

LEGAL NOTES—"CAUSE OF ACTION" IN THE COMMON LAW PROCEDURE ACT.

The Court of Queen's Bench, in England, recently struck an attorney off the rolls, because of his personating an articulated clerk at an examination of the Law Society. It appeared that the candidate was very nervous, and felt himself unequal to undergo the examination, and in an unhappy moment, his friend appeared for him. The Court proceeded upon grounds of public policy.

It has lately been held in the English Court of Bankruptcy, by one registrar sitting as chief judge in an appeal from another registrar, that a liquidation by arrangement cannot be sanctioned by the court in a case where the debtor was without assets. It appears from the judgment, that the point was not argued; no cases are referred to, and the matter is disposed of by a broad declaration that it was clear to the mind of the registrar that the Legislature never intended that a debtor, who has not a single farthing for his creditors, should avail himself of the provisions of the bankruptcy law. The practice is stigmatised as an ingenious device to revive a most obnoxious practice under the old law, that of white-washing, and ought to receive no countenance from the court: *Ex parte Ash*, 16 Sol. J. 574. The *Revue Critique* lately discussed this question under the Dominion Statute, and came to an opposite conclusion. The law has been settled in this Province, in a case not cited in the *Revue* (*Re Thomas*, 15 Gr. 196) that the want of assets is no reason why the case should not fall within the scope of the Act.

A gift for life of consumable articles with a limitation over, in a testamentary instrument, is usually held to vest in the donee the absolute ownership. There have been conflicting decisions as to the effect of such a gift in the case of farm-stock. But lately the Master of the Rolls has held (in *Cookayne v. Harrison*, 20 W. R. 504) 5 C. L. J. N. S. 219, that the subject of such a bequest being in the nature of stock-in-trade, only a life-interest passed as to so much of the stock as was of a consumable nature, and that the gift over was operative.

Our readers will have noticed in the *resumé* of the proceedings in Convocation in Easter Term, published in our last issue, that various important changes have been made in the

system of law reporting at Osgoode Hall. The intention is to follow the system recently adopted in England. We see some practical difficulties in the way and some imperfections, which may, however, be remedied. The changes will work harshly as to some of the reporters. We shall refer to the whole matter at greater length on a future occasion.

"CAUSE OF ACTION" IN THE COMMON LAW PROCEDURE ACT.

Mr. Harrison in his commentary upon the 44th section of the Common Law Procedure Act (as Consolidated), remarks that much difficulty has arisen about the meaning of the words "Cause of action" contained in that section. The difficulty has, of late, been much increased by the various conflicting decisions of the English Courts upon the corresponding sections of their statute, *i.e.*, the 18th and 19th of the C. L. P. Act of 1852. The result of this conflict is briefly this: the English Common Pleas holds that the statute includes a case where the whole cause of action, technically speaking, has not arisen within the jurisdiction, but where such an act has been done on the part of the defendant, as in popular parlance, gives the plaintiff his cause of complaint. The Queen's Bench holds precisely the opposite of this, namely, that the *whole* cause of action and not merely the act or omission which *completes* the cause of action, must arise within the jurisdiction, in order that the language of the statute may be fully met. The Exchequer has occupied a somewhat intermediate position, and some of its decisions have been, so to speak, of an uncertain sound. Thus *Pife v. Round*, 30 L. T. R. 291, is in accord with the holding of the Common Pleas, while the later case of *Sichel v. Boroh*, 2 H. & C. 954, agrees with the view of the Queen's Bench—though it is to be observed that the court does not advert to its former contrary decision. In the last reported case in the Exchequer, *Denham v. Spence*, L. R. 6 Exch. 46, a majority of the judges adopted the views of the Court of Common Pleas, as expounded in *Jackson v. Spittall*, L. R. 5 C. P. 542, and held that the "cause of action" referred merely to the act or omission constituting the violation of duty complained of, and creating the necessity for commencing the action. Kelly, C.B., strongly dissented and upheld the interpretation given.