money. The petitioners would therefore be declared to be entitled to the balance at the savings bank and the cash which was actually in the house, but not to the amount payable on the two promissory notes.

LEGAL MISCELLANY.

THE LAW AND THE LAWYERS.

A criminal was hiding from the pursuit of justice. He sent for a clergyman for spiritual consolation. The clergyman went to him, performed the duties of his holy office, and gave the man a promise not to reveal the place of his concealment. For this the clergyman, who was chaplain to St. Pancras workhouse, was dismissed from his office and deprived of his daily bread.

We have purposely stated the main facts of the case, without dates or lesser details, that its character may be clearly seen apart from any prejudice. It has been made the subject of discussion in the newspapers, some approving the conduct of the clergyman, others that of the vestry. It raises an important question in the administration of justice, and therefore we bring it under the notice of the lawyers.

The law is rightly jealous of privileged communications; but it recognizes some cases in which confidence is essential to justice itself, as in communications between client and attorney, or to society itself, as in communications between husband and wife. With a strange perversity, however, it does not recognize the interest of *religion* as of equal importance, and a confidential communication to a clergyman is not privileged, although the courts will not resort to the last remedy to enforce obedience or punish a refusal to betray.

It is much to be lamented that the courts will not frankly and fully recognize as privileged, all communications made to ministers of religion in the course of the exercise of their office. It would not impede justice, because the effect of the existing rules is simply to prevent sinners from making that confession of sin which God

commands. It is merely an obstacle to the performance of a religious duty. It is a proclamation by the law to the sinner, "Thou shalt not do what the Bible enjoins thee to do without hazard of temporal punishment," It puts him to choose between peril to his soul and peril to his body. It is a premium upon impenitence.

It has been said that in the present instance the clergyman ought not to have made such a promise? Why not? The criminal had sent for him in the confidence that he would not be betrayed, and he asked only what the other would have granted without asking. Was it, then the duty of the clergyman *not* to go at all? For what have we ministers of the Gospel to do, if not to bring *sinners* to repentance? It is for such as the wretched man who asked his aid in this case that the clergyman's office is most needed. Once let it be understood that a minister of the Gospel cannot be trusted with a secret, and half his usefulness is lost. It is for the interest of religion that such communications should be privileged, and to that highest interest even the interests of the law should bend. It would be better that one criminal should escape punishment than that a hundred criminals should be deterred from seeking religious consolations, or that a sacred duty should be incompatible with personal safety.

Very cruel has been the treatment of the clergyman to whom we refer, very hostile to religion the vote that condemned him to penury, but, unhappily, we must add, in strict compliance with the letter of a law, which would be far more honored in the breach than in the observance.—*Law Times.*

UNANIMITY OF JURIES—LORD CAMPBELL AND AN ENGLISH JURY.

The absurdity of the rule that requires unanimity in a jury in a civil cause has received a striking illustration. An action against a railway company claimed damages for an injury done by an accident. The defence was, that the accident was the inevitable consequence of a tempest, and by no fault of the company. Lord

CAMPBELL, who tried the case, told the jury that this was a good defence, if they were satisfied that it was true in fact. The jury retired, and after a long deliberation returned a verdict for the plaintiff, damages one farthing. This was manifestly ridiculous. If they believed the defendants, they were entitled to a verdict; if they were disbelieved, the plaintiff was entitled to substantial damages. Clearly the verdict was the result of a compromise. Lord CAMPBELL, refused to receive it, and the following scene occurred.

After an absence from the court of two hours and ten minutes the jury returned, and the foreman said their verdict was for the plaintiff—damages, one farthing.

Lord CAMPBELL.—I really cannot in the discharge of my duty, gentlemen, receive that verdict. It cannot be right. It is impossible that it can be right. It cannot stand. The Court of Queen's Bench would set it aside. If you find for the plaintiff you are bound to give him reasonable damages. If he is not entitled to your verdict you must say so. I must beg you will return to your chamber.

Several Jurymen.—There is no chance of our agreeing, my lord.

Lord CAMPBELL.—I really hope, gentlemen, that by consultation and deliberation you will agree. Trial by jury has flourished in England to the great benefit of the land in which we live; but it has been so by reason of jurymen deliberately and calmly consulting each other, and usually after that deliberation coming to conclusion either on one side or the other. Now, in this case it is quite clear that you have not done so. I must respectfully tell you that you have not done what the law requires you to do, and I must beg you to withdraw and deliberate. I cannot receive such a verdict. I should be guilty of a dereliction of duty were I to receive a verdict which is unquestionably wrong. You cannot agree in a verdict which is wrong; but, by consultation, some of you may change the opinion which you originally had, and unless you deliberate and try to come to a just opinion, in which you all concur, it is not possible that the law can be administered. I must request you to withdraw.

The jury then retired a second time.

At half-past five o'clock, after the lapse of a further interval of two hours.

Lord CAMPBELL ordered the jury to be brought into court, and asked them whether they had agreed upon their verdict.

The Foreman.—There is no chance of our coming to any agreement.

Lord CAMPBELL.—Then I can only order you to return to your chamber and deliberate upon it. That is what the law requires, and I must enforce it.

The Foreman.—We have gone over it, my lord, and we cannot agree.

Lord CAMPBELL.—The law is binding upon me and you. Though not to force your consciences, you must return and be locked up until you agree.

A juryman.—We have agreed.

Lord CAMPBELL (warmly).—You have agreed in a verdict contrary to law, to justice and to common sense, and I am astonished at it. No judge ever sat upon the bench with a greater respect for juries than I have, and the more that I have assisted in the administration of justice in conjunction with juries, the more I have admired the admirable tribunal which they form. It does surprise me to find that gentlemen of your intelligence will now, after being told that your verdict cannot be received, and is a verdict contrary to law, justice and common sense, persist in a verdict for the plaintiff, giving it as your opinion that there was negligence on the part of the company, whereby he suffered severe injuries, and then cutting him off with a farthing. That is not creditable. You will return to your chamber.

A juryman.—Does your lordship refuse to receive the verdict?

Lord CAMPBELL.—I do refuse to receive it, as the law requires me. You will return to your chamber.

The jury withdrew, and before leaving the bench Lord Campbell directed the officer of the court to receive any proper verdict, but expressed a determination not to discharge them until to morrow

morning if they persisted in the verdict they had already returned. Lord CAMPBELL took unnecessary pains to express his admiration of the jury system; but his eulogium must have been addressed to the principle, not to the practice, for he has himself proposed to relieve them from the compulsory unanimity now enforced in civil cases. If any lingering doubt can rest in any mind as to the propriety of abolishing this relic of barbarism, the above narrated incident must remove it. To expect agreement among twelve intelligent men on questions of civil rights and wrongs, in which there are of necessity as many views as minds, and which really admit of infinite degrees of honest difference, is either the dream of a visionary or the assertion of ignorance. It had its origin in criminal trials, where but one question is to be decided—"guilty" or "not guilty"—with the further rule that, in case of doubt, the accused is entitled to the benefit of the doubt, and to an acquittal. Here unanimity is very desirable as a protection to the subject, and it is very practicable, because but two opinions can exist; and if there is a serious difference which discussion cannot remove, the solution is found in the conclusion that, where the judges differ, there must be a reasonable doubt, and that doubt decides in favor of an acquittal. But, in civil cases, the questions are unlimited in number and intricacy; and, if the jury are intelligent, may, and often must, produce numerous differences of opinion, that lead either to wrongful concessions or unjust compromises, or discharge without delivery of a verdict; in either case, inflicting grievous injury upon one or both of the suitors.

The now frequent occurrence of juries discharged because they cannot agree is the consequence of their increasing intelligence, and the more conscientiously and intelligence, and the more conscientiously and intelligently juries perform their duties, the more often this result will be seen. There is but one remedy—to abolish the requirement for unanimity in civil cases, where neither reason nor experience approves it, but retaining it still in criminal trials, where the rule is supported both by principle and by practice.

We had written this before the finale, which was equally instruc-

tive. On the following morning the jury came into court, in a very woebegone condition. With one exception they had eaten and drunk nothing for twenty-four hours, and that exception was a case of illness, in which a medical man had been sent for, and advised the administration of some port wine and sandwiches, which prescription Lord CAMPBELL entirely approved.

Lord CAMPBELL said that, as the law now stood, the jury might have refreshment before they retired to consider their verdict. He recollected that Lord Ellenborough had so decided. But after they were locked up they could not be so refreshed. His Lordship then directed the jury to be sent for to see if they were agreed.

On being asked whether they were agreed on their verdict, the foreman said they were not.

Lord CAMPBELL said that, in so answering that they were not agreed, the jury had given a sensible and reasonable answer, such as the law sanctioned and demanded; but with respect to the answer which they had given yesterday, "a verdict for the plaintiff, with one farthing damages," that was not a reasonable answer, and the law would not sanction it. It was quite clear the jury did not all agree on that verdict, that the plaintiff had suffered only one farthing damages. The plaintiff was a respectable man, had suffered seriously, and had done nothing to hinder him from recovering the damages which he had sustained, and to which he was entitled by law. It was therefore impossible for him to receive that verdict. But now they stated they were not agreed he had a discretion as to the time when he should discharge them from giving a verdict. At the assizes, according to the traditional law, a jury which could not agree were to be locked up during the assizes, and then carried in a cart to the borders of the next county, and there shot into a ditch. But, as the jury had sat up the whole night, and had already been exposed to great inconvenience, he should now discharge them. Such was the law at the present time, but his Lordship added that it was his intention to bring in a bill in the next session of Parliament to alter the law on this subject. He was anxious that the old maxim, that no one should be found guilty of crime, unless the jury

were unanimously of opinion that he was guilty, should still be maintained; but in civil causes his Lordship thought a verdict might be given either by a majority, or a certain number of the jurymen. He should submit some such measure to the legislature, and he thought the change would be an improvement in the administration of the law. As the jury were not agreed, this trial would go for nothing, and the question would be submitted to another jury, who, it was to be hoped, would agree upon a verdict which would be satisfactory.—*London Examiner.*

SLANDER—INTERPRETATION OF SLANG—QUERY, WHETHER "BLACKLEG" IS ENGLISH OR SLANG. Barnett *vs.* Allen, 3 H. & N., 376.

The above case may be referred to as affording an example of the difference of opinion, which sometimes strangely occurs in our courts, upon what seems a very simple matter. The action was brought for the following words of slander, spoken by defendant: "I am surprised Mr. Reynolds should allow a blackleg" (meaning the plaintiff) "in this room," (meaning that the plaintiff obtained his living by dishonest gambling, and was a professed gamester, and a fraudulent gamester.) A witness was asked what he understood by the term "blackleg." The question was objected to, but allowed; and the reply was to the effect that it involved the charge of cheating in the process of card-playing. Pollock, C B., said, that the meaning of the word was well enough known by the public, and it required no expert to explain it. It signified, said the learned judge, "a person who gets his living by frequenting racecourses, and places where games of chance are played, getting the best odds and giving the least he can, *but not necessarily cheating.* That is not indictable either by statute or at common law." Watson, B., agreed in the main with the Chief Baron. Martin, B. and Bramwell, B., however, put the point so clearly and conclusively, that as room was made for variance in the apprehension of such a question, it is well to note their remarks thereon. "I regret," said

the former learned judge, "that any difference should exist in the court on so trifling a matter. I always understood the rule to be, that words are actionable, if they impute to the person of whom they are spoken an indictable offence, either on a particular occasion or habitually. By the Stat. 8 and 9 Vict., c. 109, cheating at cards is indictable, and the question is, did or did not the defendant use the word with the intention of conveying to the minds of the persons present the imputation that the plaintiff had habitually by fraud and malpractice won money. I should so have understood them, and that such was the defendant's meaning was proved by the evidence. The witness who was called said he considered the word 'blackleg' to mean a person who plays at cards and cheats; it was therefore a question for the jury, whether the defendant meant to impute to the plaintiff, that he had been guilty of an offence for which he was liable to be indicted under the statute."

Bramwell, B., agreed in this construction of the term. "A person," said the learned judge, "is responsible for the natural meaning of words uttered by him. If a word is properly an English word, the judge must interpret it. If it be slang, witnesses may be called to show in what sense it is understood. I doubt whether the word 'blackleg' is English, or whether it is slang. If it is English, then I understand it as my brother Martin does; if it is slang, an interpretation has been put upon it by the evidence. I do not agree with the Lord C. B. in thinking that there was no evidence of its meaning. If it is English the innuendo was unnecessary—if it is slang that innuendo was proved; that is, the defendant uttered language charging the plaintiff with being a fraudulent gamester. I entertained some little doubt whether, to constitute a cause of action, it was not necessary that the charge should be specific; but, on referring to Comyn's Digest, action on the case for defamation, D. 4, I find that it is actionable if the defendant charge the plaintiff 'with felony generally, as,' he is a thief.' "