CURIOSITIES OF THE LAW REPORTERS

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1871.

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.

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 ou de plein age; car ascun femes que sont de age de XXX ans voilent apperer d'age de XVIII ans."

[1] 3 Macqueen, 266, 301 note. Quoted in Gilman *v.* Eastern Railroad Corporation, 10 Allen, p. 237.

"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 10*s*. 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, 15 Jurist, p. 636.
[2] 3 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, Lane, 67.

[2] Darcy v. Leigh, Hobart, 324.

MR. JUSTICE CROMPTON recently[1] gave this brief description of Sir John Fenwick's Case:[2] "The House of Commons were unable to impeach Sir John Fenwick of high treason because there was only one witness against him, the other having been spirited away; but they and the Lords passed a bill of attainder to cut off his head on the evidence of one."

※

LORD CAMPBELL mentions that Lord Erskine, when Lord Chancellor, in one of his judgments observed: "Lord Coke considers the word 'lunatics' as by no means material, classing it with 'amens' and 'demens,' and there is no doubt that the moon has no influence over lunatics; and he notices that Vesey Jun., the reporter, represents this as a point decided by Lord Erskine, and writes this marginal note: 'In cases of lunacy, the notion that the moon has an influence erroneous.'"[3]

※

THE case of Lillcott *v.* Compton, reported by Vernon,[4] merits commendation for the brevity with which the reporter gives the whole case in a single line:—

"Plate shall pass by a devise of household goods."

[1] Regina *v.* Boyes, 1 Best & Smith, p. 324.
[2] 13 Howell State Trials, 538.
[3] Cranmer, Ex parte, 12 Ves. 445, 450.
[4] Vol. II. p. 638. 60 Penn. State Rep. 223.

"REPORTS and Pleas of Assizes at Yorke," by John Clayton, is the title of a very thin duodecimo published in 1651. "If this book," writes Mr. Allibone, "will do all that Mr. Clayton promises for it, we should suppose that our friends the lawyers would insist on its immediate republication." — "You may see here how to avoid a dangerous jury to your client, what evidence best to use for him, how to keep the judge so he overrule you not; so that, if it be not your own fault, — as too often it is for fear of favor, — the client may have his cause so handled as, if he be plaintiff, he may have his right, and if defendant, moderately punished, or recompensed for his vexation; and such pleaders the people need." — Preface.

⁂

CERTAIN rules of evidence which are now considered fundamental, appear to have been altogether unknown in the seventeenth century. In the trial of Mr. Hawkins, a clergyman, for stealing money and a ring from Henry Larimore, in September 1668, Lord Hale admitted evidence to show he had once stolen a pair of boots from a man called Chilton, and that, more than a year before, he had picked the pocket of one Noble. In summing up, Lord Hale said, after referring to the cases of Chilton and Noble: "This, if true, would render the prisoner now at the bar obnoxious to any jury." [1]

[1] 6 Howell State Trials, 935.