## DIARY FOR MARCH.

1. Fri. .. *St. David.*
3. SUN.. *3rd Sunday in Lent.*
6. Wed.. Name of York changed to Toronto, 1834.
10. SUN.. *4th Sunday in Lent.*
13. Tues.. General Sess. and County Ct. sittings in York.
17. SUN.. *Passion Sunday. St. Patrick.*
21. Thur,. *Benedict.*
24. SUN.. *Palm Sunday.*
25. Mon.. *Annunciation.*
29. Fri. .. *Good Friday.*
31. SUN.. *Easter Sunday.*

# The Local Courts' AND MUNICIPAL GAZETTE.

## MARCH, 1872.

The *Goodhue Case* was re-heard before the Court of Appeal, on the 11th instant. Judgment will probably not be given before Sept. next. All the judges were present except the learned Chief Justice of Ontario. Mr. Christopher Robinson, Q.C., who led for the appellants, made a concise, but very masterly argument against the constitutionality of the Act which has given rise to the suits now under adjudication.

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When speaking with reference to the case of *In re Dodge et al., Insolvents*, decided in the Supreme Court of Nova Scotia, (see pp. 29, 51 *ante*) we omitted to refer to the recent case of *In re Chaffey*, 30 U.C.Q.B. 64 (and see a note of this case in 7 L. C. G. 7); Mr. Justice Wilson in delivering judgment saying, "They (the creditors holding a note made by the firm and endorsed by one of its members) must elect to prove upon one estate or the other. They cannot rank on both. And in our opinion, sec. 5, sub-sec. 7 of the Insolvent Act of 1864, directly favors and directly decides this question." We had intended to refer further to the Nova Scotia Case, but want of space forbids at present.

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A decision of interest to dwellers in cities was recently pronounced by the New York Court of Appeals, in *Barker* v. *Savage*, with regard to the respective right of foot-passengers and vehicles at street-crossings. It was held that each has the right of passage in common and neither the right of precedence; consequently that each is bound to accommodate the other, so that neither should vehicles be obstructed nor foot-passengers injured in crossing at such places.

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Some of the Chicago lawyers are peculiarly happy in their advertisements. They manage incidentally to give the lie to current slanders about law and religion being divorced. The testamentary practitioners recommend themselves by their touching candour to all persons well-disposed, or of disposing mind. Here for instance is the ultimate part of a card that appears in the *Legal News*:

"SPECIAL ATTENTION GIVEN TO PROBATE MATTERS.
"WILLS DRAWN AND CONSTRUED.
"ESTATES SETTLED.
"'*Set thine house in order: for thou shalt die, and not live.*'—2 King xx, 1.

This style of religious advertisement might be judiciously extended to other branches of the profession. Thus, counsel hungering for clients could extol their own perfections by the citation: "Who is he that will plead with me? for now, if I hold my tongue, I shall give up the ghost."—Job xiii, 19. And the Indiana lawyer could herald the salient features of his practice by a pardonable adaptation of Jerem. iii, 8, "Put her away, and give her a bill of divorce."

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Many legal squibs are let off against the Chicago practitioners, but they can afford to bear them all, consoled by this impartial testimony from the *Chicago Legal News*: "Men who are competent to manage any case, in any court where the law and equity systems of England prevail, work on from year to year, guiding the immense interests of their clients in this great city, with as little ostentation as has characterized the incredible increase of its commerce. To such men, public office offers few attractions. Its cares are too exacting, and its rewards too small. They find in their profession an ampler field, greater honors, richer rewards, and, with them, the peace and independence of private life."

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A Mr. Bass has introduced a Bill into the British House of Commons to abolish the power to recover debts under 40*s*. Some of the best of the County Court Judges, however, have taken the would-be benefactor of the poorer classes to task, and say that the effect would be most disastrous to the persons whom it is desired to benefit—we think so too.

## DIVISION COURTS ACT.

We publish this Act as passed last Session. It is a specimen of legislation that will not, we hope, be taken as a model for imitation. We object to the wholesale allowance of any one to appear as an Advocate in a Division Court; but even leaving that out of the question for the present, and turning to the second section, it would seem scarcely possible to find an objectionable enactment more absurdly guarded against. Under what circumstances would "justice appear to require" a person to be "prevented from appearing at the trial as agent or advocate for any party to a cause" in these courts?

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## ARE TELEGRAMS PRIVILEGED?

We notice that this question arose before a select committee of the Ontario Parliament, appointed to investigate charges in connection with the election for the South Riding of Grey. An officer of the Montreal Telegraph Company was subpœnaed to produce certain despatches, and the following is a report of what occurred, taken from the columns of the Toronto *Globe* of the 22nd February last:

"The Select Committee on the charges against Mr. Blake, in reference to the late election in the township of Proton, for the South Riding of the county of Grey, met again yesterday morning. Present — Messrs. Rykert (Chairman), Prince, Galbraith and Pardee.

Mr. Lauder proceeded with his case by recalling Mr. H. P. Dwight, who said he begged to decline giving any information whatever in regard to the messages referred to in his subpœna. He thought it unnecessary to give his reasons; but, on being pressed, gave the same reason as he had at the previous sitting, viz., that the law prohibited his communicating the contents of telegrams.

The Chairman said the law only prohibited his communicating the contents of messages to any person other than a court of law, or a court of enquiry appointed by the Legislature. The law would not screen him in this case.

Witness said he had been advised that it would. He had been advised by counsel. He did not object to producing the telegram from Mr. Kerr to Mr. Oliver at the last session, because both the sender and the receiver consented to that production. He should decline to produce the register of messages, because he did not think it right that the affairs of all their customers should be exposed. He declined to say who had advised him in this matter. He had not seen Mr. Kerr since the last sitting. He had the sanction of the President of his Company for the course he was taking."

Subsequently, it appears, some of the telegrams were produced, with the consent of all parties interested, and thereafter the committee reported to the House. No action was taken, although it was discussed whether the House had power to enforce production, or to punish as for a contempt. The general understanding seemed to be, that colonial Parliaments had no such power. With this we have no concern at present, though it does strike one as an absurd condition of affairs that this high chamber of Parliament is more powerless than the barrister who holds a Division Court in some backwoods village of Ontario, or the most illiterate magistrate who ever scrawled J.P. after his name.

We simply consider the legal question, whether privilege was properly claimed for the documents required. We take it that parties testifying before a select committee of the House are entitled to no greater privileges than persons testifying in ordinary courts of justice. They have the same immunity from arrest, *eundo, morando et redeundo*, as other witnesses: May's Parliamentary Prac. 147. They are also protected, by privilege, from the consequences, by way of threat or action, of any statements made by them in giving evidence. True it is that the Chamber in Ontario, equally with the House of Commons of England, has no inherent power to administer oaths to witnesses. By consequence neither has a committee of the local House. The English House of Commons has the inherent power of punishing, as for a breach of privilege, persons who give false evidence, who refuse to answer proper questions, and who decline for insufficient reasons to produce documents in their possession, custody or power, even when such misbehaviour occurs before a select committee: see May, pp. 405-6.

Assuming, then, that the officer of the Montreal Telegraph Company, who refused to produce the telegrams asked for, was entitled to the same protection as if he had been before any court of justice (which is indeed held in *Burnham* v. *Morrissey*, 14 Gray, 226), the question is, whether his plea of privilege was valid. It was clearly insufficient. No doubt all the acts of incorporation of these companies provide, in terms more or less explicit, against the disclosure by the company or its officers of the contents of any private mes-

sage, under penalties more or less severe. The provision of our statute runs thus: "Any operator of a telegraph line, or any person employed by a telegraph company, divulging the contents of a private despatch, shall be guilty of a misdemeanor, and on conviction shall be liable to a fine not exceeding one hundred dollars, or to imprisonment for a period not exceeding three months, or both, in the discretion of the court before which the conviction is had:" Con. Stat. Can. c. 67, s. 16.

Mr. Justice Willes made short work of the objection in a case before him at Nisi Prius. A telegraph clerk having refused, under instructions from his superior officer, to produce private telegrams, or to answer questions concerning them, his Lordship said, "The only persons who can refuse to answer questions are attorneys, and of course counsel, who would stand on the same footing for a stronger reason. I do not enter into any question, whether another class is or is not privileged; I do not choose to introduce matter that is doubtful; but, with the exception, perhaps, of people in government offices as to matters of state, and counsel and attorneys, I do not know of any class that is privileged. It is quite clear that telegraph companies are not privileged." And then, addressing the witness, he proceeded: "If you did not produce those papers, everybody connected with the telegraph company, who could lay his hand on them, would be subject to be brought here, and to be punished for not producing them." The telegram was then read: *Ince's Case*, 20 Law Times, N. S. 421, May, 1869. Another case, to the same effect, of colonial authority, being the decision of the Chief Justice of Newfoundland, is to be found in 8 Jur. N. S. Part ii. p. 181. The Chief Justice, after referring to an analogous case of *Lee qui tam* v. *Birrell*, 3 Camp. 337, said: "I do not entertain a doubt that the communications or messages through the telegraph offices are not in law privileged communications; and that when the operators are compelled to attend a judicial proceeding, they are bound to disclose the contents of such messages; and that in so doing, they do not violate any oath of secrecy they have taken (that they will not *wilfully* divulge, &c.), or subject themselves to any prosecution under the statute." The rule is the same in the United States: *Henisler* v. *Freedman*, 2 Parsons, 274; as well as in the Province of Quebec: *Leslie* v. *Harvey*, 15 L. C. Jur. 9, where it was also held that such messages are not privileged. In truth, the wonder is that any one should ever have supposed that a disclosure of telegraphic messages by a witness in a court of justice, should expose him to a penalty under the statute for divulging the secrets of the office.

## COMMUNICATIONS BETWEEN CLIENT AND LEGAL ADVISER.

A correspondent writes us in the following terms:

"Sir,—I would like to have the question, as to the right of gentlemen of the legal profession to be held exempt from divulging in a court of justice their knowledge of their client's conduct in criminal matters, fully discussed in your journal. My proposition is that they are not exempt and that they ought not to be exempt."

The question proposed is not so accurately put as to enable us to determine precisely what is meant. But whatever is meant the discussion would be an unprofitable one, in this sense: that all that can be said upon such a matter has been said long ago, and the law thereupon is fixed beyond a peradventure. It is a well-established rule, that all communications passing between a client and his legal adviser (be he attorney, solicitor, or counsel) in the course, and for the purpose of professional business, are privileged. If the communication is made, not as between client and professional adviser, nor in the usual course of business, or for a fraudulent or illegal purpose, then it is not protected. It is difficult to condense the law on this subject into a few sentences, but it may be found written at large in any modern text-book on discovery or evidence. For example, Wigram, Kerr, Taylor, or Russell on Crimes.

We only discuss subjects taken up by the text-books, where those text-books seem to have come to erroneous or uncertain conclusions, or where there has been some recent alteration of the law, or where it is desirable to agitate for a change of the law, or for the purpose of making a *resumé* of cases upon some point not fully handled in such treatises. In the present instance, no fault can be found with the law; it is eminently reasonable. Suppose the rule were otherwise, then it would be impossible for lawyers to obtain information so as to enable them to give advice or conduct proceedings. No doubt something may be said as to the advisability

of changing the law by statute, in so far as to declare privileged all confessions made to spiritual advisers. But it is certainly not desirable to change the present law by breaking down or modifying that privilege, as to lega advisers. It is in every respect, and in all aspects, fit and proper that confessions made by an alleged criminal to his attorney or counsel should not be divulged. If an attorney or counsel has acquired a knowledge of any criminal conduct, on the part of his client, from another source, then no privilege exists, nor need it exist, as to this. The maintenance and enforcement of the rule are supported by considerations which the Lord Justice Knight Bruce has expressed unanswerably: "Truth, like all other good things, may be loved unwisely, may be pursued too keenly, may cost too much. And surely the meanness and the mischief of prying into a man's consultations with his legal adviser, the general evil of infusing reserve and dissimulation, uneasiness, suspicion, and fear into those communications which must take place, and which, unless in a condition of perfect security, must take place uselessly or worse, are too great a price to pay for truth itself."—*Pearse* v. *Pearse*, 1 *De G. & Sm.* 28.

A well-authenticated anecdote is told respecting an ejectment suit, brought by a lady, a few years ago in England, who claimed some estates as sole heiress of the deceased proprietor. Before entering on proof of a long and intricate pedigree, which Mr. Adolphus her counsel had opened, Mr. Gurney, who was counsel for the defendant, offered to prove a fact which would end the suit at once, that the plaintiff had two brothers living, one of whom was then in court. Mr. Adolphus assented. The fact was proved, and on the plaintiff being asked whether she had communicated the fact to her attorney, she replied, "To be sure not; do you take me for a fool? why, he could not have undertaken the case if I had told him that." So difficult is it sometimes to get the truth and the whole truth from clients, under the most favourable circumstances. But remove the safeguard that the law has thrown around such communications, then awkward surprises and unpleasant discoveries worse than the above, would be the rule and not the exception. Then clients would be always speculating how far it would be safe to disclose their case; there would be half-confidences and imperfect narration of circumstances; suppressions and distortions of fact so that the advantages of advocacy would be well-nigh destroyed, and the relationship of solicitor and client, especially as to the "*alter ego*" theory, would become a meaningless thing, of small benefit to either.

## BEQUEST TO A CHARITABLE INSTITUTION.

For the first time since the Reformation the effect of a bequest and devise to a sisterhood of nuns, in England, has been determined by *V. C. Wickens*, in *Cocks* v. *Manners*. This Judge manifested how fitly he is characterized as the English lawyer who knows most about the law relating to charities, by delivering his judgment of unquestioned soundness at the close of the argument. One object of the testator's bounty was "the community of the Sisters of the Charity of St. Paul, at Selley Oak," who appeared to be a voluntary association for the purpose of teaching the ignorant and nursing the sick. As to these, it was held that they were a charitable institution, and that, consequently, the devise of lands failed, though the bequest of pure personalty was valid. There was also a devise to the Dominican Convent, at Carrisbrooke, which it was shewn was an institution consisting of Roman Catholic nuns, who had associated themselves together for the purpose of working out their own salvation, by religions exercises aud self-denial, not visiting the sick or relieving the poor, except casually or accidentally. The Vice-Chancellor was of opinion that such a society was not charitable, and not within the meaning of the act, so that the devise to them, of £6,000 value, was upheld. The curious issue of the law on this case is very strikingly brought out in the language of the *Law Journal*, as follows:—

"The one institution, on its own showing, does not visit the poor, or teach the young, or engage in any of the works of charity or mercy; and because it abstains from doing these good deeds, it is allowed to become the recipient of £6,000. The other institution has to be content with £100 because its members employ themselves in teaching the children of the poor and in nursing the sick. Mr. Bagshaw, in his argument, well compared the two institutions to 'Mary' and 'Martha' of Scripture history—the one 'active,' the other 'passive'—the one 'practical,' the other 'contemplative.' May we not carry the illustration further? As it was of old, so now, the 'passive

and contemplative' convent of Dominican nuns seem to have chosen the good part, which the law will not take away from them."

## "DULCE EST DESIPERE, &c."

It is strange how "good things" repeat themselves. These, also, would appear to fall under Solomon's aphorism about "nothing new under the sun." Mr. Justice Maule is credited with having had at his fingers' and tongue's end the whole cycle of professional *ana* that periodically re-appears in the published collections. It is told of him, that once upon a circuit his postchaise companion had picked up at a bookstall a collection of anecdotes, supposed to contain an unusual admixture of new material; but the learned Judge undertook to give the point of any story in it, on hearing two lines of it read, and really fulfilled his boast without a single failure.

But the particular "good thing" which has induced this moralizing occurred on this wise: In a case heard at the present Chancery sittings in Toronto, there was put in the witness box a gentleman of high standing in the community, though, like the worthy Zaccheus, little of stature. As he stood in the box, however, after being sworn, with arms stretched along the top, and shoulders and head just visible, he presented to the Chancellor's observant eye, as it first fell upon him, very much the appearance of some awkward fellow squeezed into a sitting position as comfortably as the straitness of the enclosure would allow; whereupon his Lordship admonished the witness to stand up and give his evidence properly. "But I *am* standing up, my lord," said the witness, with such solemnity as truth spoken under oath, could alone give. An explanation of the true condition of affairs was then made *sotto voce* to the court, and the examination proceeded.

A counterpart to this is the story told of a diminutive barrister, *temp.* Lord Mansfield, named Morgan, who was so addicted to the citation of *Croke's* Reports that he won for himself the soubriquet of "Frog" Morgan,—to which probably his squat figure gave additional point. Before he was much known at the bar, he was beginning to open a case, when Lord Mansfield, in a tone of grave rebuke, addressed him: "Sir, it is usual for counsel, when they address the court, to stand up." "I *am* standing, my lord," screamed "The Frog;" "I have been standing these five minutes."

## ACTS OF LAST SESSION.

*An Act to amend an Act passed in the thirty-second year of the reign of Her Majesty, and chaptered twenty-two, respecting County Courts.*

Whereas, &c:

1. That section 3 of the said recited Act is hereby repealed, and the following shall be section 3 of the said Act:

(3.) After the passing of this Act no Junior Judge shall be appointed in or for any county or union of counties in Ontario, except in any county or union of counties where the population shall exceed forty thousand, as shall appear by the official census then last taken.

2. The Junior Judge of the County Court of any county or union of counties is hereby authorized to transact such business in Chambers, in the absence therefrom of the Senior Judge, as relates to matters over which the said Courts have jurisdiction, and as may, according to the course and practice thereof, be transacted by the Judges of the said Courts.

3. It shall be lawful for any Judge of a County Court, if requested so to do, and when the interests of justice seem to require it, to sit for a Judge of another County Court either at the sittings or in term, or to hear any case triable under the special or summary jurisdiction of such Judge, and the County Judge while so sitting, shall have all the powers and authority of the Judge of the County Court within whose county or union of counties he shall be so sitting.

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*An Act further to amend the Law relating to Property and Trusts.*

Whereas, &c.:

1. In the construction of the will of any person who may die after the 31st March, 1872, a general direction that the debts or that all the debts of the testator shall be paid out of his personal estate shall not be deemed to be a declaration of an intention contrary to or other than the rule established by the said Act, unless such contrary or other intention shall be further declared by words expressly or by necessary implication referring to all or some of the testator's debts or debt, charged by way of mortgage on any part of his real estate.

2. In the construction of the said Act and of this Act, the word "mortgage" shall be deemed to extend to any lien for unpaid purchase money, or any charge, incumbrance or obligation of any nature whatever upon any lands or tenements of a testator or intestate.

3. Whereas by an error in the printed copy of the Act passed in the thirty-second year of Her Majesty Queen Victoria, intituled, "An Act to amend the law as to Wills," the word "not" is omitted in the beginning of the fourth line of the third section of the said Act, be it enacted that the said section be and the same is hereby amended so as to read as follows:

"3. Every will shall be revoked by the marriage of the testator except a will made in the exercise of a power of appointment, when the real or personal estate would not in default of such appointment pass to the testator's next of kin, under the Statute of Distribution."

And the said section so amended shall read as if incorporated in the said Act at the time of the passing of the same; but nothing in this Act shall apply to or affect any case now pending or heretofore adjudged by any court in this Province.

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*An Act to extend the rights of Property of Married Women.*

Her Majesty, &c., enacts as follows:

1. After the passing of this Act, the real estate of any married woman, which is owned by her at the time of her marriage, or acquired in any manner during her coverture, and the rents, issues and profits thereof respectively, shall without prejudice and subject to the trusts of any settlement affecting the same, be held and enjoyed by her for her separate use, free from any estate or claim of her husband during her lifetime, or as tenant by the curtesy, and her receipts alone shall be a discharge for any rents, issues and profits; and any married woman shall be liable on any contract made by her respecting her real estate, as if she were a feme sole.

2. All the wages and personal earnings of a married woman, and any acquisitions therefrom, and all proceeds and profits from any occupation or trade which she carries on separately from her husband or derived from any literary, artistic or scientific skill, and all investments of such wages, earnings, moneys, or property shall hereafter be free from the debts or dispositions of the husband, and shall be held and enjoyed by such married woman, and disposed of without her husband's consent, as fully as if she were a feme sole; and no order for protection shall hereafter become necessary in respect of any of such earnings or acquisitions, and the possession, whether actual or constructive, of the husband, of any personal property of any married woman, shall not render the same liable for his debts.

3. A married woman in her own name, or that of a trustee for her, may insure for her sole benefit, or for the use or benefit of her children, her own life, or with his consent, the life of her husband for any definite period, or for the term of her or his natural life; and the amount payable under said insurance, shall be receivable for the sole and separate use of such married women or her children as the case may be, free from the claims of the representatives of her husband, or of any of his creditors.

4. A policy of insurance effected by any married man on his own life and expressed upon the face of it to be for the benefit of his wife, or of his wife and children, or any of them, or upon which he may at any time after effecting such insurance, notwithstanding a year may have elapsed, endorse thereon that the same shall be for the benefit of his wife, or of his wife and children or any of them, shall enure and be deemed a trust for the benefit of his wife for her separate use, and of his children or any of them, according to the intent so expressed, and shall not so long as any object of the trust remains, be subject to the control of the husband or his creditors or form part of his estate, save and except for such amount as the same may be pledged to any person or persons prior to any endorsesation thereon for the benefit of his wife or children, or any of them, when the sum secured by the policy becomes payable: in the event of no executor or trustee having been appointed by the husband by will, a trnstee thereof may be appointed by the Court of Chancery upon the application of the wife, or in the event of her death, by the children or their guardian, and the receipt of such executor or trustee shall be a good discharge to the office in which such insurance is effected; Provided always, if it shall be proved that the policy of insurance was effected and premiums paid by the husband with intent to defraud his creditors, they shall be entitled to receive out of the sum secured an amount equal to the premiums so paid.

5. Any married woman may become a stockholder or member of any bank, insurance company, or any other incorporated company or association, as fully and effectually as if she were a feme sole, and may vote by proxy or otherwise, and enjoy the like rights, as other stockholders or members.

6. A married woman may make deposits of money in her own name in any savings or other bank, and withdraw the same by her own check, and any receipt or acquittance of such depositor shall be a sufficient legal discharge to any such bank.

7. Nothing hereinbefore contained in reference to moneys deposited, or investments by any married woman, shall as against creditors of the husband, give validity to any deposit or investment of moneys of the husband made in fraud of such creditors, and any money so deposited or invested may be followed as if this Act had not passed.

8. A husband shall not by reason of any marriage which shall take place after this Act has come into operation, be liable for the debts of his wife contracted before marriage, but the wife shall be liable to be sued therefor, and any property belonging to her for her separate use shall be liable to satisfy such debts as if she had continned unmarried; and a husband shall not be liable for any debts of his wife in respect of any employment or business in which she is engaged on her own behalf, or in respect of any of her own contracts.

9. A married woman may maintain an action in her own name for the recovery of any wages, earnings, money and property by this or any other Act declared to be her

separate property, and shall have in her own name the same remedies both civil and criminal against all persons whomsoever, for the protection and security of such wages, earnings, money and property, and of any chattels or other her separate property for her own use, as if such wages, earnings, money, chattels and property belonged to her as an unmarried woman; and any married woman may be sued or proceeded against separately from her husband in respect of any of her separate debts, engagements, contracts or torts as if she were unmarried.

10. This Act shall not affect any pending suit or proceeding.

11. This Act may be known as the "Married Women's Property Act, 1872."

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*An Act to empower all persons to appear on behalf of others in the Division Courts in the Province of Ontario.*

Her Majesty, &c., enacts as follows:

1. Any person may appear at the trial or hearing of any cause, matter, or proceeding as agent and advocate for any party or parties to any such cause, matter or proceeding in the Division Courts in the Province of Ontario.

2. The Judge or other person lawfully holding any Division Court in the Province of Ontario may, whenever in his opinion justice would appear to require it, prevent any person from appearing at the trial or hearing of any cause, matter or proceeding in the said Court, as agent and advocate for any party or parties to any such cause, matter or proceeding.

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*An Act for the prevention of Corrupt Practices at Municipal Elections.*

Her Majesty, &c., enacts as follows:

1. The following persons shall be guilty of bribery, and shall be punished accordingly:

(1.) Every person who shall directly or indirectly, by himself or by any other person lend, or shall offer or promise any money or on his behalf, give, lend, or agree to give or valuable consideration, or shall give or procure, or agree to give or procure or offer or promise, any office, place or employment, to or for any voter, or to or for any person no behalf of any voter, or to or for any person in order to induce any voter to vote or refrain from voting at a municipal election, or upon a by-law for raising any money or creating a debt upon a municipality or part of a municipality for any purpose whatever, or who shall corruptly do any such act as aforesaid, on account of such voter having voted or refrained from voting at any such election, or upon any such by-law.

(2.) Every person who shall directly or indirectly, by himself or by any other person in his behalf, make any gift, loan, offer, promise or agreement as aforesaid, to or for any person, in order to induce such person to procure, or endeavour to procure, the return of any person to serve in any municipal council, or to procure the passing of any such by-law as aforesaid, or the vote of any voter at any municipal election, or for any such by-law:

(3.) Every person who shall by reason of any such gift, loan, offer, promise, procurement or agreement, procure or engage, promise or endeavour to procure the return of any person in any municipal election, or to procure the passing of any such by-law as aforesaid, or the vote of any voter at any municipal election, or for any such by-law:

(4.) Every person who shall advance or pay, or cause to be paid, any money to or to the use of any other person with the intent that such money, or any part thereof, shall be expended in bribery at any municipal election, or at any voting upon a by-law as aforesaid, or who shall knowingly pay, or cause to be paid, any money to any person in discharge or repayment of any money wholly or in part expended in bribery at any such election or at the voting upon any such by-law:

(5.) Every voter who shall, before or during any municipal election, or the voting of any such by-law, directly or indirectly, by himself or by any other person on his behalf, receive, agree or contract, for any money, gift, loan, or valuable consideration, office, place or employment, for himself or any other person, for voting or agreeing to vote, or refraining or agreeing to refrain from voting at any such election, or upon any such by-law:

(6.) Every person who shall, after any such election, or the voting upon any such by-law, directly or indirectly, by himself or by any other person on his behalf, receive any money or valuable consideration on account of any person having voted, or refrained from voting, or having induced any other person to vote or to refrain from voting at any such election, or upon any such by-law:

(7.) Every person who shall hire any horses, teams, carriages, or other vehicles for the purpose of conveying electors to and from the polls, and every person who shall receive pay for the use of any horses, teams, carriages or other vehicles, for the purpose of conveying electors to and from any polls as aforesaid.

2. Every person who shall directly or indirectly, by himself or by any other person on his behalf, make use of, or threaten to make use of any force, violence or restraint, or inflict, or threaten the infliction, by himself or by or through any other person, of any injury, damage or loss, or in any manner practise intimidation upon or against any person, in order to induce or compel such person to vote or refrain from voting, or on account of such person having voted or refrained from voting at any election, or who shall in any way prevent or otherwise interfere with the free exercise of the franchise of any voter, shall be deemed to be guilty of undue influence, and be subject to the penalty hereinafter mentioned.

3. The actual personal expenses of any candidate, his expenses for actual professional services performed, and *bona fide* payments for the fair cost of printing and advertising, shall be held to be the expenses lawfully incurred, and the payment thereof shall not be a contravention of this Act.

4. Any candidate elected at any municipal election, who shall be found guilty by the judge, upon any trial upon a writ of *quo warranto*, of any act of bribery, or with using undue influence as aforesaid, shall forfeit his seat, and shall be rendered ineligible as a candidate at any municipal election for two years thereafter.

5. Where the writ of summons, in the nature of a *quo warranto*, is returnable before one of the Judges of the Superior Courts of Law, in case any question as to whether the candidate or any other voter has been guilty of any violation of sections one and two of this Act, affidavit evidence shall not be used to prove the offence, but it shall be proved by *viva voce* evidence taken before the Judge of any County Court, upon a reference to him by the Judge of the Superior Court, for that purpose, in the presence of counsel for, or after notice to, all parties interested; and in case such reference be directed to the Judge of the County Court, he shall return the evidence to the Clerk of the Crown at Toronto, and every party shall be entitled to a copy thereof.

6. In all other cases the Judge of the Superior Court before whom the writ of summons is returnable, may order the evidence to be used on the hearing of the summons, to be taken *viva voce* before the Judge of the County Court; and in any such case the previous section of this Act shall apply.

7. The vote of every person found guilty, upon any trial or enquiry as to the validity of the election or by-law of a violation of either of the first two sections of this Act, shall be void.

8. Any person who shall be adjudged guilty of any of the offences within the meaning of this Act, shall incur a penalty of twenty dollars, and shall be disqualified from voting at any municipal election or upon a by-law for the next succeeding two years.

9. The penalties imposed by this Act shall be recoverable, with full costs of suit, by any person who will sue for the same by action of debt in the Division Court having jurisdiction where the offence was committed; and any person against whom judgment shall be rendered, shall be ineligible, either as a candidate or municipal voter, until the amount which he has been condemned to pay shall be fully paid and satisfied.

10. It shall be the duty of the judge who finds any candidate guilty of a contravention of this Act, or who condemns any person to pay any sum in the Division Court for any offence within the meaning of this Act, to report the same forthwith to the clerk of the municipality wherein the offence has been committed.

11. The clerk of every municipality shall duly enter in a book, to be kept for that purpose, the names of all persons within his municipality who shall have been adjudged guilty of any offence within the meaning of this Act, and of which he shall have been notified by the judge who tried the case.

12. All proceedings against a candidate elected at any municipal election for any violation of the provisions of this Act, must be commenced within the time allowed by the Municipal Act of 1866.

13. Any by-law the passage of which has been procured through or by means of any violation of the provisions of this Act, shall be liable to be quashed upon any application to be made in conformity with the provisions of the Municipal Institutions Act of one thousand eight hundred and sixty-six, as hereinafter provided.

14. Before any application for the quashing of a by-law upon the ground that any of the provisions of this Act have been contravened in procuring the passing of the same, and if it is made to appear to a judge of one of the Superior Courts of Law, that probable grounds exist for a motion to quash said by-law, the said judge may make an order for an inquiry, to be held upon such notice to the parties affected, as the Judge may direct concerning the said grounds, before the judge of the county court of the municipality which passed said by-law, and require that upon such inquiry, all witnesses both against and in support of such by-law, be orally examined and cross-examined upon oath before said county court judge; and the said county court judge shall thereupon return the evidence so taken before him to the clerk of the Crown and Pleas at Toronto; and after the return of said evidence, and upon reading the same, any Judge of the said Superior Courts may, upon notice to such of the parties concerned, as he shall think proper, proceed to hear and determine the question; and if the grounds therefor shall appear to him to be satisfactorily established, it shall be competent to him to make an order for quashing said by-law, and may order the costs attending said proceedings to be paid by the parties or any of them, who shall have supported said by-law; and if it shall appear that the application to quash said by-law ought to be dismissed, the said Judge may so order, and in his discretion award costs, to be paid by the persons applying to quash said by-law.

15. After an order has been made by a judge directing an inquiry, and after a copy of such order has been left with the Clerk of the Corporation of which the by-law is in question, all further proceedings upon the by-law shall be stayed until after the disposal of the application in respect of which the enquiry has been directed, but if the matter be not prosecuted to the satisfaction of the Judge he may remove the stay of proceedings.

16. Any witness shall be bound to attend before the judge of the County Court upon being served with the order of such County

Court Judge directing his attendance, and upon payment of the necessary fees for such attendance, in the same manner as if he had been directed by a writ of subpœna so to attend; and he may be punished for contempt, and shall be liable to all the penalties for such non-attendance in the same manner as if he had been served with such subpœna.

17. No person shall be excused from answering any question put to him in any action, suit or other proceeding in any court or before any judge, touching or concerning any election, or by-law, or the conduct of any person thereat, or in relation thereto, on the ground of any privilege, or on the ground that the answer to such question will tend to criminate such person; but no answer given by any person claiming to be excused on the ground of privilege, or on the ground that such answer will tend to criminate himself, shall be used in any criminal proceeding against such person, other than an indictment for perjury, if the judge shall give to the witness a certificate that he claimed the right to be excused on either of the grounds aforesaid, and made full and true answer, to the satisfaction of the judge.

18. All other proceedings against any person for any violation of this Act, shall be commenced within four weeks after the municipal election at which the offence is said to have been committed, or within four weeks after the day of voting upon any by-law as aforesaid.

19. [The clerks of municipalities to furnish returning officers with six copies of Act]

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*An Act to further provide for the Registration of Co-Partnerships, and of other business firms.*

Her Majesty, &c., enacts as follows:

1. Every person who at the time of the passing of this Act is, or who hereafter may be, engaged in business, for trading, manufacturing, or mining purposes, and who is not associated in partnership with any other person or persons, but who uses as his business style some name or designation other than his own name with the addition of "and company," or some other word or phrase indicating a plurality of members in the firm, shall cause to be delivered to the Registrar of the County, City or Riding in which such person carries on or intends to carry on business, a declaration in writing, signed by such person,

2. Such declaration shall contain the name, surname, addition, and residence of the person making the same, and the name, style or firm, under which he carries on or intends to carry on business, and shall also state that no other person is associated with him in partnership; and shall be filed in the case of persons who before the passing of this Act use a style requiring registration under the provisions thereof, within six months of the time of the passing of this Act; and in the case of persons first using such a style, after the passing of this Act, within six months of the time when such style is first used.

3. Every person required to register a declaration under the provisions of this Act, and failing to comply with the provisions thereof shall forfeit the sum of one hundred dollars, to be recovered before any court of competent jurisdiction by any person suing, as well in his own behalf as in behalf of Her Majesty; and half of such penalty shall belong to the Crown for the use of the Province, and the other half to the party suing for the same, unless the suit be brought, as it may be, on behalf of the Crown only, in which case the whole of the penalty shall belong to Her Majesty, for the uses aforesaid.

4. It shall be the duty of each registrar to keep two alphabetical indices of all declarations of co-partnerships delivered to him in pursuance of the provisions of the Registration of Co-Partnerships Act of 1869, and of declarations delivered to him in pursuance of the provisions of this Act.

5. In one of such books, hereinafter called the "Firm Index Book," the registrar shall enter in alphabetical order the style of the respective firms, in respect to which declarations have been delivered to him, and shall place opposite such entry the names of the person or persons composing such firm, and the date of the receipt by him of the declaration, in the manner shown in the "Firm Index Book," a form of which is exhibited in the schedule hereto.

6. In the second of such books, hereinafter called the "Individual Index Book," the registrar shall enter in alphabetical order the names of the respective members of each of such firms, and shall place opposite such entry the style of the firm of which such person is a member, and the date of the receipt of the declaration in the manner shown in the "Individual Index Book" in the schedule hereto.

7. Each registrar shall, immediately he is provided with books therefor, cause to be entered in such books, in due order, the names and firms mentioned in any declarations registered with him before the time that he is provided with such books, and all other arrears, and shall, after such entries have been made, from time to time, enter such declarations as the same are received.

8. The registrar shall be entitled to be paid by the treasurer of the municipality, whose duty it is to furnish registry books for all entries made in respect of declarations filed before such registrar is provided with registry books, at the rate of one cent per entry.

9. Said index books shall be furnished by the treasurer of said municipality, (or in case of his default, by the registrar,) in the same manner as other registry books.

10. After all declarations registered with any registrar have been duly entered in the Firm Index Book herein provided for, it shall not be necessary for such registrar to record declarations of co-partnership in the book provided for by section five of the said Act, but

the said index books shall be thereafter substituted therefor.

11. The registrar shall be entitled to charge for searches made in each of such books the following fees and no more: for searching in Firm Index, each firm ten cents; for searching in Individual Index, each name ten cents; for each certificate, when required, twenty-five cents.

12. Neither this Act nor that relating to the registration of co-partnerships Act of 1869, shall be construed to apply to associations of individuals for the manufacture of cheese and contributing produce from their dairies for that purpose.

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*An Act to amend the Act intituled "An Act respecting the property of Religious Institutions in Upper Canada."*

Her Majesty, &c., enacts as follows:—

1. That section three of chapter sixty-nine, of the Consolidated Statutes for Upper Canada be and the same is hereby amended by inserting in the eighth line of the said section after the words "meeting house or chapel," the following words, "or residence for the minister," so that the amended Act would read as follows, viz:—

(2) When a debt has been or may be hereafter contracted for the building, repairing extending or improving of a church, meeting house or chapel or the residence of a minister respectively on land held by trustees for the benefit of any religious society in Upper Canada, or for the purchase of the land on which the same has been or is intended to be erected, the trustees, or a majority of them, may from time to time secure the debt or any part thereof, by a mortgage upon the said land, church, meeting house or chapel, or the residence of the minister, or may borrow money to pay the debt or part thereof, and may secure the re-payment of the loan and interest by a like mortgage upon such terms as may be agreed upon; Provided that no such mortgage shall be created by the said trustees upon the land on which any church, meeting house, chapel or residence of a minister respectively is or may be erected, except in case of a debt incurred or to be incurred for the erection of such church, meeting house, chapel or residence of the minister respectively.

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*An Act to amend the Act respecting Apprentices and Minors.*

Her Majesty &c., enacts as follows:—

1. Section four of the Act respecting apprentices and minors, chaptered seventy-six of the Consolidated Statutes for Upper Canada is hereby repealed, and the following shall be substituted for the said section, and shall be taken and read as part of the said Act:—

(4.) In a city or town, the mayor, judge of the County Court or police magistrate, and in a county the judge of the county court of the county, may put and bind for the like period to any person mentioned in the several sections of this Act, with the consent of such person and of the minor, any minor who is an orphan or has been deserted by his or her parents or guardian, or whose parents or guardian have been for the time committed to a common gaol or house of correction, or any minor who is dependent upon public charity for support; and such apprentice and the master of such apprentice shall be held in the same manner as if the apprentice had been bound by his or her parent; and no minor who has been or shall hereafter be abandoned by his or her parent or guardian, or who is dependent upon charity for support, shall hereafter be removed from any public or private charitable institution, or from the custody or control of any private person who may charitably be taking care of such minor, by the father or mother or guardian of such minor against the will of the head of such public or private charitable institution, or of such private person, without an order for such removal from a judge of one of the superior courts of law or equity, or from the judge of the county court of the county, or mayor or police magistrate of the city or town where such minor may be; and such judge or other person hereby empowered to make such order for removal, may notwithstanding the strict legal right of the applicant to the custody and control of such minor, refuse to grant an order for the removal of such minor unless he shall be satisfied that such removal will tend to the benefit and advantage of such minor.

## SELECTIONS.

### AMERICAN SHIPS UNDER BRITISH COLOURS.

One of the items of damages claimed by the United States under the Alabama Convention consists of losses sustained by the transfer of American ships to the British registry. We believe that during the war more than seven hundred American merchantmen were transferred to our registry, and became British ships for the express purpose of escaping the Confederate cruisers. Assuming that this head of damage is within the treaty, and also capable of proof, we may suggest, on the part of Her Majesty, an objection to the claim which, in the majority of cases, will, we believe, prevail. If the British registry be inspected, it will be found that opposite to many of the ships are placed the names of American mortgagees. The names of the transferees are never given on the registry, but they could be easily ascertained. Now where the names of transferors and mortagees are identical, there arises the presumption that there was no absolute sale of the ship, but only a colourable transfer. So also if in other cases it be found that the transferred ships were held upon trust for the former owners, there again the claim would fail, because, there being no *bona fide* sale, there

could be no loss. To these objections, founded upon general principles, must be added one of a more important character, based on the British Merchant Shipping Act 1854. By section 56 of that Act, every person, before being registered as transferee of a ship or share of a ship, must make a declaration that he is qualified to be registered as owner as owner of a British ship, and also that, to the best of his knowledge and belief, no unqualified person is entitled as owner to any legal or beneficial interest in the ship or any share therein. A false declaration constitutes a misdemeanour, and by section 103, if any unqualified person acquires as owner any interest, either legal or beneficial, in a ship using a British flag and assuming the British character, such interest shall be forfeited to Her Majesty. Persons qualified to be owners of British ships are British-born subjects who have not sworn allegiance to a foreign State, denizens, and naturalised person. If, therefore, upon the evidence in any cases under this head of damage, it turns out that an American citizen has retained or acquired after transfer to the British registry any beneficial interest in the ship transferred, that share will be forfeited to the Queen, and no claim against the Crown for damage can be founded on a transaction which in itself constitutes a violation of the municipal laws of the United Kingdom.

It is impossible to believe that in four years ships showing an aggregate burthen of half a million tons were bought out and out by subjects of the Crown, but the American claim rests entirely upon the hypothesis that such was the fact. The alternative hypothesis, which is much more probable, not only defeats the claim, but entitles the Crown to confiscate to its own use an enormous mass of property of the highest value.—*Law Journal.*

## ARBITRATION IN TRADE DISPUTES.

The following is the copy of the bill drawn up by Mr. Rupert Kettle on the subject of Conciliation and Arbitration in Trade Disputes, and approved of by the Trades Congress at Nottingham :—

A Bill to extend the application of the Act to consolidate and amend the Laws relative to the Arbitration of Disputes between Masters and Workmen.

Whereas it is desirable to extend the provisions of an Act passed in the reign of His Majesty King George IV., intituled "An Act to consolidate and amend the Laws relative to the Arbitration of Disputes between Masters and Workmen," so as to make the same applicable to modern modes of settling such disputes by boards of arbitration: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by authority of the same, as follows :—

1. Interpretation.—In this Act the words 'the Act' shall mean the statute of 5 Geo. IV. c. 96. The word "board" shall mean any board of arbitration described in the next following section, which shall have under its rules power to determine any dispute of which it may have cognizance. The word "decision" shall mean any final decision in writing of any dispute in manner prescribed by the rules of the board, whether the same be by recording a vote of the board on a resolution of a meeting or by the written judgment in the nature of an award of any chairman or umpire.

2. Act to Extend to all Boards.—Whenever a board shall be formed for the purpose of settling any dispute between masters and workmen in any trade, or between masters and workmen carrying on business in any district, then, whatever may be the constitution or form of procedure of such board, and whether or not the same shall purport to have cognizance of both present and future disputes, or cognizance of disputes relative to the terms of any contract about to be entered into, or to the construction of any existing contract, or to the breach of any contract, such board shall have all the powers conferred by this Act, and also such powers contained in the Act as are hereinafter mentioned.

3. How Contract of Submission shall be made.—Every master who agrees to be bound by the decision of any board shall affix, and keep affixed, in some conspicuous part of his place of business, where the same can be read by his workmen, a printed copy of the rules of such board, and shall also deliver a printed copy thereof to each of his workmen; and every workman who agrees in like manner to be bound shall accept a printed copy of the rules so delivered; and every employer so affixing, and every workman so receiving a copy of such rules, shall in all things be bound thereby.

4. Attendance of Persons and Production of Documents.—Where a summons is issued and served upon any person according to the rules of any board, to attend before such board and give evidence, or to give evidence and also to produce any books or documents in his possession, and the person so served wilfully omits to appear at the time and place mentioned in the summons, or then and there to produce the books or documents mentioned in such summons; or if any person, being present at the sitting of any board, shall refuse, when required in accordance with the rules of such board, to give evidence, or to produce any books or documents then in his possession, then, and in either of the above cases, the person so omitting or refusing shall be a witness in default within the meaning of section 9 of the Act; and thereupon any justice of the peace acting in the petty sessional district where such person shall have so omitted or refused to attend or to produce books or documents, shall have and exercise all the jurisdiction conferred upon justices by section 9 of the Act, and the person who shall have so omitted or refused shall be subject to the penalties therein mentioned. If any person objects to the inspection of any book or document by the board, because so doing would unnecessarily expose his trade, then the board shall appoint some independent person to extract from such book or documents, in a form not to lead to such exposure, such information as may be required by the board, and such books and documents shall be then produced and delivered in the presence of the person producing the same to the person so appointed.

5. Decisions and their Enforcement.—Every decision shall be in writing, and where it orders the payment of money, it shall state the sum, and by whom, to whom, and when the same shall be paid; and when the decision orders anything to be done, or not to be done, then it shall further order what sum shall be paid, and by whom and to whom, and when, as liquidated damages if such decision is not complied with; and every decision so made shall be an award within the meaning of section 24 of the Act, and be enforced accordingly.

6. Exemption from Operation of Penal Statutes. No member of any board, or any person bound by the proceedings thereof, shall be liable to any penalty or punishment under any Act relating to masters and servants for any breach of contract of which such board might under its rules take cognizance.

7. Boards to use Public Buildings.

8. Parts of the Act to be incorporated herewith.—Sections 9, 17, 24, 25, 26, 27 (with form in schedule there referred to), 28, 29, 30, 33, and 34 of the Act shall be incorporated with this Act, and construed therewith as though the same had been hereby re-enacted.

9. The Acceptance of this Act by Boards to be Voluntary.—This Act shall not be in force in relation to any board, or the proceedings thereof, until the whole or some part hereof shall be accepted by such board. And any board may accept the whole or any part of this Act; and only such parts as are so accepted shall, in relation to such board, be in force. And when any board shall accept the whole or any part of this Act, such board shall so state in its rules, in the following form (or some form to like effect), viz., "This board has accepted the Trades Arbitration Act, 1871;" or, if part only be accepted, then, "This board has accepted sections (here state sections accepted) of the Trades Arbitration Act, 1871.)" Provided that it shall not be competent to any board to accept section 32 of the Act only.

10. Not Apply to Proceedings for Conciliation. —The provisions of this Act shall not apply to any proceedings taken for the purpose of settling any dispute by conciliation only; and where no power is given to any board to determine any dispute, in case the parties thereto cannot mutually agree, any proceedings to promote such mutual agreement shall for the purposes of this Act, be deemed proceedings for conciliation.

11. Short Title.—This Act shall be cited as "The Trades Arbitration Act, 1871."

Clauses in the Act of 5 Geo. IV., c. 96, proposed to be incorporated in the "Trades Arbitration Act, 1872":—

Section 9. Power to summon witnesses, and to compel them to attend and to give evidence, under pain of imprisonment.

Section 17. Power for married women to lodge complaint in name of husband, and for children under age in the name of parents or guardians.

Section 24. Performance of award may be enforced by distress, and failing that, the party refusing may be imprisoned.

Section 25. Where consequences of distress, ruinous or especially injurious to defaulter or his family, warrant may be withheld and defaulter committed.

Section 26. On payment of sum awarded, with costs, the party imprisoned to be discharged.

Section 27. Form of commitment.

Section 28. No appeal by writ of *certiorari*.

Section 29. No proceedings under Act to be bad for want of form.

Section 30. Fees to be paid as under:—Summons, 2d.; oath, 3d.; entering order, 4d.; warrant, 6d.

Sections 33 and 34. As to limiting actions against arbitrators, &c.

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## A FRENCH VIEW OF LORD BROUGHAM.

At the annual public meeting of the Académie des Sciences Morales et Politiques, a branch of the French Institute, held on Saturday last, M. Jules Simon read a report on the various essays sent in competition for the prizes offered by the Academy. The feature of the day, however, was an address delivered by M. Mignet upon the career and character of the late Lord Brougham, which occupied the attention of the assemblage for more than an hour an a half, and was listened to throughout with the closest attention. M. Mignet said:—"Lord Brougham was the oldest as he was the most illustrious foreign associate of the Academy. He was Lord High Chancellor of England when, in 1832, the Académie des Sciences Morales et Politiques was re-established, and he was immediately admitted to its ranks, and with indisputable titles. A celebrated and an intellectual writer, he had since the beginning of the century applied his powerful faculties and his varied talents to the propagation or defence of the noblest and most humane ideas. He had cultivated with an aptitude that was in some degree universal the vast field of social science, after having in his earlier day traversed not without distinction, the field of physical and mathematical sciences.

A great advocate, he pleaded the greatest causes with earnest speech and vigorous dialectics, and he acquired by his eloquence an imperishable renown. A political orator of extraordinary fertility, and not less remarkable for the loftiness of his views as for the brilliancy of his talents, he was placed from 1810 to 1830 at the head of that party in the House of Commons which desired to improve the laws and to extend the public liberties. An enterprising Minister and a reforming Chancellor, he effected in the Government and in the administration of justice those happy changes, equally prudent and just, which he had recommended while in Opposition." The talents and tastes of Lord Brougham were displayed at an early age, and M. Mignet dwelt at some length upon this portion of Brougham's career, recounting many anecdotes which have become familiar to the English public. After alluding to Brougham's advocacy on behalf of Queen Caroline, and to the famous speech demanding the repeal of the well-known Order in Council forbidding neutral vessels from entering French ports, the orator passed to the period when the subject of his address became Lord Chancellor, having in the meantime, during a space of twenty years, displayed inexhaustible activity and eloquence on behalf of the most

liberal and generous views of reform. The new Chancellor was described as being—"Not only a Liberal Minister in the Council, a fruitful legislator in Parliament, but also a great magistrate in the High Court of Equity, where he was the supreme judge. No one possessed in a greater degree the sentiment and the perception of justice. Scarcely had he become installed in the chief seat of the Court of Chancery than he applied himself with honourable promptitude and ardent equity to accelerate the suits which had accumulated from time immemorial' and which formed a congealed mass of litigation. He sat with indefatigable assiduity in his Court, where he was many times found at the dawn of day listening to argument or delivering judgments. His penetrating sagacity and his general knowledge of jurisprudence enabled him to constitute a real Court of Equity. He there at the same time abolished abuses which would have been lucrative to himself, and he suppressed sinecures which were onerous to the State." Brougham's career in the House of Commons and his efforts on behalf of the parliamentary reform were dwelt upon by M. Mignet, who, referring to the celebrated speech in which the orator implored upon his knees the House not again to reject a bill so anxiously desired by all lovers of the country, said, "Certainly the kneeling was out of place." Referring to that later period when Brougham had become somewhat estranged from the leaders of the Whig party, he said, "At this time Lord Brougham was no less admired than he was fortunate, but perhaps he did give way a little to the intoxication of pride, and failed to restrain the intemperance of a mind whose fiery nature was capable of leading to any extravagance."

Passing to a consideration of Brougham's labours—political, philosophical, and historical—M. Mignet said, 'He loved the English Constitution as an Englishman, he admired it as a publicist. He has ably traced its history, explained its structure, appreciated its influence, and pointed out its useful developments.

Always in progress, the Constitution, becoming more and more representative of England and bending to the exigencies, had adapted itself to the diverse conditions of a great country, whose ideas it follows, and whose wants it satisfies. Little by little it has thus directed the efforts of all powers and classes within the State to the same end—the growing establishment of all that is right, the increasing respect for public interests, the skilful management of common affairs. Lord Brougham well explained that progressive Constitution which, without changing the form of Government, has perfected its means of action, has rendered royalty limited in its intervention the aristocracy liberal in its conduct, and the democracy moderate in its pretensions; and which, constructed not by force of logic, but by history, has issued less from the spirit than from the very existence of a people which it has enabled in our days to conduct itself as a republic under a monarchy, to enjoy order, prosperity, and greatness combined with liberty. Lord Brougham dedicated his book upon the Constitution of England to Queen Victoria, under whose long reign that Constitution, faithfully observed in its spirit, has never been evaded in its exercise. Written at the age of eighty-one, that dedication is a model of propriety and grace. In the same year in which he dedicated a political work to the Queen of England he dedicated a scientific work to the University of Edinburgh, which selected him for its Chancellor in 1860. That volume contained treatises upon mathematics and physics, written between 1796 and 1858, upon the most various subjects—general theorems of geometry, problems of Keppler, dynamic principles, the differential calculus, the architecture of the cells of bees, analytical and experimental researches into light, the attractions of forces, and lastly, the admirable speeeh which he delivered at Grantham upon the occasion of inauguruating the monument to Sir Isaac Newton." After describing the residence at Cannes and the industrious and learned life which Brougham passed there during many winters, and where he died on May 7, 1868, M. Mignet thus summed up his estimate of his character:—"Henry, Lord Brougham, belongs to the number of the great men of his time and of his country. Endowed with extraordinary genius, possessed of vast knowledge, gifted with brilliant talents, animated by incomparable ardour, he devoted the thoughts of his mind, the enthusiasm of his soul, the resources of his knowledge, the brilliancy of his talents, to the service of the noblest causes—to the progress of justice, of law, of intelligence, of humanity.

A Reformer without a chimera, a Conservative without a prejudice, he never separated, either in his writings or in his actions, what was expedient from what was right, and it was his pride to keep in accord the free advancement of men and the moral order of society.

He was also the defender of political liberty, the persuasive advocate of civil equity, the zealous promoter of public education, the eloquent supportor of human emancipation. Illustrious by his works, memorable by his services, Lord Brougham must be counted among those great men who honour the country whose glory they sustain, who maintain what is right and strengthen what is good, and who, by the brilliancy of their talents and the generosity of their souls, are held by posterity in everlasting esteem.'—*Law Journal.*

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It has lately been held in the English Court of Admiralty, that under Lord Campbell's Act, corresponding to Con. Stat. Can., c. 78, sec. 2, it is competent for the Court or jury to award compensation in the case of an unborn infant whose father has been killed by accident. *The George & Richard* 20 W. R. 245.

## CANADA REPORTS.

### *ONTARIO.*

### COMMON LAW CHAMBERS.

#### IN RE BROWN AND WALLACE.

*(Reported by* HENRY O'BRIEN, Esq., *Barrister-at-Law.)*

*32 Vic. cap. 32, secs. 23, 36, (Ont.)—Tavern License Act—Trial by Judge without jury—Depositions as evidence—Prohibition.*

*Held*, 1. After an appeal to the Sessions from a conviction of a magistrate for selling liquor after 7 o'clock on Saturday evening, under 32 Vic. cap. 32, sec. 23, is confirmed a prohibition to the Sessions will not be granted.

*Held*, 2. That under the above section, it is irregular for the judge who tries the case to call a jury, or to receive depositions of witnesses as evidence, but this is not ground for a prohibition.

[Chambers, January 5, 1872—GALT, J.]

*Osler* obtained a summons, calling upon John Wallace, and George Duggan, Esq., the Chairman of the General Sessions of the Peace for the County of York, to shew cause why a writ of prohibition should not be ordered to issue out of this court to prohibit the said Court of General Sessions of the Peace from further proceeding in the matter of an appeal to the said court, wherein one Thomas Brown was appellant and one John Wallace was respondent, being an appeal from a certain conviction made by Alexander Macnabb, Esquire, Police Magistrate of the said City of Toronto, against the said Thomas Brown, on the twenty-third day of November, 1871, for that he the said Thomas Brown on November 11th, 1871, sold intoxicating liquors after seven o'clock in the evening of that day, and which said appeal came on to be tried at the said Sessions on December 16th, 1871, and was dismissed, and the said conviction affirmed with costs—on the grounds:

1st. That the said appeal was tried by a jury who were called and sworn upon the matter of the said appeal, and not by the said Chairman of the said Sessions, as required by the Statute in that behalf;

2nd. That the respondent gave no evidence in support of the said conviction, and that the learned Chairman of the said Sessions allowed the respondent to read to the said jury the depositions of the witnesses for the prosecution taken in the Police Court on the hearing of the information, instead of giving the *viva voce* testimony of the said witnesses themselves.

3rd. That the said conviction was affirmed without evidence, and the said Sessions exceeded their jurisdiction in so doing.

The facts of the case material to the application are the following:

The applicant Brown had been convicted in the Police Court of the City of Toronto, upon the evidence of two witnesses, and fined in the sum of $20 and costs, for selling liquor after 7 o'clock on Saturday evening contrary to sec. 23, cap. 32, 32 Vic., Ont. He appealed from this conviction to the Court of General Sessions, pursuant to C. S. U. C. cap. 114, and 32 Vic. cap. 32, Ont., sec. 36, which provides that such appeal "shall be tried by the Chairman of the Court without a jury."

The appeal came on to be heard at the Sessions, when the Chairman, with the consent of the appellant, but against the wish of the respondent, who contended that under the statute the appeal should be tried by him alone, directed a jury to be sworn to try the appeal. The respondent opened his case, and then offered evidence to shew that the witnesses upon whose evidence in the Police Court the appellant was convicted had left the Province, and he proposed to read their depositions taken in the Police Court as evidence in the trial of the appeal. The appellant objected that the depositions in question were not evidence, that the absence of the witnesses from the country did not entitle the prosecutor to read them, and that the witnesses themselves should be called. The learned Chairman of the Sessions overruled the objections, and the absence of the witnesses being proved, their depositions were admitted, and the conviction was affirmed with costs.

The summons for prohibition was then taken out.

*Hurd*, on behalf of the Chairman of the Sessions and of the respondent, shewed cause.

Prohibition is not the proper remedy, and justice has been done. The effect of a prohibition would be unfair, and put respondent in a worse position than before the appeal. If the appellant has any remedy it would be by error.

The effect of a prohibition if allowed would be the same as a *certiorari*, the right to which is taken away: 33 Vic. cap. 27, sec. 2 (Can.)

The appellant cannot take the objection that the case was tried by a jury, as the jury was called at his instance, and if he can, it may be said that the case was tried by the judge if he accepts their finding and makes it his own judgment. But we say that 32 Vic. cap. 32, sec. 36 (Ont.) is overridden by 32–33 Vic. cap. 31 (Can.) as amended by 33 Vic. cap. 27 (Can.), which govern in the matter of this appeal.

*Osler* supported the summons.

The Sessions have exceeded their jurisdiction in trying the case before a jury. The statute is express and positive in its terms, "*shall* be tried by the Chairman without a jury;" sec. 36, cap. 32, 32 Vic., Ont., and the appellant is not estopped from objecting to the jurisdiction by having consented to the jury being sworn: *Smith* v. *Rooney*, 12 U. C. Q. B. 66; *Yates* v. *Palmer*, 6 D. & L. 283; 1 T. R. 552; 2 Just. 602, 607.*

Prohibition lies from the Queen's Bench to the Sessions: *Reg.* v. *Herford*, 3 E. & E. 115.

If inferior court assume a greater or other jurisdiction than that allowed by law, or refuse to allow an act of Parliament, Superior Courts will control them by prohibition: Bac. Abr.; Title Prohibition, C. p. 568; *Ib.* prohibition, K. p. 557.

The court here has assumed a jurisdiction other than that allowed by law in another respect, in that it has decided the appeal without evidence, the depositions not being legal evidence and not receivable: Roscoe Cr. Ev., Ed. 6, pp. 65, 71; Dickenson's Qu. Sess., pp, 525, 643, 644; *Reg.* v. *Austin*, 25 L. J., M. C. 48; Indictable Offences Act, 32-33 Vic. cap. 30, sec. 30, Can., applies only to depositions

* See *Mossop* v. *Great Northern R. W. Co.*, 26 L. T. 92; and cases there cited.—EDS. L. C. G.

taken on a preliminary investigation in a criminal matter. The appeal here was an entirely new proceeding, and the prosecutor had to begin *de novo*: Dickenson, 643, 644.

The appeal was governed by the Statute of Ontario, not by the Summary Conviction Act of Canada, 32, 33 Vic. cap. 31, for the subject of it was not a crime under sec. 1, and it was in relation to a matter wholly within the jurisdiction of the Provincial Legislature: B. N. A. Act, sec. 92, sub-sec. 9.

GALT, J. (having consulted HAGARTY, C. J., C. P.)—There is no doubt that the whole of the proceedings of the Sessions were entirely irregular; but I see a difficulty in granting a prohibition. How is the appeal to be disposed of? If we could grant a conditional prohibition until the next Sessions we might relieve the appellant, but it cannot be disputed that there was jurisdiction to *entertain the appeal.* Are then the facts, that a jury was sworn to try the appeal, and that improper evidence was received, reason for granting a writ of prohibition? I think not. The judge might accept the verdict of the jury, and make it the judgment of the court. I do not think that the other ground taken by the summons, that the Sessions proceeded without evidence, can be put higher than the admission of improper evidence, and this is no ground for a prohibition.

The summons must be discharged, but under the circumstances without costs.

*Summons discharged without costs.*

## REVIEWS.

THE CANADIAN MONTHLY AND NATIONAL REVIEW. Adam Stevenson & Co., Toronto. Nos. 1 and 2. (Price $3 00 per annum.)

So many attempts to establish a periodical in this country which should be a vehicle for the development of English literature in Canada have resulted in failure, that every fresh attempt is regarded with some misgiving. Inasmuch, however, as Confederation has opened a wider field, both as a market and a source of supply, and as every year increases that field and adds to its fertility, we may hope that the effort now made will be attended with happier results..

Typographically, the new magazine is a credit to this country, and especially to Toronto, where the business of publication seems to be largely established. Nor do the contents of the first two numbers belie the neat, plain, yet attractive exterior. Sufficiently solid, without being heavy, they are like a well-baked home-made loaf, sustaining, yet easy of digestion. Variety prevails; but, thank the conductor, *no sensationalism.* May they ever avoid that rock on which so much of our periodical literature is wrecked, and rendered useless for everything but mischief!

To get at the best part of these numbers we must begin at the end, where the "Book Reviews" are to be found. The critique in the February number upon Mr. Freeman's historical essay is very interesting, and that upon Longfellow's "Divine Tragedy" is a gem, which even the warmest admirer of Mr. Longfellow cannot fail to appreciate, even if they are forced to the conclusion that for once he has made a mistake. *Query.*—Could not a nicer phrase than this be hit upon? Surely "Book Reviews" is not such English as so great a master of the language as we fancy we discover working here would undertake to defend. It smacks too much of that modern style which regards adjectives and substantives as possessing a difference without a distinction.

The magazine is not to be made altogether non-political except in a party sense; and here the Editors are probably right, for otherwise the publication would be deprived of a subject without which its professed character of a national work would be practically negatived. Nevertheless, to treat of such subjects in a judicious way so as to hit the happy mean of instruction, without "raising the dander" of either Grits or Tories, will be no easy task. The article upon "The Recent Struggle in the Parliament of Ontario" is very good, and comes within the rule that no party politics are to be discussed. The paper upon the Census of 1871 is full of suggestions of great value. And, in connection with this article, we are reminded that we have received a pamphlet published by Mr. J. C. Taché, controverting some of the views advanced by Mr. Harvey, and, perhaps, in some instances successfully. Mr. Taché says, correctly enough, that "the rate of increase of one period, in a young country yet undergoing the process of colonization and traversed by migratory currents, is no criterion whatever of the rate of increase of the next period. The population of Upper Canada was 465,357 in 1841 (end of that year), as ascertained by the census of that year; it was 952,004 in 1851 (end of the year); and 1,396,091 in 1861 (end of 1860), showing a total increase of 104 per cent. for one decenniad, and 46,000 for the period next following. But as the second period was made, in reality, only of nine years, the correct statement is to say that the annual increase was at the rate of

7.42 during the first, and 4.34 during the second period. This example shows the fallacy of calculations based on a mere regular geometrical progression." Again, when speaking of the supposed inaccuracy of the census, he alludes to the special re-numeration of St. Mary's which gave the population of that place as 3,178, taking nine months after the taking of the census, which gave the number as 3,120. It is, however a matter of notoriety that general disatisfaction exists on the subject of the last census.

We are glad that military matters, so essentially a part and parcel of this Canada of ours, are not overlooked, and so far that department has been well supplied by the pen of Lt.-Col. Denison.

We understand that the proprietors are determined that the want of immediate financial success shall not deter them from giving the enterprise a fair trial. That it will succeed we have no doubt, and that it includes among its contributors one so well known and so highly appreciated in the literary world as Mr. Goldwin Smith cannot but tend largely to that success.

The leading articles contained in the January number are, "The Washington Treaty," by Chas. Lindsey, Esq.; "Anne Hathaway—a Dialogue," by Dr. Wilson, of University College; "The Cavalry Charges at Sedan," by Lt.-Col. G. T. Denison, jun.; "Man's Place in Nature," by Prof. Nicholson, of University College; an article on the curiosities of Canadian Literature, by Dr. Anderson, of Quebec; the initial chapters of an admirably written story entitled "Marguerite Kneeler, Artist and Woman," by Miss Murray, of Wolfe Island; a Sketch of an Historical Night in the Old Canadian Parliament, by S. T. Watson, Esq.; two original poems—"Marching Out," and "January;" and a translation by Goldwin Smith, M.A., of the Opening of the Second Book of Lucretius, together with Tennyson's recent poem, "The Last Tournament."

The contents of the February number are—"The Canadian Census of 1871," by Arthur Harvey, Esq., of Toronto; a thoughtful article on Early Christian Art and Symbolism, by the Rev. W. H. Withrow, M.A., of Niagara; "Modern Dress" by Mrs. C. R. Corson; "A North American Zollverein," by Chas. Lindsey, Esq.; a description of "A Night of Terror in the Backwoods," by Mrs. Muchall, (not quite equal in style and tone to the other matter), and a capital article on the Recent Struggle in the Ontario Legislature, by a "By-stander." Marguerite Kneeler is continued in a style equal to its commencement, and the poetical contributions include "Marching In," "February," "The Bachelor's Wife," "One Woman's Valentine." The selections are excellent, embracing a biographical sketch of Henry Cavendish, a study of Hibernicisms in Philosophy, by the Duke of Argyle, and a critique upon Helps as an Essayist, by the Rev. Charles Kingsley.

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BLACKWOOD'S MAGAZINE for March

Is an unusually attractive number, and contains an eloquent and probably not an exaggerated sketch of the Life of General Lee, the greatest General that ever trod this continent and perhaps the third in rank of all modern Generals. There is also a paper by Cornelius O'Dowd, entitled "The American Revoke," and many other interesting articles all in the true Blackwood style. This number is of peculiar interest to readers here at the present moment. It has been republished very early by the Leonard Scott Publishing Company of New York. The following are the contents in full: — "A True Reformer"— "Voltaire" — Maid of Sker, Part viii"—"Autumnal Manœuvres"—"The Manchester Nonconformists and Political Philosophy"—"General Lee"—"Cornelius O'Dowd (The American 'Revoke'")—"Ministers before Parliament"

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WOOD'S HOUSEHOLD MAGAZINE. March, 1872. S. S. Wood & Co., Newburgh, N. Y.

This periodical, now in its tenth year, has with the present issue passed into the hands of the well-known Gail Hamilton, as editor-in-chief. With a frankness characteristic of her sex and country, this lady lets us know that her income exceeds $3,000 a year, that she means to make money for the proprietors, that she has secured, as contributors, such writers as Greeley, Portus, Beecher and Saxe—and that for a dollar per year the whole can be secured. Taking the average run of readers, something can be found in this magazine suitable for everybody, so diversified are its contents. We have found the stories not to be of that livid kind which induce nightmare and dyspepsia, but rather gentle sedatives, well adapted after a course of legal reading to tone the nervous system down to balmy sleep.