THE

MANITOBA LAW JOURNAL.

VOL. I. JUNE, 1884. No. 6.

BLASPHEMOUS LIBELS.

MATTHEW Arnold insists upon it, that the minority is always right and that the sequel always proves that it is so. This is only a striking and terse way of saying that progress is constantly being achieved by new ideas, at first embraced by the few, finally advancing to universal recognition. In spite, however, of this very patent fact the majority has always considered the rest of the community not only not to be right, but to be most wilfully, obstinately and maliciously wrong. The majority, of course, governs, and when it seems to be apparent to the rulers that the possession or promulgation of certain opinions tends to the subversion of order and happiness and the welfare of the kingdom, then the unlucky proprietors of brains that lead their owners to such conclusions must be silenced and punished. This is not only natural, it is the only logical outcome of the circumstances, and is applied as well where christians are in the minority as where they control legislation. Ecclesiastics argue that it is better to burn one heretic than that he be allowed to contaminate many and put all in danger of eternal damnation. We bow to his logic, but feel that there must be some lapse, some distributive middle, something

NOTE.—We are indebted for much that appears in the following pages to the articles of Mr. Justice Stephen (*Fornightly Review*, March, 1884), and H. J. W. Coulson (*Law Magazine and Review*, February, 1884).

more or less in the case—we refuse his conclusion and plead for liberty of opinion *ut ruat cœlum.*

Being strongly possessed of this feeling we hailed with satisfaction the summing of Lord Chief Justice Coleridge in the celebrated case of *Reg.* v. *Foote*, feeling that although it was a strong step taken by a strong judge, yet that the general sense of the community was in its favor and that it would be accepted as a just, if not sound, exposition of the law. It has not, however, been allowed to pass. Many felt that the constitution had received its death blow and that the destruction of the empire, so often presaged to follow reforms, had at last come to pass. They, of course, let loose their little wail.

Mr. Justice Stephen, from a more dangerous standpoint and with more weighty reasons attacks the charge. He agrees that the law ought to be as the Chief Justice asserts it is—indeed that it should be still more liberal—but that an act of parliament is necessary to make it so.

For a somewhat adequate appreciation of the difficulty it will not be necessary in more than a general way to commence at a period earlier than the restoration. Suffice it to say that for several centuries after the conquest the bishops, both as regards heresy and blasphemy, had it all their own way, and that they made it hot, in this world, at all events, for unbelievers; that in the fifteenth century the bishops received statutory authority to arrest persons suspected of heresy, to try them, to condemn them and to hand them over for execution to the sheriff who burned them alive; that these statutes were replaced by others in the reign of Henry VIII, were revived during the reign of Mary, and abolished by Elizabeth; and that in 1648 the puritans shewed themselves to be as sanguinary as the catholics and declared that "those that say that bodies of men shall not rise again after they are dead are guilty of felony and to suffer death."

After the restoration the courts and modes of procedure by which heresy and blashemy had formerly been punished

were disabled or abolished; but as the offence of blasphemy was a crime at common law the court of King's Bench undertook the administration of the law, and acted in the character of *custos morum*. This, as pointed out by Mr. Justice Stephen, is the origin of the modern law as to blasphemy and blasphemous libels. The law then is to be found in the decisions of the courts and in any statutes passed since the period just referred to. These we propose to shortly notice, but as the arguments for the opposing opinions are derivable from them, let us first, for the sake of clearness, state shortly the gist of these conclusions.

Lord Chief Justice Coleridge holds that the following extract from *Starkie* (*Folkard's Starkie pp. 559, 560*) contains a true exposition of the law: "There are no questions of more intense and awful interest than those which concern the relations between the Creator and the beings of His creation; and though as a matter of discretion and prudence, it might be better to leave the discussion of such matters to those who, from their education and habits, are most likely to form correct conclusions, yet it cannot be doubted that any man has a right not merely to judge for himself upon such subjects, but also, legally speaking, to publish his opinions for the benefit of others. Where learned and acute men enter upon these discussions with such laudable motives, their very controversies, even where one of the antagonists must necessarily be mistaken, so far from producing mischief, must in general tend to the advancement of truth and the establishment of religion on the firmest and most stable foundations. The very absurdity and folly of an ignorant man who professes to teach and enlighten the rest of mankind are usually so gross as to render his errors harmless. But be this as it may, the law interferes not with his blunders so long as they are honest ones, justly considering that society is more than compensated for the partial and limited mischief that may arise from the mistaken endeavor of honest ignorance, by the splendid advantages which result to religion and to truth from the exertions of free and unfettered minds. It is the mischievous abuse of

this state of intellectual liberty which calls for penal censure. The law visits not the honest errors but the malice of mankind. A wilful intention to pervert, insult, and mislead others, by means of licentious and contumelious abuse applied to sacred subjects, or by wilful misrepresentations, or wilful sophistry, calculated to mislead the ignorant or unwary, is the criterion and test of guilt. A wilful and mischievous intention, or what is equivalent to such an intention, in law and in morals—a state of apathy and indifference to the interests of society, is the broad boundary between right and wrong." In the same strain the Chief Justice told the jury that: "If the decencies of controversy are observed, even the fundamentals of religion may be attacked without a person being guilty of a blasphemous libel." In another place he said: "It is no longer true in the sense in which it was true when these *dicta* were uttered that christianity is part of the law of the land. In the time when these *dicta* were uttered Jews, Roman Catholics, Nonconformists of all kinds, were under heavy disabilities for religion, were regarded as hardly having civil rights. Everything almost, short of the punishment of death was enacted against them." Now these disabilities are removed. The late Master of the Rolls might have had to go circuit to try for a blasphemous libel a Jew who denied that Christ was the Messiah, "a thing which he himself did deny, which parliament had allowed him to deny, and which it is just as much part of the law that any one may deny, as it is your right and mine if we believe it to assert." Apart from this the Chief Justice argues that if it is illegal to attack christianity because it is part of the law of the land, that implied that to attack any part of the law would be, if not blasphemous, yet seditious; and this, he says, is an absurdity. For these reasons "to base the prosecution of a bare denial of the truth of christianity *simpliciter* and *per se* on the ground that christianity is part of the law of the land, in the sense in which it was said to be by Lord Hale, and Lord Raymond, and Lord Tenterden is, in my judgment, a mistake. It is to forget that the law grows, and that though the prin-

ciples of law remain unchanged, yet (and it is one of the advantages of the common law) their application is to be changed with the changing circumstances of the times."

Mr. Justice Stephen, on the other hand, quotes *Blackstone* (*Com. 2nd Ed. IV., 43*) as exhibiting the present condition of the law: "Doubtless the preservation of christianity as a national religion is, abstracted from the intrinsic truth, of the utmost consequence to the civil state, which a single instance will sufficiently demonstrate. The belief in a future state of rewards and punishments, the entertaining just ideas of the moral attributes of the Supreme Being, and a firm persuasion that He superintends and will finally compensate every action in human life (all which are clearly revealed in the doctrines and forcibly inculcated in the precepts of our Saviour Christ), these are the grand foundations of all judicial oaths which call God to witness the truth of those facts which perhaps may be only known to him and the party attesting. All moral evidence, therefore, all confidence in human veracity, must be weakened by irreligion and overborne by infidelity. Wherefore all affronts to christianity, or endeavors to depreciate its efficacy, are deserving of human punishment."

We will now set out the statutes and decisions and leave our readers to judge as between these judges.

The statute of 29 Car. II., c. 2, s. 9, provided that "heresy" should no longer be an offence punishable by the secular law, but should be only subject to ecclesiastical correction "*pro salute animæ*"; and concludes as follows: "Nothing in this Act shall extend or be construed to take away or abridge the jurisdiction of protestant archbishops or bishops, or any other judges of any ecclesiastical courts, in cases of atheism, blasphemy, heresy, or schism, and other damnable doctrines and opinions."

The Act 9 and 10 Wm. III, c. 32, is still in force except as to the doctrine of the Trinity. It is entitled "An Act for the more effectual suppressing of blasphemy and profaneness," and is as follows:—

"Whereas many persons have of late years openly avowed and published many blasphemous and impious opinions, contrary to the doctrines and principles of the christian religion, greatly tending to the dishonor of Almighty God, and may prove destructive to the peace and welfare of the kingdom; wherefore, for the more effectual suppressing of the said detestable crimes, be it enacted, that if any person or persons having been educated in, or at any time having made profession of the christian religion within this realm, shall by writing, printing, teaching or advised speaking, deny any one of the persons of the Holy Trinity to be God, (repealed as to this part by 53 Geo. III., c. 160) or shall assert or maintain that there are more Gods than one, or shall deny the christian religion to be true, or the Holy Scriptures of the Old and New Testament to be of Divine authority, and shall, upon indictment or information in any of His Majesty's Courts at Westminster, or at the assizes, be thereof lawfully convicted by the oath of two or more credible witnesses, such person or persons for the first offence shall be adjudged incapable and disabled in law, to all intents and purposes whatsoever, to have or enjoy any office or offices, employment or employments, ecclesiastical, civil or military, or any part in them, or any profit or advantage appertaining to them or any of them; and if any person or persons so convicted as aforesaid, shall, at the time of his or their conviction, enjoy or possess any office, place or employment, such office, place or employment shall be void and is hereby declared void; and if such person or persons shall be a second time lawfully convicted as aforesaid, of all or any of the aforesaid crime or crimes, that there he or they shall from henceforth be disabled to sue, prosecute, plead, or use any action or information in any court of law or equity, or to be guardian of any child, or executor or administrator of any person or capable of any legacy or deed of gift, or to bear any office, civil or military, or benefit ecclestiastical forever within this realm and shall also suffer imprisonment for the space of three years, without bail or mainprize, from the time of such con-

viction." Sec. 3 provides for discharge of the penalties upon renunciation being made within four months atter conviction.

Reg. v. *Taylor, Ventris 293* (1675).—The words used in this case were, "That Jesus Christ was a bastard and a whoremaster; that religion was a cheat; that he feared neither God, the devil, or man." Lord Hale said: "That such kind of wicked and blasphemous words were not only an offence against God and religion, but a crime against the laws, state and government, and therefore punishable in this court; that to say religion is a cheat, is to dissolve all those obligations whereby civil societies are preserved; and christianity being parcel of the laws of England, therefore to reproach the christian religion is to speak in subversion of the law." Lord Coleridge agrees that these words constitute a blasphemous libel, but contends that the case does not conflict with his position. To this Mr. Justice Stephen answers that the words proved in the case before the Chief Justice were more indecent than those just quoted. But Lord Coleridge would probably reply: "That is a matter for the jury. I told them that it was for them to say whether the words were not 'a permissible attack on the religion of the country.' Decency is a question of fact, not of law."

Reg. v. *Woolston, Strange 834; Fitzgibbon 64* (1720). The libel complained of was the publication of a work in which the writer maintained "that the miracles of Christ are not to be taken in a literal sense, but that the whole life and miracles of Christ is an allegory." Lord Raymond held "that whatever struck at the root of christianity tends manifestly to the dissolution of civil government; but I would have it taken notice of that we do not meddle with any differences of opinion, and that we interfere only where the very root of christianity itself is struck at, as it plainly is by this allegorical scheme." Much of the language used in the book seems to have been highly indecent and objectionable. This fact, to Lord Coleridge, justifies the decision, but Mr.

Justice Stephen contends that the decision itself does not turn upon the "decencies of controversy" but upon the fact that "the root of christianity" was assailed.

The cases connected with "Paine's Age of Reason," Wilkes (1764), Williams, (1797), Eaton (1812), and Carlisle (1819), are not dealt with by either of the judges and may be passed over.

Rex v. *Waddington, 1 B. & C. 26* (1822). The words of the libel were that "Jesus Christ was an imposter, a murderer (in principle), and a fanatic. Lord Tenterden said that he had "no doubt it was a libel to publish the words that our Saviour was an imposter, a murderer (in principle), and a fanatic." Mr. Justice Bayley says: "There cannot be any doubt that a work which does not merely deny the godhead of Jesus Christ, but which states Him to have been an impostor and a murderer (in principle), is at common law a blasphemous libel." Mr. Justice Best gives judgment to the same effect and concludes, "It is not necessary for me to say whether it be libellous to argue from the Scriptures against the divinity of Christ. That is not what the defendant professes to do."

Reg. v. *Gathercole 2 Lewin C. C. 254* (1838). The defendant was a clergyman and was tried for a scandalous attack upon the RomanCatholic religion, and upon the conduct of the Lady Superior and nuns of the nunnery at Scorton, charging them in the grossest terms with immorality and other criminal offences. The jury found the defendant guilty, but Baron Alderson held that though he was rightfully convicted on the charge of libelling the Lady Abbess and nuns, he must be acquitted on the charge of libelling the Roman Catholic religion, for, says the learned judge, "a person may, without being prosecuted for it, attack judaism, mahomedanism, or even any sect of christian religion (save the established religion of the country), the only reason why the latter is in a different situation from the others is because it is the form established by law and is, therefore, part of the constitution of the country."

Reg. v. *Hetherington, 5 Jur. 529* (1841). There were three counts each of which set out a passage of the work prosecuted. The first passage begins, "What wretched stuff this Bible (meaning that part of the Holy Bible called the Old Testament) is to be sure! What a random idiot its author must be!" And goes on to advise that it should be burnt, "that posterity may never know that we believed in such abominable trash;" and more to the same purpose in very violent language. The second count is founded on a passage which says: "The great question between you and me is, Is the Bible the Word of God, or is it not? I assert that it is not the Word of God, and you assert that it is. And I not only assert it is not the Word of God but that it is a book containing more blunders, more ignorance, and more nonsense, than any book to be found in the universe." The third count is founded on a passage in which the author says his object is "to expose this book (meaning the Old Testament) in such a manner that the children of the Stockport Sunday school will reject it with contempt" &c. The case was tried before Lord Denman and he "told the jury that if they thought the libel tended to question or cast disgrace upon the Old Testament it was a libel". In term the verdict was upheld, Littledale, J., said: "The Old Testament independently, of its connection with, and of its prospective reference to, christianity, contains the law of Almighty God; and therefore, I have no doubt that this is a libel in law, as it has been found to be in fact by the jury."

Reg. v. *Noxon* (1841). In this case a jury found the defendant guilty of publishing a profane libel upon proof that he as a bookseller sold a copy of Shelley. "Queen Mab" was thought to contain blasphemy.

Reg. v. *Pooley* (1857). The defendant was convicted for writing, upon a gate on a public road, some foolish and irreverent words about the potato rot, the bible, and his hatred of christianity.

Cowan v. *Milbourne, L. R. 2 Ex. 230* (1867). This was

an action in which the defendant justified a breach of his contract to let rooms to the plaintiff on the ground that they were to be used for the purpose of delivering lectures upon such subjects as "The Character and Teachings of Christ, the former defective, the latter misleading". Lord Coleridge admits that Lord Chief Baron Kelly's judgment "goes the full length of the doctrine" that to attack christianity is to expose yourself to an indictment for libel. From this he dissents and points out that Baron Bramwell rests his judgment upon the Statute of Wm. III.

Whether Lord Coleridge or Mr. Justice Stephen is right will have for the present to remain unsettled. In Manitoba there is the further point, whether the law of England as to blasphemous libels was ever in force here. It is said that to attack christianity is an offence at common law and that the common law was introduced into this Province. But is not this law one which is applicable only to a country where there is an established or state recognized religion? In answer to this we must refer our readers to *Pringle* v. *Town of Napanee 43 U. C. Q. B., 285*, where after an elaborate judgment it was held that although in Ontario no sect was entitled to particular protection the fundamentals of christianity are as safe from denial as in England. The same point has been decided in the same way in the United States. (See the cases referred to in *Pringle* v. *The Town of Napanee, ante.*)

A very large number in the community then, including all the booksellers, are, perhaps, out of jail only upon sufferance of any one who wishes to lay an information. We cannot doubt that it only requires that it should be attempted to apply the law to some persons of respectability in order to ensure its unanimous relegation to the nearly completed list of stupid attempts to stop people thinking, and expressing their thoughts in any language they choose to employ—whether inspid or vigorous.

RECENT LEGISLATION.

WHEN the present Attorney-General assumed office we had hopes that there would be a marked improvement in legislation, so far at all events as the expression of the intention of the House was concerned. Having himself been a judge his experience should be of value in so framing the statutes that at all events patent ambiguity and uncertainty should be excluded. We have been terribly disappointed. We cannot imagine anything more unworthy of a legislative body than the statutes of last session. We give a few examples.

Chapter xv., sec. 1, is as follows:—"Any keeper of a Livery Stable or of a Boarding or Sale Stable, in this Province, may detain in his custody and possession, and before the same shall have been removed out of his custody and possession, but not afterwards, any animal, vehicle, harness, furnishings, or other gear appertaining thereto, and personal effects, of any person who is indebted to him for stabling, boarding or caring for such animal." In construing this law (for we suppose we must so style it) it would be well if some one could be found who would explain how a Livery Stable keeper (even if the stable has a big initial and the owner a small one) can detain in his custody a horse after it has been removed out of his custody. Also, let it in some way be made apparent what the "gear appertaining thereto" includes. Does the "thereto" refer to the horse or the furnishings? and if the latter what are the furnishings to which the gear appertains? Then, may *any* "personal effects" of the debtor be detained? and if so, why are the furnishings and gear specially mentioned?

By sec. 2: "Every livery stable keeper and every keeper of a boarding or sale stable, shall be obliged to keep in his possession, and shall be responsible for any animals and effects detained by him for the full period of such detention, unless they shall sooner be released," &c. This is rather hard on the livery stable keeper, and his buildings are

therefore given less conspicuous letters. There are two duties imposed: first, the keeper must "keep in his possession the animals and effects," "for the full period of such detention unless they shall sooner be released;" and if he knows how to do anything else we will always spell his stable in leaded capitals; and secondly, he "shall be responsible for" any such animals and effects, without exception in favor of acts of God and the Queen's enemies, fire, tempest, or the legislature.

Chapter xvi., s. 3, provides that 46 and 47 Vic., c. 24, is to be amended "by substituting for the word 'two' immediately preceding 'oxen and horses,' the word 'three.'" The only difficulty about this is that the words in the former statute are not "oxen and horses," but "two oxen, two horses." The intention was no doubt to alter both of the twos. What has been done is one of those things no fellow knows.

Chapter xix. provides that there shall be no sale of growing crops until they have been harvested, a feat that probably no one would have attempted even if not restrained by a Manitoba statute; and that even then the growing crops cannot be sold until all exemptions have "been claimed and reserved;" but no provision is made whereby an obstinate debtor may be compelled to put in his claim—no sale can take place until he does.

It is hard to see the advantage of the change from the usual *shall* to the disturbing *should* in chapter xx., s. 1:—"Provided that no company incorporated under said Act *should* commence business until at least ten per cent. of the capital stock of the said company *should* have been subscribed," &c.

Chapter xxviii., s. 1, provides that, "From and after the first day of January, A. D. 1885, the right of mortgagees to distrain for interest due upon mortgages shall be limited to the goods and chattels of the mortgagor only, and as to such goods and chattels, only to such as are not exempt from seizure under execution." Now everyone knows that a mortgagee's right of distress always has been "limited to

the goods and chattels of the mortgagor only." A mortgagee has always heretofore distrained by virtue of a special license accorded to him by the mortgagor, and it was never supposed that the latter could give a license to seize the goods and chattels of any one but himself. There are certainly circumstances under which one who has loaned money upon the security of land may distrain the goods and chattels of third parties upon the premises. A desiring to borrow money from B upon the security of Blackacre conveys it to him, upon the agreement that B is to receive the rents and profits and apply them in reduction of principal and interest. B leases the land to C. It will hardly be contended that the above statute applies to this case; and that B who is a landlord is interfered with in the collection of his rent. Surely the title by which B acquires the land will not affect his relation to C. Then if instead of renting to C, B leases to A, the result is and must be the same. If so, the Act is meaningless, for the clause about exemption from seizure is a matter of contract between the parties, with the freedom of which the legislature does not attempt to interfere.

Sec. 2 of the same Act is a wonderful jumble, but it is too long for extract. It speaks of an order being "made delivering up possession of the premises," and directs the bailiff acting under such an order "to eject and remove the said tenant together with all goods and chattels that he may have on *or about* the premises, and *make the rent in arrear.*

Chapter xxx., requires that hire-receipts, &c., shall "be of no effect whatsoever" as against judgment creditors, purchasers or mortgagees, unless copies are filed within sixty days from the date thereof. This, of course, was a little hard upon the holders of receipt-notes which were then more than sixty days old, so chapter xxxi. amends it and provides that chapter xxx. is not to be held to require the filing of receipt-notes made "before the coming into force of the said Act," (viz.: the first of August, 1884,) "but instead thereof the parties claiming under the same shall within three months of the passing of this Act, (viz.: the twenty-ninth day of July, 1884,)

file . . . . a list or statement and an affidavit," but what that statement and affidavit are to contain we defy anyone to make out. We can only suggest that the whole transaction should be stated with the most minute exactness, and that the affidavit after adopting the same language should quote the statute in full, and make the deponent swear that he has complied with its provisions—to the best of his information and belief.

By sec. 2 the Act is not to come into force until the first of August, and the County Court Clerks cannot therefore act under it until then; but the luckless receipt-note holders have to file their list of transactions up to the first of August, within three months from the passing of the Act, or at latest the twenty-ninth of July.

Space and inclination to prosecute this enumeration of blunders fails us. There are plenty more of the same kind.

The errors just referred to are the result of indifference and indolence, not of incapacity. When a direct purpose has to be served there is no more ambiguity than is necessary to hoodwink the members and get them to make laws without knowing what they are doing—a coating of sugar to get the pill down. The Attorney-General having been retained for the plaintiff in an important mechanics' lien case, and the affidavit not having been sworn in accordance with the statute, it was necessary to the success of the case that the Act should be amended to suit the affidavit; and that the amendment should be made retrospective. A bill therefore was introduced, but the pill was uncoated and the House refused to swallow it, refused to allow pending litigation to be interfered with and inserted a clause making provision to that effect. Nothing daunted, another bill is introduced of a general, vague, uncertain character, providing that *any* affidavit required by *any* statute, &c., should, if sworn, &c., be valid and effectual. To insure success the pill was not inserted until the members had seen and handled the innocent looking object; not until the confusion of committee

had afforded an unobserved moment did the Attorney-General, with his own hand, write in the retroactive words, "have been taken, or." The Attorney-General may plead that the other members should have watched what he was doing. We are inclined to agree with him and to think that when again chairman of a committee he will receive more attention. The members, however, may be excused for not observing the alteration of the bill, for it was so dexterously done that even the clerk of the committee was not aware of the change and reported the bill to the House without amendment. Both bills advanced to and passed their third reading, but it was evidently advisable that one of them should become law and that the other should in some way be strangled. Great genius is never without resource. The Lieutenant-Governor was asked to come down during the session and assent to some bills, the pretext being the boundary bill. *The General Act* (bill number two) *was then assented to and the other was not.* Two scenes more in this precious drama. It was now important that the hearing of the case should be hurried on, for prorogation was approaching and with it the other Act. This was easily accomplished for the defence knew nothing of the plot, and Mr. Justice Taylor when informed by the Attorney-General that he had to leave for Ottawa on the 24th of April fixed the case specially for the 23rd. Prorogation took place on the 29th and the Attorney-General did not leave until the 30th, but, of course, he may have changed his mind about the date. We drop the curtain upon a tableau. The Attorney-General has triumphantly produced his statute and scored his point. Another defect in his proceedings, not thought of and not remedied, has been pointed out, the judge has dismissed the Attorney-General's bill with costs, and the faces of judge, counsel and parties are full of expression.

There seems to be no doubt that another provision was smuggled through the House; we refer to the clause as to confessions of judgment. Whether Mr. Justice Taylor's decision in *Union Bank* vs. *Turner*, is good law or not there is only one opinion about its justice. There can be no doubt

that securing judgment by a judge's order, obtained collusively, is accomplishing that which the statute now amended was intended to render impossible; and we are convinced that the legislature would not have knowingly overruled Mr. Justice Taylor's decision. We trust that there will be a rigorous investigation into the matter, and we would suggest that after the House acquits the Master-in-Chancery, as we have no doubt they will, he be appointed to investigate and report upon the actions of the members.

QUEEN'S COUNSEL.

MESSRS. F. McKenzie, Sedley Blanchard, J. B. McArthur, and A. C. Killam have been appointed Queen's Counsel by the Dominion Government.

Mr. McKenzie has for some time occupied the highest position in the gift of the bar and is an able common law and criminal lawyer.

Mr. Blanchard is one of the ablest business men in the profession, and has been practically at the head of a very large and successful practice for many years.

Mr. McArthur's jovial rotundity—not to mention his ability—would entitle him to anything. Any depression of his spirits would be a distinct loss to the community. Everyone will be glad that he has not been overlooked.

Mr. Killam is a sound and able lawyer. The profession would heartily welcome his appointment to the bench, and notwithstanding rumors to the contrary, we still hope that he may be induced to accept the position.

It has been said that three other gentlemen have been selected for distinction. We hope that the rumor is true so far as it relates to Mr. H. M. Howell. If numbers of briefs supplied a claim, Mr. Howell would take first place.

To the disappointed let us say, that a patent of precedence, like the forgiveness of sins, comes not by merit but by grace; and that if there are two lists upon which a name may or may not be, the mathematics of probabilities are against the chance of it being upon both.