

## MORTGAGEE IN POSSESSION—DIVISION COURT JURISDICTION.

The following is a list of the present Benchers: H. C. R. Becher, Q. C.; T. M. Benson; James Bethune, Q. C.; B. M. Britton, Q. C.; Hector Cameron, Q. C.; John Crickmore; Thos. Ferguson, Q. C.; A. S. Hardy, Q. C.; J. A. Henderson, Q. C.; John Hoskin, Q. C.; Æ. Irving, Q. C.; J. K. Kerr, Q. C.; Robert Lees, Q. C.; Andrew Lemon, Q. C.; D'Alton McCarthy, Q. C.; F. MacKelcan, Q. C.; D. McMichael, Q. C.; James MacLennan, Q. C.; E. Martin, Q. C.; W. R. Meredith, Q. C.; T. B. Pardee, Q. C.; D. B. Read, Q. C.; S. Richards, Q. C.; Thomas Robertson, Q. C.; L. W. Smith, D. C. L.; Alex. Leith, Q. C.; B. B. Osler, Q. C.; James Beaty, Q. C.; and Chas. Moss.

The ballot papers are to be sent in not later than the 6th April.

## MORTGAGEE IN POSSESSION.

Readers of the LAW JOURNAL may remember our notice of a touching epitaph commemorative of the woes of a mortgagee in possession, who preferred "the grave and death's dark gate" to a longer continuance of his unhappy estate. Those who still survive under so heavy a burden may find some slight consolation in a recent decision of the Master of the Rolls in *The Union Bank of London v. Ingram* reported in the January number of the *Law Journal Reports*. In that case the plaintiffs, who were second mortgagees, claimed redemption against the defendant, a mortgagee in possession, in whose mortgage there was a proviso for the acceptance of a lower rate of interest in the event of punctual payment by the mortgagor. Default having been made, the mortgagee entered into possession and received punctually rents equal in amount to the higher rate of interest. It was claimed by the plaintiffs on the authority of *Stains v. Banks*, 9 Jur. (N. S.), 1049, that in taking the account the defendant should only be allowed interest at the lower rate. Fortunately for the defen-

dant it happened that Sir Geo. Jessel had been engaged as counsel in *Stains v. Banks*, and had an impression that the reported decision had been over-ruled. A reference to the registrar's book shewed that the memory of the learned judge was not at fault, and that in addition to his other calamities, the mortgagee in possession had false witness borne against him by the printed report. The Master of the Roll, in following the final decision in *Stains v. Banks*, expressed his entire concurrence with its principle, considering, to quote the language of the English *Law Journal*, "that it would be unjust and a mockery, to treat a mortgagee, who has been forced to undertake all the responsibilities and dangers of an entry into possession, as if he were a lender who had received the interest on his loan punctually to the very day."

## DIVISION COURT JURISDICTION.

[COMMUNICATED.]

Small fear there is of lawyers starving so long as we have a body of men in the halls of our Legislature who are burning with desire to immortalize themselves by making changes in laws as to which very few of them understand either the old law, the mischief or the remedy—or, in fact, whether there is a mischief which requires a remedy. Division Courts being courts for the people, are peculiarly subject to this "worrying" process. The doctor has then to be called in in the shape of a judge, aided by a large staff of nurses in the shape of lawyers, and the consequence often is that the last state of the litigant public is worse than the first.

The enactment that has been most before the profession lately in the way spoken of is sub-section 3 of section 2 of the Act of 1880. It provides that Division Courts shall have jurisdiction in "all claims for the recovery of a debt or money demand, the amount or balance of which does not exceed