to being quite taken with the idea of Mr. Kingsford's work as outlined by the preface. Every lawyer in Ontario has frequently had perplexing doubts upon important and practical everyday questions, where the doubts have largely been the result of our having to rely upon English text books which contained many pages inapplicable to this province. Everyone agrees that for a foundation to his legal education the student cannot do better than read Blackstone. But how erroneous will be many of a student's ideas of Ontario law if he reads an old or any edition of Blackstone. As far as real property is concerned we have Mr. Leith's book, but after the lapse of about twenty years it, too, has become out of date. All these disadvantages Mr. Kingsford attempts to obviate, and as far as we have been able to look into it he has succeeded. We are glad to see that as far as was consistent with the scheme of the work, the original text has been preserved, thus retaining the elegant and masterly diction of the original author. The present volume deals with the rights of persons, but the whole common law will be treated in the work, which is to be composed of three volumes in all. We have been going through the first volume with some curiosity, as it is new to find so wide a field covered in one work. In the past we have been getting our legal knowledge by piecemeal; getting one little section from one book and another from another. This has made our knowledge more or less disjointed. In Mr. Kingsford's work there is a comprehensiveness that seems to cover everything, and one seems to glide from one subject to another imperceptibly. We await with interest the subsequent volumes.

GENERAL NOTES.

Jury Scandal.—Another scandal caused by the withdrawal of jurors' names from a sealed verdict occurred in one of the Chicago Courts recently. The case of Blum Harris against the Lake Street Elevated Railroad Company for damages caused to his property by the construction of the road had been on trial before Judge Ewing for several days. After the arguments and the charge of the Court, the jury were sent to their room with instructions to return a sealed verdict if they should agree before morning.

It was reported that one of the jurors refused to join in the verdict until a very late hour. He finally consented, however, signed the verdict, which was in favor of the railroad company, and the jury separated, the members

going to their respective homes. The sealed verdict was left for the clerk of the Court.

When the Court opened next morning the jury were present and the verdict was opened and read. As the clerk concluded reading the document, the juror who had signed his name last the night before, created a sensation by arising and recanting his assent to the verdict. The jury was then polled and another juror said he also had changed his mind. The verdict was entered with a notation of the facts, and the effects of the jurors' action was left for future judicial consideration.

* * *

Directors are behind the scenes, and, being so, are perfectly aware whether the play is a "draw" or whether the curtain must shortly come down on the piece for good, and this knowledge gives them an unquestionable advantage in getting paid over outside creditors who view the performance only from the pit or dress circle. Is a director entitled to profit by this knowledge? In America they think not. Directors are treated as being in a fiduciary relation to the creditors as soon as the company is unable to pay its way. The subject has not received all the attention it deserves in England, but, so far as the authorities go, they give the directors the full benefit of their position. The strongest case is Wilmott v. The London Celluloid Company. There the directors had received insurance moneys on the eve of winding up, and repaid themselves out of them a loan to the company, and the Court refused to treat it as a fraudulent preference, though by doing so the directors were practically putting the whole of the assets in their pockets. It was a short syllogism. Thus: Paying debts of the company is in the ordinary course of business. This is a debt of the company. It is in the ordinary course for the directors to pay it. By English law the directors may even prepay their shares to prefer themselves. But a director's "place" is a hard one, and he ought to have his perquisites.—From the *Law Journal* (Eng.)

* * *

Litigants to be Restrained.

Litigants in person have a prospect of being left without their ordinary occupation. There is no doubt that there are some persons of—to say the least—eccentric natures who love to go on airing what they consider their grievances. They no doubt often become great nuisances. To remedy this the Lord Chancellor has introduced a bill into the House of Lords "To prevent abuse of the process of the High Court or other courts by the institution of vexatious legal proceedings." It is proposed that the Attorney-General shall be at liberty to apply for an order preventing vexatious litigants instituting any proceedings without leave of the court, and to get such an order he must show that the person in question has habitually and persistently instituted vexatious legal proceedings without any reasonable ground. Ourselves we doubt whether it is worth while passing any such Act of Parliament. These vexatious litigants are but few, and the principle of the measure is objectionable.—From *Law Notes*.

RECENT ENGLISH DECISIONS.

SCHWEDER v. HASTIE.

[101 L. T. 186.

Libel.

If A. is a solicitor and B. is his client, and B. transfers his work to C., another solicitor, and in the course of taking over the papers A. unjustifiably writes to B. that being unable to tolerate the tone of the letters received from C., he has written C. declining further communication with him, and now writes to B. to say that he will hand over B.'s papers to any person selected by B., except C. or C.'s clerk; and A. in the letter referred to tells C. that A. declines further communication with him, as he does not know how to write letters to gentlemen; and B. thereon takes the work away from C.—A. has libelled C. in his character as a professional man, and must pay damages. (Russell, L.C.J.)

* * *

RE VEUVE MONNIER. EX PARTE BLOOMENTHAL.

[101 L. T. 180; 40 S. J. 566.

Company — Contributory — Companies Act, 1867, s. 25.

If A. lends £1,600 to a limited company upon the company giving him its acceptance and depositing by way of collateral security certificates for 16,000 £1 preference shares; and the company send A. certificates stating that he is the registered proprietor of the shares subject to the articles of association, and that each share is fully paid—but nothing had in fact been paid on any of the shares and no contract was filed in respect of them with the registrar of joint stock companies under section 25 of the Companies Act, 1867; and an order is made to compulsorily wind the company up: what is A.'s position?

He loses the money lent as regards which he can prove in the winding up as an unsecured creditor, and he will be put upon the A. list of contributories in respect of the 16,000 shares, and will have to pay the calls thereon. The principle that the company were estopped from alleging the shares were not fully paid as stated in the certificates (which applied in Parbury's Case) had no application in this case. (Court of Appeal affirming Williams, J.)

* * *

ROGERS v. HULL.

[T. 470.

What is the meaning of the word "land" used in s. 2 of 27 & 28 V. c. 115?

The section makes it an offence to place poisoned flesh on land, and a Divisional Court (Cave and Wills, JJ.) held that it applied to placing poisoned meat in a pigeon-house situate on the ground in an enclosed garden, the object being to kill cats.

* * *

THOMPSON, RE, GRIFFITH v. THOMPSON.

[S. J. 544.

If a testator gives property to his children to be distributed and paid when they attain twenty-eight, and then imposes a condition affecting the share of any child who embraces a religious life, what is the effect of the condition?

It is void, since by giving his

children the property so that it vests in possession, the direction that it be paid, etc., on their attaining the age of twenty-eight is void within the Saunders_v. Vautier doctrine (see 14 L. N. p. 277), and the testator having made an absolute gift could not, said Chitty, J., by a condition subsequent cut it down; the subsequent condition was, in fact, repugnant to the gift, and void.

* * *

PUGH v. LONDON, BRIGHTON AND SOUTH COAST RAIL. CO.

[T. 448; L. T. 158; S. J. 266.

What is the meaning of "incapacitated from employment by reason of accident", in an accidental insurance policy?

It includes, said the Court of Appeal (Esher, M.R., Kay and Smith, L.JJ.) a shock to nerves through fear of seeing a railway accident, which shock incapacitates from work.

* * *

BOVILL v. ENDLE.

[44 W. R. 523.

Is a mortgagee who takes possession entitled to six months' notice of the mortgagor's intention to redeem, or to six months' interest in lieu of notice?

No, said Kekewich, J., but must allow redemption on payment of principal, interest up to date, and costs, and this though the amount be tendered to him before the day fixed by the mortgage deed for repayment of the money. A mortgagee who takes possession for his own benefit is not entitled to remain in the position of a mortgagee out of possession, and ask for interest or notice before being paid off. Indeed, entry into possession is equivalent to a demand for payment, and if he is paid all owing to him he cannot complain. (C. 249.)

* * *

SHARLAND, RE, KEMP v. ROZEY.

[S. J. 515; W. N. 62; L. J. 330; L. T. 111.

If A. covenants to pay B. an annuity of 100l. a year, and charges the payment of the annuity on Whiteacre, and dies, does the annuity constitute an equitable charge on Whiteacre within the meaning of 40 & 41 V. c. 34?

Yes, said the Court of Appeal, and Whiteacre will pass, on A.'s death, to the heir or devisee, subject to the annuity in the absence of a contrary intention. (S. 754.)

* * *

REGINA v. LILLYMAN.

[31 L. J. 383; 40 S. J. 584; 101 L. T. 207.

Criminal law—Evidence.

In charges of rape and indecent assault and kindred offences against females, to what extent (if at all) is evidence admissible of a complaint made by the prosecutrix?

The fact that the female did make a complaint of some kind within a reasonable time after the alleged offence has always been admitted in evidence. But the particulars of such complaint were formerly rigorously excluded; though lately some judges have admitted it.

The universal rule is now laid down that—after direct evidence of the acts charged against the prisoner has been given by the prosecutrix or some other witness—evidence can be given that the prosecutrix did make a complaint (not on oath, not in the presence of the accused, and not

forming part of the res gestae), but such complaint can only be used as evidence of the consistency of the conduct of the prosecutrix with the story she has told in the box, and as being inconsistent with her consent to the conduct of which she complains, and the Judge must tell the jury that it can only be used by them for this purpose, and not as proof that the offence was committed; and the very words of the complaint in full ought to be disclosed in the witness-box, and not merely the fact of a complaint. (Russell, L.C.J., Pollock, B., and Hawkins, Cave and Wills, JJ.)

* * *

PAIN v. BOWDEN.

[101 L. T. 181; 31 L. J. 371.

Costs—Administration.

In allowing the cost of administration of a deceased's estate, there is a distinction to be drawn between solvent and insolvent estates, and the solicitor advising a personal representative when the estate is known to be insolvent should only be allowed to charge for services which are strictly necessary for the protection of the estate—e.g., he must not charge for letters and attendances, answering the inquiries of creditors (especially after an administration action is commenced), or for any work which the administrator might well do himself. (Cave and Wills, JJ.)

* * *

EX PARTE WHYTE.

[40 S. J. 565.

Mandamus.

A motion for a prerogative writ of mandamus can only be made by counsel, and not by the applicant in person; and this applies to a motion for a rule nisi as well as to the argument in showing cause against the rule, and to the Chancery Division and Court of Appeal as well as the Queen's Bench Division. (Full Court of Appeal and Russell, L.C.J.)

* * *

CARTER v. RIGBY.

[W. N. 71; 101 L. T. 180; 40 S. J. 568; 31 L. J. 397.

Joinder of plaintiffs — Separate causes of action.

Fifty miners were killed by the flooding of Rigby's coal mine. The legal personal representatives of the fifty miners joined together in one action, claiming damages against Rigby under Lord Campbell's Act and under the Employers' Liability Act 1880. Rigby applied to strike out all the plaintiffs except one, on the ground that the parties were improperly joined as co-plaintiffs.

Held, that the causes of action arose from separate and distinct claims; that consequently under Smurthwaite v. Hannay, 71 L. T., 157, the plaintiffs could not join in one action; and that all plaintiffs save the personal representatives of one must be struck out. (Court of Appeal, affirming Russell, L.C.J., and Wright, J.)

* * *

OSBORN v. CHOCQUEL.

[31 L. J. 384; 101 L. T. 133.

Dog bite—Scienter.

Action for damages for defendant's dog having bitten plaintiff. The only evidence of the ferociousness of the dog and

of its owner's scienter was that the dog, before biting plaintiff, had, to the knowledge of its owner, in company with another dog, chased and worried a goat which, in consequence, had to be killed.

Held, that this was not sufficient evidence; the law requires plaintiff to prove the owner's knowledge that his dog had a ferocious disposition directed against mankind. Action dismissed. (Russell, L.C.J., and Wills, J.)

* * *

ROCHEFOUCAULD v. BOUSTEAD.

[KEKEWICH, J., JUNE 19.—Chancery Division.

Evidence — Trust — Joint adventure between two parties—Statements by one to the solicitor of the other—Admissibility—Privilege—Joint consultations.

This was an action claiming a declaration that the defendant had purchased certain estates in Ceylon as trustee for the plaintiff, and for an account. The defendant had been engaged in a joint adventure with D. with regard to the purchase of these estates from a company to whom they had been mortgaged. The plaintiff was the owner of the estates, subject to the mortgage. D. wished to retire from the joint adventure, and wrote to the defendant suggesting an interview with regard to the matter between his (D.'s) solicitor and the defendant and his solicitor. An interview took place between the defendant and D.'s solicitor. The defendant subsequently purchased the estates, and dealt with them as his own absolute property. In the course of the trial the plaintiff sought to prove the existence of the trust or fiduciary relationship by questions as to what passed at the interview in question. Defendant's counsel objected, on the ground that the communications were privileged, inasmuch as D.'s solicitor was, for the time, in the position of the solicitor or confidential adviser to the defendant.

R. B. Haldane, Q.C., and T. L. Gilmour, for the plaintiff.

W. C. Renshaw, Q.C., and G. Lawrence, for the defendant.

Kekewich, J., held that D.'s solicitor was not at liberty to answer any questions as to what was said by the defendant at the interview in question, as the communications were privileged. Statements made at joint consultations between parties threatened with litigation and their respective solicitors and counsel would be similarly privileged.

* * *

IN RE DYSON AND FOWKE'S CONTRACT.

[JUNE 26.

Vendor and purchaser--Title--Will —Charge of legacies on residue—Trustees with unlimited power of sale—Beneficial owners absolutely entitled — Sale—Concurrence of beneficiaries unnecessary.

By his will a testator directed payment of his debts and testamentary expenses, and gave £3,900 in pecuniary legacies. He then devised the residue of his realty and personalty to trustees upon various trusts as to specific parts, and as to the residue he gave and bequeathed the same to certain persons equally; and he declared that the trustees should have power to sell the whole or any part of his real es-

tate at such times and in such manner as they should deem expedient, and hold the proceeds upon the trusts of the will. The personal estate was insufficient to pay the debts, testamentary expenses, and legacies.

The trustees sold the residue of the testator's property, which was almost entirely realty, in various lots, and one of the purchasers required the concurrence of the beneficiaries in the conveyance.

The question was whether the power of sale was good and could be exercised now that the beneficiaries were absolutely entitled to the equitable fee, and were sui juris.

E. P. Hewitt, for the trustees, the vendors.

L. Morton Brown, for the purchaser.

Kekewich, J., held that, having regard to the charge of testamentary expenses and legacies upon the residue, the power of sale could be validly exercised by the trustees, and that a good title could be given by them to the purchaser without the concurrence of the beneficiaries.

* * *

OVERTON & CO. v. BURN, LOWE & SONS.

LINDLEY, L.J., LOPES, L.J., JULY 1.—Court of Appeal.

Practice—Service out of the jurisdiction—Notice of motion with notice of writ—Foreign subject—Rules of the Supreme Court, 1883, Order LII., rule 9.

This was an application by way of appeal from a decision of Kekewich, J., for leave to serve notice of motion for an injunction with notice of the writ in the action out of the jurisdiction upon some of the defendants, who were foreign subjects. The injunction sought for was to restrain the defendants until the trial of the action from threatening the plaintiffs or any other person or persons by letters or otherwise with legal proceedings or liability in respect of any alleged infringement of certain alleged patent rights of the foreign defendants.

Kekewich, J., having regard to the opinion expressed by North, J., in The Manitoba and North-Western Land Corporation v. Allan, 63 Law J. Rep. Chanc. 156; L. R. (1893) 3 Chanc. 432, made no order, and intimated that, in his opinion, it was a proper case for appeal.

Lambert Bond, for the application, referred to Hersey v. Young, W. N. 1894, 18, in which a similar application was acceded to by this Court, the service in that case being required upon a British subject out of the jurisdiction.

Their Lordships said that they would do what was done in Hersey v. Young, give leave to effect the service asked for, and say that the order would be without prejudice to any question which might be raised upon it.

* * *

IN RE BINNS, LEE v. BINNS.

[NORTH, J., JULY 9.—Chancery Division.

Executor — Retainer — Advancement—Testator surety for legatee—Bankruptcy of legatee—Proof by principal creditor—Suretyship liability—Retainer in respect of.

Testator deposited £2,400 in his own name at the Brentford Bank as collateral security for the account of J. & F. Binns, a

firm in which two of his sons were the sole partners. The two sons were entitled to legacies and shares of residue under the testator's will.

At the time of the testator's death the overdraft of the firm exceeded £2,400. The bank, to avoid the rule in Clayton's case, 1 Mer. 572, opened a new account, through which all subsequent transactions of the firm were passed, leaving the debit on the old account still standing. The firm subsequently became bankrupt, and the bank proved for the entire overdraft without giving credit for the collateral security which they intended to retain to meet any ultimate deficiency.

The plaintiffs, the trustees in bankruptcy, having applied to the defendants, the present trustees of the will, for payment of the bankrupt's legacies and shares of residue, which amounted to less than £1,200 a piece, the defendants claimed to retain them by way of set-off against the possible loss of the £2,400.

C. Swinfen Eady, Q.C., and J. Scott Fox, for the plaintiffs, pointed out that the whole overdraft having been included in the proof, that debt was gone. There was, therefore, no subsisting debt which would entitle the defendants to retain. The case of In re Watson; Turner v. Watson, 65 Law J. Rep. Chanc. 553; L. R. (1896) 1 Chanc. 925, on which the defendants relied, expressly turned on the fact that the debt was still subsisting because no one had proved for it (see p. 933 of the report). There would be no retainer unless there was a provable debt (Stammers v. Elliott, 37 Law J. Rep. Chanc. 353; L. R. 3 Chanc. Div. 195).

Vernon R. Smith, Q.C., and W. J. Tanner, for the defendants, contended that, even if they had no right to prove in bankruptcy, they could treat the £2,400 as an advancement, which more than cancelled the son's shares.

North, J., adopted the plaintiffs' argument, and held that the defendants could not retain the legacies and shares of residue against the plaintiffs.

* * *

SALTER v. SALTER.

[LINDLEY, L.J., LOPES, L.J., RIGBY, L.J., JULY 3.—COURT of Appeal.

Probate—Receiver—Lis Pendens—Caveat—Writ—Commencement of action.

Appeal from a decision of the President (Sir F. H. Jeune).

On May 30 the widow of the deceased caused a caveat to be entered to prevent probate of his will. On June 8 the caveat was warned, and on June 10 the widow entered an appearance. She applied for the appointment of a receiver pendente lite, but the President refused the application on the ground that as no writ had been issued there was no lis pendens.

The widow appealed.

P. Rose Innes, for the appellant.

Bargreave Deane, contra.

Their Lordships dismissed the appeal, with costs, holding that there was no lis pendens, and that until the issue of a writ there was no jurisdiction to appoint a receiver.

REGINA v. ERDHEIM.

[CORAM LORD RUSSELL, L.C.J., POLLOCK, B., HAWKINS, J., CAVE, J., AND WILLS, J., MAY 2, JUNE 2—Crown Cases Reserved—High Court of Justice.

Criminal law—Evidence—Public examination of debtor—Parol evidence of shorthand writer—Bankruptcy Act, 1883, 46 & 47 V. c. 52, s. 17.

This was a case stated by the Deputy Recorder of Leeds, before whom the prisoner was convicted of certain misdemeanours under the Debtors' Act, 1869. He had been adjudicated bankrupt May 20, 1875, and under the Bankruptcy Act, 1883, s. 17, had been examined on oath on five different days, when the examination was adjourned *sine die*. During his examination a shorthand writer had taken in shorthand the prisoner's evidence, and had made a transcript of it, but the transcript was not read over to or signed by the prisoner. At the trial parol evidence of the shorthand writer was tendered and received of statements and admissions made by the prisoner in the course of his examination of facts tending to establish the misdemeanours with which he was charged.

The question was, whether that parol evidence was properly admitted or not.

The Solicitor-General (Sir R. B. Finlay, Q.C.), G. J. Banks, and A. W. Bairstow, for the Crown.

C. Mellor for the prisoner.

Cur. adv. vult.

June 2.—The Court held that the shorthand writer's parol evidence was properly admitted.

Conviction affirmed.

THE OUTSIDE JUDGE.

You may sing of the judge, Common Pleas judge,
Or any judge that you please;
I go for the judge, the nice old judge,
That knowingly takes his ease,
And looking wise from behind the bench,
At the rate of six thousand a year,
Cares not a hair in his sound old head,
Who goes to the front or rear.

Not his is the bone they are fighting for,
And why should the judge sail in
With nothing to gain, but a chance perhaps
To lose in strife and chagrin,
There may be a few, perhaps, who fail
To see it quite in this light;
But when the fur flies, I'd rather be
The outside judge in the fight.

I know there are some—of judges I speak—
That think it is quite the thing
To take the part of one in the fight,
And hop right into the ring;
But I care not a hair what any may say,
In regard to the wrong or the right,
My judgment goes, as well as my rhyme,
For the judge that keeps out of the fight.

—Marshall Brown in *Pittsburg Legal Journal.*

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