LAW STUDENTS' DEPARTMENT.

The following questions and answers are taken from the *Bar Examination Journal*, published by Stevens & Haynes. The answers are given *in extenso* as they will be useful in giving some of our young friends an idea of how similar questions should be answered when their time comes to go through the ordeal at Osgoode Hall :—

COMMON LAW.

Pass Paper.

Q.—1. State and explain the principal rules to be observed in the construction of contracts.

A.—(1.) The construction must be reasonable, that is, according to the apparent intention of the parties ; *e.g.*, if a party to a contract promise payment, without saying *to whom*, it is to be understood that he promised payment to the party from whom the consideration for the promise proceeded.

(2.) The construction must be liberal ; that is, the words of a contract may be taken in their most comprehensive sense ; *e.g.*, the word *men* may sometimes be understood to include both men and women.

(3.) The construction must be favourable ; that is, must be such as may, if possible, support the contract. Hence, if the words of a contract will bear two senses, one agreeable to and the other against law, the former sense is to be adopted.

(4.) Words are to be construed according to their ordinary signification ; unless by usage or custom they have acquired a different meaning, or the context shows that they were not intended to be used in their ordinary sense.

(5.) A contract is to be construed with reference to its object and the whole of its terms ; hence, the whole instrument must be considered, even though the immediate object of inquiry be the meaning of a single clause.

(6.) A contract is to be construed according to the *lex loci contractus* if it is to be performed in the country where it is made. If it is to be performed elsewhere, it is to be construed according to the law of the country where it is to be performed.

(7.) The construction is to be taken most strongly against the contractor. This rule, however, is only applicable where other rules of construction fail.

(8.) If there are two repugnant clauses in a contract the first is to be received and the latter rejected.

(9.) The construction of a written contract belongs to the Court alone ; but the jury have to determine, as a matter of fact, any question as to the meaning of the words in which it is expressed.

(10.) As a general rule parol evidence is not admissible to assist the Court in construing a written contract ; but it is admissible in the case of a latent ambiguity ; also to explain the meaning of words used in a particular sense in trade, art, or science, or words written in a foreign language ; and to prove the existence of a local custom or custom of trade by which the contract is governed. (Chitty on Contracts, ch. 1, sec. 3 ; as to parol evidence, see *Bar Ex. Journal*, Vol. IV. p. 236, No. 23.)

Q.—2. Give instances of contracts void on the ground of contravening public policy.

A.—Marriage brocage agreements, that is, agreements for the procuring of marriages ; agreements not to marry, where the intention is to restrain marriage altogether ; agreements made in contemplation of the future separation of husband and wife ; agreements made with a view to compromising prosecutions for felonies and misdemeanours ; agreements in general restraints of trade ; agreements involving champerty and maintenance. (For other instances, and on the subject generally, see Pollock on Contracts, 2nd ed. 273—317.)

Q.—3. Explain the nature of a contract of guarantee, showing how the surety may be discharged from his liability.

A.—A contract of guarantee is an agreement whereby the promisor becomes liable to the promisee to answer to the payment of some debt or the performance of some duty in the event of the failure of a third person, who is, in the first instance, liable for such payment or performance. (Broom, C. L. 5th ed. 377.)

It is of the essence of this contract that there should be some one liable as principal (that is, in the first instance) ; hence, where one person agrees to be responsible for another the former incurs no liability as surety if no valid claim ever exists against the latter. (*Lackeman* v. *Montstephen*, L. R. 7 H. L. 17 ; Chitty on Contracts, 475.)

Under the Statute of Frauds (sec. 4), no action can be brought on a contract of guarantee unless there be a note or memorandum in writing of the contract, signed by the party to be charged or his agent.

By 19 & 20 Vict. c. 97 (s. 3), the consideration for a guarantee need not appear in the note or memorandum required by the Statute of Frauds. But there must, of course, be a valuable consideration for the promise of surety, unless the contract be