

**CURIOSITIES OF THE
LAW REPORTERS,
PP. 1-211**

Published @ 2017 Trieste Publishing Pty Ltd

ISBN 9780649558674

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Cover @ 2017

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OF

THE LAW REPORTERS

BY

FRANKLIN FISKE HEARD

BOSTON

LEE AND SHEPARD, PUBLISHERS

NEW YORK

LEE, SHEPARD, AND DILLINGHAM

1871

Entered according to Act of Congress, in the year 1871,
BY FRANKLIN FISKE HEARD,
in the Office of the Librarian of Congress, at Washington.

UNIVERSITY PRESS: WELCH, BIGELOW, & Co.,
CAMBRIDGE.

AND know, my son, that I would not have thee believe that all which I have said in these books is law, for I will not presume to take this upon me. But of those things that are not law, inquire and learn of my wise masters learned in the law.

LITTLETON.

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CURIOSITIES OF THE LAW REPORTERS.

IN the great case, *Bartonshill Coal Company v. Reid and McGuire*,¹ who were both killed in the working of a mine by the negligence of a fellow-servant, employed in the same common work, the reporter quaintly observes: "Reid and McGuire were both victims of the same accident, which, though melancholy, has settled the law."

✱

YEAR BOOK, 50 Edw. III. fol. 6, pl. 12. This was a case in which a question arose upon a lady's age; her counsel pressed the court to have her before them, and judge by inspection whether she was within age or not. But "Candish, Justice," showing great knowledge of female character, says: "Ill n'ad nul home en Engleterre que puy adjudge a droit deins age on de plein age; car ascun femes que sont de age de XXX ans voilent apperer d'age de XVIII ans."

¹ 8 Macqueen, 265, 301 note. Quoted in *Gilman v. Eastern Railroad Corporation*, 10 Allen, p. 227.

“FORMERLY, when a question was raised by government with respect to the right of persons to take water from Portsmouth Harbor, Lord Abinger said: ‘An old woman must not take a bucket of water from that harbor, lest a seventy-four should not float.’”¹

✱

BY St. Geo. IV. ch. 71, it is enacted, that “If any person or persons shall wantonly and cruelly beat, abuse, or ill-treat any horse, mare, gelding, mule, ass, ox, cow, heifer, steer, sheep, or *other cattle*,” such person or persons are made liable to a penalty not exceeding £5, nor less than 10s. In *Ex parte Hill*,² Starkie and Holroyd contended before Bayley J., that the bull was included in the statute under the term “*other cattle*.” Curwood, contra, argued, that it was a rule in the construction of Acts of Parliament, that where there was an enumeration beginning with the lower degrees, and general words embracing others *ejusdem generis* at the end, these general words did not include a superior degree which was not named in the Act; and he cited the case of the Archbishop of Canterbury,³ where it was held, on the statute 13 Eliz. ch. 10, which mentions deans and chapters, parsons and vicars, and *all other persons whatsoever having spiritual promotion*, that the words did not

¹ Alderson B. in *Embrey v. Owen*, 16 Jurist, p. 686.

² 8 C. & P. 225.

³ 2 Rep. 46.

extend to bishops, a superior order, who were not named therein; and he contended, therefore, that as, in the statute in question, the enumeration began with ox, cow, and heifer, omitting bull, and concluded with other cattle, it did not include a bull, the bull and the bishop standing in *pari statu* with reference to the words of those statutes respectively.

✱

BARON SNIGGE, with reference to the distinction between the actions of trespass and trespass on the case, thus defines the duty of the pleader: "An action of trespass lieth generally, but in an action on the case he ought to hit the bird in the eye."¹

✱

IN *March on Slander*, A. D. 1648, it is said, with reference to the encouragement of actions of slander, "Though the tongues of men be set on fire, I know no reason wherefore the law should be used as bellows to blow the coals."

✱

THE Star Chamber decided that they might punish the undue preparation of witnesses, though their testimony be true.²

¹ *Levison v. Kirk*, *Lana*, 67.

² *Darcy v. Leigh*, *Hobart*, 324.