

at finding our precautions useless. A few days since, our door-keeper (a new servant) complained that he not only could not sleep, but that he never had slept since his arrival more than a few minutes at a time, and that he never could sleep consistently with his duty, unless the 'Efreet should be destroyed. He added, that he came up every night into the upper gallery leading to our sleeping rooms, and there he found the figure I have mentioned, walking round and round the gallery; and concluded with an anxious request that my brother would consent to his firing at the phantom, saying that devils have always been destroyed by the discharge of fire-arms. My brother consented to the proposal, provided the servant used neither ball nor small shot. Two days and nights passed, and we found on the third, that the doorkeeper was waiting to ascertain whether the spectre were a saint or a devil, and had therefore resolved to question him on the ensuing night before he fired. The night came, and it was one of unusual darkness. We had really forgotten our man's intention, although we were talking over the subject of the disturbances until nearly midnight, and speculating upon the cause, in the room where my children were happily sleeping, when we were startled by a tremendous discharge, which was succeeded by the deep hoarse voice of the doorkeeper, exclaiming "there he lies, the accursed!" and a sound as of a creature struggling and gasping for breath. In the next moment, the man loudly called his fellow-servant, crying, "Come up, the accursed is struck down before me!"—and this was followed by such mysterious sounds that we believed either a man had been shot, and was in his last agonies, or that our man had accidentally shot himself. My brother went round the gallery, while I and my sister-in-law stood like children trembling hand in hand, and my boys mercifully slept (as young ones do sleep), sweetly and soundly through all the confusion and distress. It appeared that the man used not only ball-cartridge, but put two charges of powder, with two balls, into his pistol. I will describe the event, however, in his own words. "The 'efreet passed me in the gallery and repassed me, when I thus addressed it. 'Shall we quit this house or will you do so?' 'You shall quit it,' he answered; and passing me again, he threw dust into my right eye. This proved he was a devil," continued the man; "and I wrapped my cloak around me, and watched the spectre as it receded. It stopped in that corner, and I observed attentively its appearance. It was tall and perfectly white. I stooped, and before it moved again, discharged my pistol, which I had before concealed, and the accursed was struck down before me, and here are the remains." So saying, he picked up a small burnt mass, which my brother showed us afterwards, resembling more the sole of a shoe than anything else, but perforated by fire in several places, and literally burnt to a cinder. This, the man asserted (agreeably with a popular opinion) was always the relic when a devil was destroyed, and it lay on the ground under a part of the wall where the bullets had entered. The noise which succeeded the report is and must ever remain a mystery. On the following morning we closely examined the spot, and found nothing that could throw light on the subject. The burnt remains do not help us to a conclusion; one thing, however, I cannot but believe—that some one who had personated the evil one suffered some injury, and that the darkness favoured his escape. It is truly very ridiculous in these people to believe that the remains of a devil resemble the sole of an old shoe. It reminds me of the condensed spirits of whom we read in the "Thousand and One Nights," who were (so say tradition) bottled up, hermetically sealed, and thrown into the sea, by order of Suleyman the son of Da-ood.

Eventually the Lanes were compelled to quit "the haunted house," and we learn by a subsequent letter that six families succeeded each other in it, in as many weeks, and five had been driven out, and the sixth was about to leave, finding it impossible to be at rest there.

After such a story there is no meddling with sublunary things.—*Athenaeum*.

#### A VISIT TO A CHINESE CITY.

BY AN ENGLISH LADY.

WE visited Ningpo a short time since, in company with Captain and Mrs. B.; the latter and myself being the first foreign women who were ever there, with the exception of Mrs. Noble, who was taken prisoner during the war, and was seen but by very few. We started for Ningpo on Saturday morning, expecting to arrive the same evening, but did not reach there until the next morning, suffering sundry inconveniences in the interim, having to pass the night in the China fast-boats, with accommodations the most narrow and limited. A cabin was formed by spreading bamboo mats over the deck, and it was not, I assure you, of the most lofty and commodious kind, for we could not stand upright in the highest part. We furnished our own provisions, beds, dishes, &c., &c.; spread our beds upon the floor, and slept, if we could, and as we could—though I have found, before now, a softer and more downy resting place.

We arrived early on Sunday morning, and behold a mighty crowd had gathered to see us when we landed. So eager was the curiosity, that many waded off some distance, the sooner to get a peep at us. We had with us a Chinese and English police-officer. Captain B. sent his card to one of the mandarins, who despatched his servant immediately, to show us the way to the house that had been provided for us. We were placed in sedan chairs, which were carried by two men called coolies; and it was really with difficulty they could get through the streets, which are narrow, and now they were completely thronged. My chair, instead of Captain B.'s, was by mistake taken first, and, of course, curiosity was most directed toward me, and I really feared for the safety of the chair, if not for my own, so great was the desire to see a foreign woman. They were by no means rude, however, for they are a civil people. But it required stronger nerves than mine to face unmoved such a multitude, with every countenance directed toward me, and written all over with the most intense and anxious curiosity.

Our first day at Ningpo we spent within doors, it being Sunday; but we received a call and an invitation to dine the next day, from one of the mandarins. The house we occupied was thoroughly Chinese, with all its appurtenances.

Monday morning came, and quite early two sedan chairs were sent to take us to see the wonders of the place, and, it may be, that we might be seen. The chairs differed from those we were carried in the day before, being much more elegant, and furnished with glass windows before, behind, and on each side, which enabled them the better to see us, who had suddenly become literally, and in very truth, the "observed of all observers." We had been greatly annoyed before by the people constantly lifting the curtain which hung in front of the chair, and we found it more pleasant to meet the

gaze of the people fully and fairly, than to be playing bo-peep with them all the time.

We commenced our day's amusement by first making a call, and then we went to some public places, where we received calls from a number of mandarins, and were quite diverted with their "chin chins" (the Chinese for "how do you do?") which is their mode of salutation, folding their hands at the time, and bowing their heads. We were then served with tea in the neatest little cups imaginable; and then tables were brought in, and spread with a great variety of sweet things, fruit, and the like.

From here we went to the mandarin's to dine; and really the dinner was a curiosity itself. The first course was of sweet things, the second meats, and more substantial viands. Our dinner over, we bade our host adieu, and made another call, where they furnished us another dinner, and similar to the first; and, at another place where we called, they spread tables, and gave us luncheons; fortunately, our luncheons came after dinner instead of before. We made five meals in a few hours, and you may judge if we were not in some danger of surfeiting. As for myself, I suffered an intense headache, as a penalty for eating too much of good things. During all this time we had been introduced to a great many people; and the streets, as we made our way through them, were crowded to even greater excess than before. I assure you the excitement was almost too much for me, and I returned to our abode on that evening quite exhausted.

The next morning, after receiving calls by the score, we visited a pagoda, mounted fourteen flights of stairs, and stood where the feet of white woman had never before trod. We had a fine view from the top, and below were crowds of people, who had followed us hither, and were waiting to see us pass out. Men, women, and children, were there, to the amount of some thousands; and, as we came out to go to our chairs, which were standing a little way off, they parted to the right and left for us to pass through, the women holding up their children, that they might catch a glimpse of the wonderful strangers. We went from here to a place of worship, called a "Josh-house;" beautiful, indeed, it was, and their huge gods, of wood and stone, though they may seem very majestic and imposing to them, awakened in me no feelings but sadness and pity for the deluded wretches who trust in them. There was a great deal of beautiful carved work and gilding about the building, and it was adorned with beautiful lanterns of painted glass, in endless number and variety.

From here we went to the house of another mandarin, who has a beautiful garden adorned with caves, grottoes, pools of water, and a great variety of gorgeous and beautiful flowers. We strolled about here a little while, enjoying its beauty and its freshness, and called upon yet another mandarin, where a more pleasing sight awaited us than any that had before been presented. We saw and were introduced to the wife and daughter of the mandarin, also several of their children of various sizes. The ladies were very finely dressed, and the young lady was quite a modest, pretty-looking girl. Her hair was ornamented with flowers, and her arms with bracelets, two on each.

After dinner they took us into another room, where they examined our dresses with great curiosity and delight. We have been favoured beyond any foreigners who have ever been here before; none, I apprehend, having been so honoured as to sit at table with ladies of the Celestial Empire. We are indebted, probably, for much of the attention we received to the fact of Captain B.'s holding the office of civil magistrate, in addition to his rank as captain in the army, and being, in consequence, acquainted with many of the people, whom he had received at his house.

When we left here, we made another call, where we were treated to another lunch, and, to my great horror and dismay, to another dinner. I was sick and disgusted at the very sight of food. We were helped in the most lavish manner. Not content with heaping our plates, which, by the way, were quite small, and more like saucers than plates, they actually piled up the good things all about us. They by no means confine themselves to the use of the chop-sticks, but seem quite to prefer their fingers in helping either themselves or others.

It seemed to trouble our good friends that we ate so little, and it appeared to me the less we ate, the more bountifully they helped us. One of the young mandarins, especially, was quite concerned on my account. He had been extremely gracious and polite to me all the while—good-looking he was, too, his eyes black and most brilliant, and his whole face agreeable and pleasant. In his anxiety lest I should depart with my appetite unsatisfied, he took rice from his own plate and put it upon mine, motioning me to eat; and this is deemed an act of extreme politeness by the Chinese. Of course I could do no less than eat it, which seemed to gratify him exceedingly. I looked as amiable as I possibly could, half surfeited as I was, and conversing by signs, we became quite well acquainted before the dinner was over.

After dinner we attempted to visit some of the shops, but could do so in no kind of comfort, for the crowd still pursued, to get a glimpse of us as we alighted from the chairs. Indeed the shopkeepers themselves were more interested in looking at us than they were in selling their goods. So we yielded to "dire necessity," and made the best way we could back to our quarters, glad enough to reach there, and to be at rest. We were, a few hours afterwards, on board the same boat which conveyed us thither, and which was waiting to take us back to Chusan. Wearied enough we were, I assure you, with the excitement of the last three days. I must say, that, as far as my own experience goes, it is by no means a pleasant thing to be an object of wonder and curiosity to a gaping multitude.

#### ON THE FISH RIVER OF THE POLAR SEA.

BY RICHARD KING, M.D.

(From the *Philosophical Magazine*, December, 1844.)

From the period when Hearne, under the guidance of the Indian chief Motanabee, undertook his memorable journey to the Polar sea we have been acquainted with the source of the Thlewyezza, or Fish River. By this stream it was proposed, in 1833, to reach the wreck of the *Fury*, in search of Captain Sir John Ross and his party. In a short paper read before the Royal Geographical Society, and published in the third volume of its journal, the river is described, upon the

authority of the Indian Blackmeat, "as being well adapted for the winter residence and support of an exploring party, both on account of its wood and the game that resorts to them; that the access to it from Great Slave Lake is easy, the water communication being interrupted by only three short portages; that the debouche is into or opposite Regent's Inlet, which points it out as well adapted for the starting-point of a boat expedition in search of the crew of any vessel known to have had the intention of visiting the wreck of the *Fury*." In confirmation, a sketch of the country between the Great Slave Lake and the Fish River, wherein is accurately laid down the three portages interrupting the water communication, is published in the official narrative of the Arctic Land Expedition in search of Captain Sir John Ross and his party. We are further informed in the same narrative, that the Indian guide Mauffly repeatedly, while on duty, pointed out well-known routes to the river, not only from Great Slave Lake, but from Lakes Aylmer and Clinton Colden. It does not appear that Captain Sir John Franklin had made up his mind upon the subject when the river and its trendings were under anxious consideration at the time of the contemplated journey in 1833, in search of the lost travellers, but by a written communication in 1836 he informed the Royal Geographical Society that he did not believe the river fell into the Arctic Sea. "The river," he says, "does not, it is imagined, flow to the northward, but to the eastward, and probably falls into the sea in Knapp's Bay, or between the Chesterfield and Wager Inlets. I doubt," he continues, "the finding of fuel on the banks of the river or near the source of it, as I always understood that part of the country to be destitute of wood. I much doubt also the possibility of a party getting a sufficient quantity of fish in any river in that quarter to support it during a winter."

The existence of a river running from the vicinity of Great Slave Lake into Regent's Inlet is of such vast importance in a geographical, and as far as the Hudson's Bay Company is concerned, in a commercial point of view, that it is necessary to well weigh Captain Sir John Franklin's doubt as a test of their value. It is necessary, however, to remove an impression, pretty generally prevalent, that the exploring party in search of Captain Sir John Ross and his party discovered the river of which it went in search. This is not the case; for it was portrayed as falling into the sea of Regent's Inlet, having on the one side Melville Peninsula, and on the other a high promontory running far to the north (the land of North Somerset?), as being well adapted for the winter residence and support of an exploring party, the country in its vicinity abounding in animals and the lakes in fish, and that source separated from Great Slave Lake by three portages. But these are not the features of the river discovered by the exploring party; on the contrary, they are just the reverse; for in the first place not a particle of wood grows either at its source or throughout its whole length, and therefore it is not adapted for the winter residence and support of an exploring party: 2ndly, it does not fall into an inlet, having Melville Peninsula on the one side and land running far to the north on the other, but into a gulf to the westward of that inlet, in which the far northern land lies to the right instead of the left hand; 3rdly, it has not three portages between it and the Great Slave Lake. It is evident, therefore, that it is in the name alone that there is any similarity between the river for which the exploring party sought, and that which they found; and it is equally evident that in the paper read before the Geographical Society it is the Fish River, and not the Great Fish River, which is there described. In confirmation, there appears in the official narrative of the expedition in search of Captain Sir John Ross, published in 1836, the engraved chart of a copper Indian, wherein the position, trending and separation by three portages, of the Fish River from the Great Slave Lake will be found exactly to correspond with the chart published in the Royal Geographical Society's Journal. We have the testimony, moreover, of Dr. Richardson, that the Fish River is well known to the fur traders, and that they travel to it from the Athabasca in four days; and we have the further testimony of the fur trader, Roderic Macleod, who accompanied the exploring party. Additionally, George Sinclair, one of the most able men attached to the expedition in search of Captain Sir John Ross and his party, and more recently to that of Messrs. Dease and Simpson, while on an excursion for provision, crossed the tributary to the Great Fish River, said by the Chipewyan chief, the Comrade de Mandeville, to take its rise near the head waters of the Fish River. That tributary was seen by him trending in a direct course for the Great Fish River through a well-wooded country, and affording everything necessary for a winter establishment.

Surely after such testimony we can no longer doubt the existence of the Fish River; that it takes its rise in a well-wooded district and that it flows parallel with the Great Fish River to the Polar Sea. The facts I have recorded, the extreme accuracy of the Indians regarding the Great Fish River, too well known to need repeating here, the northerly trending of the eastern boundary of the estuary into which the Great Fish River falls, the southerly trending of the North Somerset, all combine to induce me to put implicit belief in the original paper laid before the Geographical Society, that the Fish River falls into an extensive gulf, whose west side is bounded by a promontory running far to the north, and its east side by Melville Peninsula; and that finally that gulf will be found to be identical with Regent's Inlet. That the Fish River empties itself into that gulph is rendered more probable from the fact, that drift wood is found, according to Esquimaux information furnished to Captain Sir Edward Parry, at Siatoke, one of the islands of that gulf; and whence could this wood come, but from a wooded country? and the Fish River is the only stream eastward of the Mackenzie that is known to take its rise within the limits of the woods.

Now Captain Sir John Franklin "imagines that the Fish River does not flow to the northward, but to the eastward, and probably falls into Knapp's Bay, or between the Chesterfield and Wager Inlets." Surely the gallant officer will no longer entertain this belief. Again, he doubts the finding of fuel on the banks of the river or near the source of it, as he always understood that part of the country to be destitute of wood. Everybody except Captain Sir John Franklin, as far as I know, always understood the contrary; besides, the known confines of the woods, extending as they do, according to Dr. Richardson, to 63° 45', sets the matter entirely at rest, a fact altogether overlooked by Captain Sir John Franklin. Further,

he doubts the possibility of an exploring party getting a sufficient quantity of fish in any river in that quarter to support it during a winter; but who proposes to search for fish in the head waters of rivers? it is in the lakes and not in the sources of rivers that fish are to be found in the winter season, as is well known to the Indians and fur traders. After weighing the evidence on all sides, we can hardly, I think, come to any other conclusion than that the Fish River has been accurately described in the Royal Geographical Society's Journal. It is evident then that it must form a prominent feature in all further attempts to survey the unexplored polar lands. It is the high road by which to connect the discoveries of Messrs. Dease and Simpson on the one side with those of Captain Sir Edward Parry on the other. The sea of Regent's Inlet can thus be traced upwards, its boundaries on either side can be explored; with Melville Peninsula we shall thus be made thoroughly acquainted, and the insular or peninsular character of North Somerset will be determined.

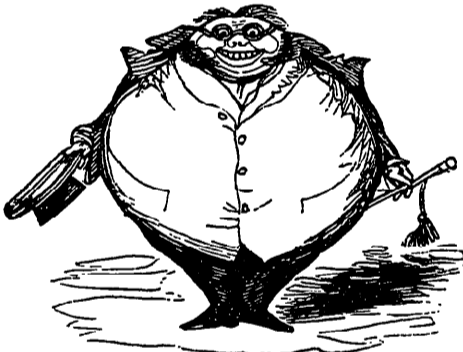
Considerable importance has been attached to the land of North Somerset, from a belief that it is an island, which, if proved, would at once solve the grand problem of three centuries—the discovery of the north-west passage. This is evidently an error; for, if insular, its separation from the main land can be but a trifling extent, otherwise there would be a strong current setting through the Fury and Hecla Strait, whereas, according to Captain Sir Edward Parry, there is no current; while the absence of any current through that strait is a powerful argument in favour of its being a peninsula. Whence then comes the mighty current setting down Davis's Straits, which drove that great "marine worthy," John Davis, some 500 miles in ten days? Certainly not from Lancaster Sound or the Fury and Hecla Strait. To the north then of the former sound we must search for the water communication connecting the two great oceans, and the most likely road is by Jones's Sound. This opening alone arrested the attention of Baffin, the discovery of the bay named after him, although he passed others, including Lancaster Sound, in the belief that they were bays. Since Baffin, Captain Sir John Ross is the only traveller who has visited Jones's Sound, and as he was wrong with respect to the character of Lancaster Sound, we cannot place much confidence in the rest of his survey, while we have the southerly movement of the waters of Baffin's Bay unaccounted for.

In conclusion I would observe, that although to fix the North American boundary of the Polar Sea ages have been required, owing to the apparently insurmountable difficulties in the way, the prosecution of the survey has led to adventures so fruitful in incident and so instructive in character that we are able to recur again and again to the subject. And shall we now stop, when one season, one short summer, is all that is required to complete the labours of three centuries?

### Punch.

#### THE COLONIAL NEWSPAPERS.

"The Sydney Morning Herald, published daily; being the only daily paper in these Colonies."—April 23.



THOUGH my mind is contracted, my body extended,  
And I've puffed up my own full-some self;  
Though my weight of corruption has often defended  
The worst measures, for sake of the pelf;  
For you, dear Sir George, I would do it again,  
Then pray do not leave us in haste;  
I'll abuse the whole Council with all might and main,  
And study most truly your taste.  
But there's one I would crush, 'tis a thorn in my fat,  
To see it extending so wide—  
'Tis the ATLAS I hate, for, like me, 'twill not rat,  
But sticks firm by the poor Squatter's side.  
To abuse dear Sir George, for his good squatting laws,  
Is a feature this ATLAS pursues;  
Of District Councils, and Quit-rents, it shows all the flaws,  
So to crush it all means I must use.

ED. S. M. H.

#### THE STANLEY MAUSOLEUM.

DIED, in October last, universally condemned, the political career of LORD STANLEY. The remains have been interred in the House of Lords.

#### THE AFFAIR AT TAHITI.

All the following are unpublished proclamations of the French Commandant. They were a few of the original drafts from which he concocted the documents that were actually issued.

No. 1.—A French sentinel has had his nose pulled in the night; perfidious Albion has had a finger in it. The inhabitants are warned against having lights in their houses after dark. All candles must be extinguished at three o'clock in the afternoon; and any stranger found in any house after gunfire, will subject the landlord to death, and all the lodgers to banishment.

No. 2.—A French sentinel has been insulted. A blacking-bottle has been thrown at him; and one PRITCHARD is believed to have been at the bottom of it. The inhabitants must hold no communication with each other after twilight. If any body causes disturbances, everybody is subject, not only to be shot dead, but to be arrested.

No. 3.—PRITCHARD is taken! Perfidious Albion is in the station-house, in the person of her consul.

No. 4.—The inhabitants are prohibited from setting a light to any thing—even a cigar—after gun-fire.

No. 5.—PRITCHARD is to be waited upon by one servant, who is not to speak to him. Clean clothes are to be conveyed to him once a week, and his washing-bill is to be examined by the gendarme on duty, and countersigned by the corporal. PRITCHARD is to put out his candle at gun-fire, and he must also put out his boots so that they may be returned to him cleaned at sun-rise.

(Signed) D'AUBIGNY.

### Music and the Theatre.

#### THE SYDNEY CHORAL SOCIETY.

We are happy to perceive that a Society, under the above title, formed for the practice of sacred and secular music, has at length been established. Although we could wish there were less of exclusiveness in its character, we still look forward to many advantages from its institution in the improvement of musical taste, and as a nucleus from whence the choirs of our parochial churches may gather increased strength and efficiency. We are told the Society has already received a large accession of members, it having been wisely determined to fix the terms of admission at a moderate rate. The first meeting for practice was held on Wednesday evening last.

THE portion of our paper allotted to theatricals usually goes to press on the Thursday, and for this reason we were prevented last week from noticing the production of that excellent standard play "The School of Reform," on the evening of that day and Saturday. We congratulate the manager upon this selection as belonging to a class in the legitimate drama that cannot fail at once to improve taste, attract "houses," and, as a *sequitur*, benefit the treasury; and we feel assured, that in catering from a refectory so rich, although a temporary absence of appreciation may be exhibited, the ulterior results will fully justify the speculation. We hope, therefore, in the absence of any efficient representative of tragic characters, to hear of some of the "stock" plays of Morton, Sheridan, Colman, &c., being put into early rehearsal, and that we shall no longer see the boards of the Victoria prostituted to the absurdities concocted to gratify the curious appetites of sixpenny audiences at the "Pavilion" or the "Clarence." If it be the object of the manager, as it assuredly is his duty, more particularly in a new community where taste is to be created—to "hold the mirror up to nature"—to "show vice its own image" *veluti in speculo*—then to the legitimate drama only should he resort, and, possessing as he does at present what may be called at least a good working company, we see nothing to prevent the adoption of our recommendation—a recommendation which we offer with a sincere desire for the prosperity of the establishment and of its enterprising proprietor.

A King against the Field, or the Royal Wager, which was produced on Monday and Tuesday night, displayed much care and good keeping in the "getting up;" the dresses characteristic, the scenery appropriate, and the performers at home in their respective parts. We cannot however refrain from animadverting upon some pruriencies in the language of this piece, which we hope to see expunged in any future performance.

Madame Carandini pleased the audience on Monday and Tuesday night with some favorite ballads, but we must particularize "Woodman Spare That Tree," as having now become so hackneyed that most people tire of its repetition, whilst, at the same time, we must in candour offer our opinion that its execution by Madame Carandini was at once too slow and inexpressive, unless we are to mistake for expression some violent inflections of voice, which, as evidently belonging to the "Gibbes" school, and therefore some twenty years behind her time, it would be as well for Madame Carandini to avoid.

On Tuesday evening, Madame Veilburn and Signior Carandini exhibited in a new characteristic dance, called the "Plouga." Signior Carandini, as usual, dressed well and danced gracefully; indeed it is one of the most admired features of his style that even in situations where much exertion and dexterity of limb are required he never descends to extravagant action, or departs from that propriety of deportment without which the "poetry of motion" becomes a paradox. The "Plouga" was followed by a *pas de trois*, by Madame Veilburn and Messrs. Carandini and Chambers, in which the two gentlemen appeared to consider that the chief point of their performance consisted in exhibiting the greatest possible number of evolutions with gleaming scimitars over the lady's head without damaging her cranium; superadded to this, Mr Chambers displayed a variety of jumps, as if in fear of rivalry, that gave us more reason to admire the power and elasticity of his respiratory organs than his physical contortions. Of Madame Veilburn we can but say that in the "Irish Jig" she stands unique and as yet unrivalled in New South Wales, but it would be quite as reasonable to expect that excellent comic actor, Mr. Simes, to take a leading part in one of Shakspeare's tragedies as to place the lady in question in a position where great pantomimic expression or the exhibition of deep feeling are required.

We had hoped before this to hear that the beautiful ballet of the *Sylphide* was in preparation. We are aware that Signior Carandini's experience would enable him to produce it if supported by the necessary auxiliaries, with much éclat, and in his hands we should not fear its success. A word before we conclude to the gentlemen of the orchestra. We trust the leader will prevent the unseemly conduct of some members of the orchestra, whom we perceive to be in the habit of constantly gossiping with persons in the front seats of the pit, even when engaged in the performance; the imposition of a reasonable fine would tend to prevent this practice, and remind the gentlemen that whilst in the theatre they are engaged in the service of the public, and that their undivided attention to their duties is imperatively required. If we were to particularize instrumental defects, we would discard the piccolo, introduced in the ballets, which is played with a sharpness so intense and excruciating as to "split the ears of the groundlings" and set all harmony at defiance. The Cornopian should also be relieved of an asthmatic quality that by the ordinary observer might be visited on the performer instead of the instrument.

#### SUPREME COURT.—CIVIL SIDE.

MONDAY, APRIL 21.

(Before their Honors the three Judges in Banco.)

This being the first day of term their Honors appeared in their purple robes.

#### RETURNS.

The Master in Equity and the Prothonotary presented the usual returns of monies received under intestates estates, and for Court fees received.

#### FINES.

Mr. George Greensil Old, who had been fined in the several sums of £2, £5, and £2, for non-attendance on three consecutive days, produced an affidavit to the effect that he had ceased to be a householder and a member of the firm to which he formerly belonged; but the Court considered this an insufficient excuse, as Mr. Old's proper course would have been to have objected to the return of his name in the list. The fine of £5 was therefore maintained, but the other two were remitted.

The fines imposed on Mr. John Macdonald, Archibald Walker, and George Moss—at the same time were, for reasons assigned, remitted by the Court.

A writ of *capias profine* was directed to issue against David Baker, a witness whose recognizance had been ordered to be

returned for non-attendance at the Maitland Court; the Sheriff reported that he had not yet been found.

The Chief Justice delivered judgment in the following cases:—

#### MACDERMOTT v. DEVLIN.

This was a motion to set aside a writ of *feri facias*, issued by the Resident Judge of Port Phillip, and directed to the Sheriff of New South Wales; or failing that, to restrain the Sheriff from executing it: on the ground, that there was no authority vested in the Resident Judge, in any case, or at all events in this case, to issue a writ so directed.

The only question for the determination of the Court was, whether that branch of the Court, which issues a writ of execution in any case similar to the one before the Court should or not direct it (or might not direct it) to the officer who ordinarily executes the process of the Court, in the place or district to which it is sent.

The Court were of opinion that the writ might and ought to be so directed.

The rule was therefore discharged, with costs.

#### BYERS v. PEACOCK.

This was an action of Special *Assumpsit* for work and labour. The declaration stated, that the defendant's estate having been sequestrated, the plaintiff was appointed assignee; and in that character, bestowed his services in arranging the affairs, and collecting the property of the estate: and afterwards, the estate was released from sequestration; at which time, divers books were in the plaintiff's possession, as such assignee, which the defendant was desirous of having delivered up to him: that thereupon, in consideration that the plaintiff would deliver to him the said books, the defendant promised the plaintiff to pay him such compensation for the aforesaid services, as the Chief Commissioner for Insolvent Estates should certify to be reasonable. The plaintiff averred that he did accordingly deliver up the said books; and that the Chief Commissioner certified that the sum of £35 was a reasonable compensation; but that the defendant had refused to pay that sum. Plea, *non assumpsit*; with a second plea, unnecessary to enter into.

At the trial which took place before Mr. Justice a'Beckett, certain amendments were allowed to be made in the declaration upon which objections had been taken, and the points reserved.

The Jury having found for the plaintiff, the defendant moved in the last term to enter a nonsuit, on two grounds: first, that the Judge ought not to have allowed any amendment; and secondly, that notwithstanding that amendment, the proof failed to establish the consideration laid.

The Court were of opinion that, under all circumstances, the nonsuit applied for must be granted.

#### DOE ON THE DEMISE OF MAZIERE v. O'BRIEN.

This was a motion for a nonsuit. The cause was tried before the Chief Justice in May last. The subject of the action was a farm near Parramatta, formerly the property of the defendant; purchased by the lessor of the plaintiff, at a Sheriff's sale in the year 1831. The judgment under which that sale took place, being against the now defendant at the suit of one Taylor, was recovered on the 23rd July, 1831. A writ of *feri facias* issued immediately on that judgment, returnable on the ensuing 25th August; and under that writ, in pursuance of the statute 54 Geo. III. c. 15, authorising the sale of lands in this colony for debt, the farm in question, then in possession of or claimed by the defendant, was sold by the Sheriff, on or about the 13th October following. Whether there was, at any time, an actual levy made on the land, was in dispute; but the fact of seizure, at any time prior to the sale, was certainly not proved: although an advertisement from the Sheriff's Office was put in, stating the levy, and notifying the intended day of sale. The bailiff's assistant, however, by whom it was supposed that the levy had been made, was unfortunately dead: so was the Sheriff; and so was the plaintiff's attorney—by whose instructions, it appeared, the sale had on one occasion been postponed. The bill of sale from the Sheriff to Maziere, was given in evidence; bearing date the 29th October. It recited the fact of a levy, but did not mention its date; and stated the sale to have taken place on or about the 13th October. Shortly after the sale the plaintiff was put in possession; and in that possession he had ever since remained, until recently; when the defendant dispossessed him.

The defendant's counsel applied for a nonsuit, on the ground of the defect in the proof, respecting the levy; and also on another ground, (on which, however, they did not much insist) that there was a defect in the proof, as to the identity of the premises. As to the first of these, the plaintiff's counsel answered, that it must be presumed that the Sheriff did his duty, and therefore, as he sold the farm, that he had duly levied on it: but that, at all events, the Court would so presume, against this defendant; he being the defendant in the original action, who would be able to show how the facts were. The first point was reserved; and the second went to the Jury. The defendant then, in answer to the action, gave in evidence a grant to him from the Crown, dated the 19th October, which, although certainly prior to the Sheriff's conveyance, was six days after the supposed date of sale. Subject to the question which arose on this, whether the Sheriff could, in law, convey to a purchaser under him, any greater estate or interest than that on which he levied, or at all events than that which he sold—and also subject to the point first mentioned—the Jury found for the plaintiff.

The Court directed a nonsuit to be entered.

#### LOW v. FOSS.

This was an action on the *Case*; for negligence and unskillfulness in the treatment of a wound. The declaration stated, that at the request of the defendant, the plaintiff retained and employed the defendant "as a surgeon and apothecary," the defendant then carrying on the profession and business of surgeon and apothecary, for fees and reward to be therefore paid to the defendant. It alleged, that the defendant entered on such retainer and employment, "as such surgeon and apothecary"—but that he neglected to use proper skill, &c.

To this, among other pleas, the defendant pleaded that at the time when, &c., he was not carrying on the profession or business of a surgeon: to which the plaintiff demurred, on the ground that the plea raised an immaterial issue. It was contended that the plea was good, on the ground that although an action for negligence would lie, where the employment was without reward, or where the defendant was not a surgeon, yet in these cases the degree of negligence necessary to maintain the action was different; and, therefore, that it was material to have it ascertained, on the record, whether the defendant really carried on the business of a surgeon or not. To this it was answered, that the duty charged in the declaration equally attached, without regard to the determination of that fact, one way or the other.

The Court inclined to the opinion that the plea was bad; but at the request of the defendant, allowed the case to stand for consideration.

The Court considered that the plaintiff was entitled to judgment; but the defendant, if he thought fit, might amend, either by substituting a plea for the one demurred to, taking issue on the