

LAW IS SO DRY.

In the most recent volume of the Seldon Society's publications is found the report of a case in "the notorious Court of the Marshalsea" (as the editor disrespectfully calls it) of the King's Household, heard before October 28, 11 James I (1613), *Burnett v. Cheek*.

The plaintiff sued for Trespass *vi et armis* committed upon him in Lewisham Church by the defendant, who assaulted, beat, wounded and maltreated him, with other enormities, so that he despaired of his life, and so he claimed damages, £100. The defendant lived quite up to his name, and put in a defence which is worth reading: it is in Latin and reads thus:—

"Quia protestando quod predictus querens usualiter (mark the impudence!) in ecclesia tempore divini servicii (*Anglice*, 'in time of divine service') obletus. Et quod tempore quo supponitur transgressio predicta inde fieri, in ecclesia de Lewisham predicta. in comitatu Kancie predicto, prefatus querens dum divina haberetur predicatio adeo vehementer storteat quod defendens vocem predicantis exaudire non posset: et adeo turpiter feteat quod predictus defendens miserum favorem tollerare non posset. Pro placito tamen dicit quod tempore quo supponitur transgressio predicta inde fieri in ecclesia de Lewisham, predicto tempore divine predicationis, predictus querens dormiebat; et quod predictus defendens, qui adtunc fuit cosedilis (*Anglice*, 'pew-fellow') cum prefato querente, adtunc et ibidem molliter cum chirotheca sua prefatum querentem suoer caput tangebatur ad ipsum querentem de somno expergefaciendum, ut prefatus querens divino attenderet sermone prout predicto defendenti bene licuit, que est eadem transgressio unde predictus querens de modo queritur. Et hoc paratus est verificare; unde petit iudicium"—all of which delectable plea may be turned into the vulgar tongue thus:—

"Protesting that the said complainant was accustomed to forget himself in the Church during divine service. And that at the time the said trespass is alleged to have been committed, in the Church of Lewisham aforesaid, in the County of Kent aforesaid, the said complainant during the sermon, kept snorting so vehemently that the defendant could not hear the voice of the preacher; and, besides, he stunk so badly that the said defendant could not stand the wretched smell. And so for a plea, he says that at the time the said alleged trespass is supposed to have been committed in the Church of Lewis-

ham, at the said time of divine preaching, the said complainant was sleeping; and the said defendant, who theretofore was his pew-fellow, then and there touched the said complainant on the head gently with his gauntlet to wake him up so that he might attend to the divine word, as he the said defendant well might, which is the same trespass the complainant here alleges. And this he is ready to prove, wherefore he prays judgment."

The plaintiff replied that the plea was insufficient—what is—or was—known as a demurrer—but, unfortunately, we are not told whether the Court thought this regard for the plaintiff's spiritual welfare, coupled with the offensive smell emanating from him, was sufficient to justify the gentle rap on his head.

And they say Law is dry! !

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P.S.—The reader will notice the use of the single "e" instead of the diphthong "æ," in the Gen., Sing., and Nom. and Voc., Pl. of the First Decln.

I fancy the word printed "favorem" is really "fetorem."

"Obletus" is a corrupt form for "Oblitus"; you will look in vain in Liddell and Scott as well as in Harper's Freund for "chirotheca": but the word is not uncommon in medieval legal documents.

The word "stortebat," you are not compelled to translate "kept Snorting": it means "making a noise" not necessarily with the nose. Possibly, the meaning is different from the translation.

Osgoode Hall, Toronto,
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