DIARY FOR JUNE.

1. Fri....Last day for delivering appeal books in Cour of Appeal.
3. SUN..1*st Sunday after Trinity.*
8. Fri....Law Society Convocation meets.
9. Sat....Easter term ends.
10. SUN..2*nd Sunday after Trinity.*
11. Mon..York Summer Assize.
12. Tues..General Sessions and County Court sittings, (ex-York).
17. SUN..3*rd Sunday after Trinity.*
20. Wed..Accession of Queen Victoria, 1837.
23. Sat....H. B. Com. Territory transferred to Dominion 1870.
24. SUN..4*th Sunday after Trinity.*
26. Tues..Law Society Convocation meets.

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THE
Canada Law Journal.

Toronto, June, 1877.

THE Court of Exchequer sat for the first time in Toronto last month, Mr. Justice Henry being the presiding Judge. He took occasion to say some few things about the Court House for the County of York. It is a pity the proper parties should not have heard the opinion of a stranger on the subject. It is certainly most discreditable to the county and city that nothing has been done "in the premises." The learned Judge read some new Rules of the Exchequer Court, which will be found in another place. After some appropriate compliments between the Bench and the Bar, the Court closed, the only case before it having been postponed by consent.

MR. EDWARD FRY, Q.C., is the new Judge who has been appointed under the third Supreme Court of Judicature Act. As stated by the Chancellor of the Exchequer in the House of Commons, the new Judge is not to be an additional Vice-Chancellor, but an additional Judge of the High Court of Justice attached to the Chancery Division, but if expedient to be removed to another Division. His immediate duty will be to assist in clearing away the enormous mass of cases that are undisposed of in the Chancery Division. Practitioners in England, however, would seem, from the *Law Journal*, to have lost heart, and look upon the block as hopeless.

LAW reporting in this Province is reaching a more satisfactory state. In the Common Pleas the cases are well up, and we suppose after this, the Reporter will be able to furnish some early notes of cases. In the Queen's Bench, where there has been much more work to be done, the arrears are rapidly dissolving before the industry of the Reporter; sixteen numbers, or a volume and a quarter, having been issued during thirteen weeks. Other numbers are ready to issue, and it is stated that all arrears are now in type, and will be issued before the next judgments are delivered. We have received from Mr. Wethey, and have published a number of notes of cases decided in his Court. In Chancery the leeway has been made up. We are also informed that the Practice cases up to the beginning of June are with the printer, and will be published, as also the Appeal cases to date, by the end of the month. The profession will be glad to see the cases up to date, so that the Reporters may apply themselves to a more systematic supply of early notes to be published in this journal, as directed by the Law Society.

THE LAW OF DOWER.

While the action, or plaint, for dower is almost unknown in England, this claim of the widow is a subject of frequent and difficult litigation in this Province. The judges and the legislators of Ontario have carefully preserved the ancient immunities of the widow, though the rights of married women have been for the last few years in a constant state of flux and change. The words of Lord Bacon, though no longer applicable in their entirety to England, are of full significance in Ontario. The tenant in dower, he says, is so much favoured, as that it is the common by-word in the law, that the law favoureth three things: (1) life; (2) liberty; (3) dower. It is somewhat singular that none of our law-writers have taken up this subject, which affords ample materials in the many modern decisions for a very useful and valuable treatise. Mr. Draper's book is now out of date, and at best was rather sketchy in character. In England, Mr. Park's book relates chiefly to ancient law and black letter cases; though very excellent and thorough, so far as it goes, it is half a century behind our requirements in Canada. The American work of Mr. Scribner is unnecessarily voluminous, and besides being badly arranged is filled with the manifold enactments and conflicting decisions of the various States of the Union. There is certainly a fine field for Canadian legal authorship in this region, and we hope that some competent student of our laws may regard it as a debt he owes his profession to embody his industry and research in a volume devoted to the law of dower.

There are in truth many anomalies, and many difficulties yet unsolved, and many decisions that cannot be reconciled to be met with in the investigation of this subject. It is held to be no objection to an action for dower, that the demandant has been in possession of the land since her husband's death, inasmuch as she has the right to have her dower specifically assigned: *Gilkison* v. *Elliott*, 27 U.C. Q.B. 95. The assignment of dower by the sheriff should be by metes and bounds; the heir may assign one-third in general of the estate, but in neither case is livery of seisin or any writing required, because, as it is said, dower is due of common right: *Fisher* v. *Grace*, 28 U.C. Q.B. 312. Therefore it has been held that as between the devisees and the widow a parol assignment of part of the land for the life of the widow in respect of her dower is good, and that such an agreement is not within the Statute of Frauds: *Leach* v. *Leach*, 8 Gr. 499.

A widow's claim to dower does not, in the absence of an assignment of dower out of the lands, give her an immediate estate in the lands, though she is in occupation of them, and ejectment is maintainable against her by the tenant of the freehold without demand of possession: *McEnally* v. *Wetherell*, 15 Irish C. L. R. 502. Against this is Sir Anthony Hart's opinion in *Lloyd* v. *Trimleston*, 2 Molloy, 81; see also *Talbot* v. *Scott*, 4 K. & J. 117. In this Province it has been held that the widow before assignment has not such an estate as a mere release can operate upon, and that a "quit-claim" deed to her so circumstanced was of no validity: *Acre* v. *Livingstone*, 26 U.C. Q.B. 282. From this judgment, Mr. Justice Hagarty dissented, and it cannot be said that the law on this point is settled. In *Collyer* v. *Shaw*, 19 Gr. 599, Strong, V.C., is reported as having disavowed his concurrence with the majority of the Court in *Acre* v. *Livingstone*, but the case is so baldly reported as not to carry much weight.

The right to dower, whether inchoate or consummate, is one of the few valuable interests which cannot be reached at law by execution to satisfy creditors: *Allen*

v. *Edinburgh Life Assurance Co.*, 19 Gr. 248; *McAnnany* v. *Turnbull*, 10 Gr. 298. In the latter case, Vankoughnet, C., argued thus: "Until the assignment, the widow merely has a right to procure dower; she is a mere stranger to the land and a trespasser, if she ventures on it; this right she may never assert; she may not choose to disturb the heir, or interfere with his freehold: and if she does not, who at law can do it for her? I asked in the argument if there was any instance to be found of an assignee of a dowery bringing a writ of dower in his own name. None such was shewn, and I am not aware of one." The point here is what can be done *at law*. For it had previously been decided in *Rose* v. *Simmerman*, 3 Gr. 598, that in equity, the widow may sell and convey her title to dower before assignment. This seems also to be the view taken, though with some hesitation, by Wilson, J., in the case of *Miller* v. *Wiley*, 16 C. P. 529, and again reported in 17 C. P. 369.

Whether a creditor can obtain equitable execution against the widow's right to dower before assignment is one of those nice questions which seems not to have been decided. Against it is the view presented in *Carrick* v. *Smith*, 31 U.C. Q.B. at p. 397; in favour of it is the course of decision in *Cottle* v. *McHardy*, 17 Gr. 342. Upon this matter it is not unreasonable that there should be legislative interference, so as to render this valuable right available to creditors, beyond peradventure.

But the strangest fluctuations of judicial opinion are to be found in the consideration of the question as to the rights against creditors of the widow who, during coverture, has joined in a mortgage to bar dower for the purpose of securing a debt of her husband. In *Sheppard* v. *Sheppard*, 14 Gr. 174, the Chancellor (Vankoughnet) held, that when the land in such a case sold for more than was sufficient to satisfy the mortgagee's claim, the widow was entitled to have her dower as of the whole value of the land out of the surplus in preference to the simple contract creditors of her husband. In *Thorpe* v. *Richards*, 15 Gr. 403, the same judge was of opinion that he had gone too far in the former case in giving the widow the value of her dower out of the entire estate to the prejudice of her husband's creditors. This change of view was adopted, and followed out into an actual decision by Mowat, V.C., in *White* v. *Bastedo*, 15 Gr. 546, where he decided that the widow had no equity to have the mortgage debt paid out of the general assets, as against the simple contract creditors, so as to set the land free to answer her dower. The law was laid down in the same way by the same Vice-Chancellor in *Baker* v. *Dawbarn*, 19 Gr. p. 118. And in *Campbell* v. *Royal Canadian Bank*, 19 Gr. p. 341, Spragge, Chancellor, said: "I think it must now be taken as settled that, as between the widow and creditors, she is dowable only in respect of the value of the land in excess of the incumbrance, *i. e.* of course, in a case where she is bound by the incumbrance. But lately, we understand the same question again arose in *Re Robertson*, (not yet reported), and Proudfoot, V.C., came to the conclusion that the judgment in *Sheppard* v. *Sheppard*, right and correctly expounded the law All this is unsatisfactory.

*CURIOSITIES AND LAW OF WILLS.**

It is easy enough to prepare such a will as, "All to wife," or, "Dear Polly, wen I ave gon, hall I av belongs to you, my dear Polly;" as soon, however, as one gets beyond these laconic documents

* The Curiosities and Law of Wills. By John Proffatt, LL.B., author of "Women Before the Law," &c., (Vol. II. of Legal Recreations). San Francisco: Sumner, Whitney & Co. 1876.

and begins to give something to the little ones, or to provide against the time when Polly, too, will shuffle off this mortal coil, the every-man-his-own-lawyer amateur begins to stumble and fall, even the professional reader of Swinburne occasionally becomes involved, and if, perchance, he is arranging his own affairs is very apt to provide business for his own successors at the Bar. For proof of this last statement we need only refer to the note to Hayes and Jarman's Concise Forms of Wills, where a catalogue containing the names of no less than fifteen legal luminaries is given, all of whom blundered over their own wills. On that black list we find such names as Mr. Sergeant Hill, Sir Samuel Romilly, Chief Justice Holt, Chief Justice Eyre, Sergeant Maynard, Baron Wood, Mr. Justice Vaughan, Vesey, Jr., the reporter, Preston, the conveyancer, and Lord Westbury. A Canadian list of similar defaulters might be begun, (32 Vict. (O.) cap. 74.)

The object of the little book under notice is not merely to entertain, but by reference to apt and striking cases to illustrate and expound the principles and rules of law relating to wills, and provide a systematic, clear and concise summary for the student and the practitioner, and an interesting volume for that fastidious individual—the general reader. It seeks not to supplant Jarman or Hawkins, Theobald, Redfield or Walkem, but to afford a manual which may serve as a refresher to minds weary of heavy reading, and give non-clerics a glimpse into the bewildering mazes in which last wills and testaments are involved and of the shadows that seem ever to group around them. Well and successfully has the author accomplished his task, and a great boon has he conferred upon his long suffering and heavily-laden-with-cumbrous-law-books confreres. His style is attractive and clear. The publisher, too, has well done his task, for it is a dainty little book, more like a volume of poetry than of law, printed—as it is—on tinted paper and tastily bound in muslin.

The making of a will is one of the most solemn acts of a man's life—hence the insertion of so many good words and pious ejaculations. Yet, solemn as the occasion is, many take advantage of it to freely speak their minds, to vent their spleen on ungrateful friends, to deride an unfeeling world, to give a last utterance to notions, eccentricities and prejudices. 'Tis well nigh impossible to predicate what may not be found in last wills and testaments. Some testators who, while able to retain their wealth, would not give even a cup of cold water to a beggar, leave enormous sums (which they know would be assuredly cremated if taken with them into another world) to endow a college, found a hospital, build a church; others leave their nearest and dearest to starve, while they bequeath millions for the benefit of far distant savages. Some wills are remarkable for their conciseness and perspicuity; others for their twisting and contortions; some for their great piety and contempt of things mundane; others again for their acidity, cynicism, shrewdness or humor. One man provides for a church, another for his dog; while a lady pensions off her dear and amusing Jacko, her faithful Shock, and her well-beloved Tib—monkey, dog, and cat, respectively, (p. 78). An Oxford professor left money to his executors to have his corpse skinned, the skin tanned, and then on it to have printed the Iliad and the Odyssy of the immortal Homer: Jeremy Bentham gave his body to the surgeons for dissection; while a third genius directed that his executors should "cause some parts of his bowels to be converted into fiddle strings, that others should be sublimed into smelling salts, and that the remainder of his body should be vitrified into lenses for optical purposes:" *Morgan* v.

Boys. One benevolent old gent left his money to portion off deserving old maids and let his own daughters pine in single blessedness for want of portions; another gave his property to set up a life-boat: *Johnson* v. *Swan*, 3 Madd. 457, and compelled his sons to paddle their own canoe; another gave his estate to plant a botanical garden, leaving his daughters to droop and fade away as wall-flowers: *Townly* v. *Bedell*, 6 Ves. 194.

Mr. Proffatt has in his introduction given us a number of extracts from curious wills, culled chiefly from the Records of Doctor's Commons, as given in the *Illustrated London News* some three or four years ago. A few of these will be good reading for this midsummer weather.

A Mr. Zimmerman had decided views on the subject of funerals; in his will he says, "No person is to attend my corpse to the grave, nor is any funeral bell to be rung, and my desire is to be buried plainly and in a decent manner, and if this be not done, I will come again—that is to say, if I can." The Countess of Sandwich directed that at her funeral there were to be "no undertaker's frauds or cheating, no scarfs, hat-bands, or nonsense." She evidently had Byron's idea, that in mourning coaches there's a deal of fun when the funeral's done.

Mr. J. W. Freshfield was so fearful of being interred alive, that by his will, proved in the last decade, he desired that previous to his burial his body should be opened, the heart effectually separated and then returned to its original position. Another testator for the same reason directed his heart to be pierced through with a red-hot iron.

Henpecked husbands often say in their wills what they have often thought but never dared to utter *viva voce*. Our author gives an interesting excerpt from the will of that broken-hearted man, whose wife heaven sent into the world solely to drive him out of it; of her the poor wretch writes: "The strength of Samson, the genius of Homer, the prudence of Augustus, the skill of Pyrrhus, the patience of Job, the philosophy of Socrates, the subtilty of Hannibal, the vigilance of Hermogenes, would not suffice to subdue the perversity of her character."

But for the credit of humanity, we are glad to be able to say that some wills bear testimony in the strongest and most affectionate language to the virtues and excellencies of wives. Mr. Sharon Turner, the eminent author of "The History of the Anglo-Saxons," in his will says of his dead wife: "None of the portraits of my beloved wife give any adequate representation of her beautiful face, nor of the sweet, and intellectual, and attractive appearance of her living features, and general countenance and character." While Mr. Granville Harcourt, who died in 1862, thus speaks of his living spouse: "The unspeakable interest with which I constantly regard Lady Waldegrave's future fate induces me to advise her earnestly to unite herself again with some one who may deserve to enjoy the blessing of her society during the many years of her possible survival after my life; I am grateful to Providence for the great happiness I enjoy in her singular affection." Mr. Harcourt was equalled by Mrs. Van Hennigh, who, after bequeathing to her husband all her property, and directing him to sell her old clothes to pay her funeral expenses, adds in her will, (proved in 1868), "It is also my earnest wish, that my darling husband should marry, ere long, a nice, pretty girl, who is a good housewife, and above all, to be careful that she is of a good temper." What a contrast do these last two wills present to the churlish stipulations anent the wife marrying again that one finds in so many wills!

Our author says that he cannot call to mind a single case in which a married

woman has sought by her will to restrain her husband from entering, for a second time, into the holiest of bonds, and he gives what would be a good reason if a correct one, viz., that they have not the privilege of doing so. He may be right in his statement of fact, for *Allen* v. *Jackson*, 1 Ch. D. 399, in Appeal, which decides the incorrectness of his law, was a case where a man's mother-in-law endeavored to keep him true to her daughter's memory.

We are favored with an extract from a will, which might form a useful precedent in these days, when bulls and bears run riot in the stock exchange; it speaks of heaven as a place "where there are no railways nor monetary panics, nor fluctuations in exchange." The well-known will of the Earl of Pembroke is given *in extenso*: some of the bequests are particularly good, especially where he gives nothing to Lord Saye, knowing that he will faithfully distribute it unto the poor; and to Lieutenant-General Cromwell, one of his (Pembroke's) words, the which he wanted seeing that he (Cromwell) had never kept one of his own; and the conclusion, "Item, I give up the Ghost."

A good portion is given of the first will in the English tongue, registered in Doctor's Commons, that of Lady Alice West, dated "the xv day of the month of Jul in the yer of the incarnacion of our Lord Thee Crist, a thousand and thre hundred and foure score and fiftene." She, among other bequests, proceeds as follows: "I devyse to Thomas, my sone, * * * my best fether bed, and a blue canevas and a materas and twey blankettys and a peyre schetes of reynes and sex of my best pilwes." Her Ladyship was religious, and gave £18. 10, "for to synge and saye 4400 masses for my lord Sir Thomas West is soule, and for myne, and for all Cristene soules," to be "done within fourtene nights after her deces." Cheap masses these, only a penny apiece!

The Introduction concludes with excerpts from the wills of William Shakespeare and Henry VIII. The poet gave nothing to his wife, save his "second best bed with the furniture."

Our author does not give us any poetical wills, although there have been several such proved. For instance, one of Mr. John Hedges', beginning:

"The fifth day of May,
Being airy and gay,
And to hyp not inclined
But of vigorous mind,
And my body in health,
I'll dispose of my wealth."

M. Darley inserts the date in his in the following words:

In seventeen hundred and sixty nine,
This with my hand I write and sign
The sixteenth day of October.
In merry mood, but sound and sober,
Past my three score and fifteenth year,
With spirits gay and conscience clear;
Joyous and frolicksome, though old,
And like this day serene, though cold.

One widow, Monica Sweeney, got off the following:

For this I never will repent,
'Tis my last will and testament;
If much, or little, nay, my all,
I give my brother Matthew Gall,
And this will hinder any pother
By sister Stritch or Mic my brother.
Yet stop: should Matt die before Mic,
And that may happen, for death's quick,
I then bequeath my worldly store
To brother Mic for ever more.
And should I outlive my brothers,
It's fit that then I think of others.
Matthew has sons and daughters, too,
'Tis all their own, were it Peru.
Pray, Mr. Forest, don't sit still,
But witness this as my last will.

Having whetted the appetites and tickled the palates of his readers by these curious productions, Mr. Proffatt brings on the substantials in his bill of fare—each dish, though highly seasoned, is most pleasant to the taste, very nutritious and easy of digestion; or, to be more literal he gives us eight most readable chapters, in which he treats of the origin and

history of wills, their form and essentials, testamentary capacity, legacies, limits of disposition, revocation, the law of domicile and rules of construction.

(To be continued.)

BENCH AND BAR AT THE ANTIPODES.

A copy of the *New Zealand Jurist* for February, 1877, is before us. In addition to usual editorial and selected matter it appears to be the recognised medium for reporting. This number seems devoted, rather than otherwise, to a general castigation of the Bench, with especial reference apparently to the Court of Appeal. We can hardly suppose that a barrister of the Middle Temple, the editor of a recognised organ of the profession, would write in the strain he does without some good reason. We are not sure that a freer criticism upon judicial utterances in this country might not occasionally have a good effect. In England it is the rule rather than the exception. The difficulty with us lies in the danger of lowering the office in the eyes of the public, especially in a country which lies so near a people whose levelling tendencies are so notorious. We need say nothing of the almost impossibility in a small community of securing the impersonality of the press, and consequent unpleasantness, where the writer must of necessity, in a country like this, constantly appear, professionally, before the judge whom he has been criticising.

Our friend from the antipodes thus discourses of the Chief Justice of New Zealand:

"A Chief Justice is usually supposed to be the master mind of the Court in which he presides; and, as a matter of fact, he usually is. It is also usually considered that he is entitled to take precedence of his brethren in all matters coming before the Court; and, as a matter of fact, he usually does. The Chief Justice of New Zealand forms a singular exception to the rule. Evidently moved by excessive modesty, he takes pleasure in yielding precedence to his brethren, making no pretension to sway the legal realm of which he is the titular monarch."

The Court catches it in the following, and apparently not without reason:

"The judgment of the Court of Appeal in *Webb* v. *The National Bank* has occasioned a good deal of surprise. In the first place, the Court arrests the judgment without costs, but no reference is made by their Honours to Rule 363, which contains an express provision as to costs in these cases. The result is that the plaintiff gets the costs of the trial, and the defendants—the successful party—have to pay their own costs throughout. If this Rule did not escape their Honours' attention, on what grounds did they ignore it?"

"It is just as well that the litigant public know nothing of the manner in which their business is blundered in the Courts. Two remarkable instances present themselves in the present number of the Jurist. In *Bird* v. *The National Bank*, the defendants omit to plead privileged communication; and when they apply for leave to amend at the trial, the learned Judge refuses the application, for reasons which seem a good deal worse than the ruling. Which are we to admire most—the pleader or the Judge? In *Webb* v. *The National Bank*, the spectacle is still more ludicrous. After a lengthy trial, and two elaborate arguments of the inevitable rule *nisi*, it is discovered by their Honours in the Court of Appeal that the plaintiff has no status entitling him to sue, by reason of a technical error in the vesting order obtained under the Trustee Act, for the purpose of enabling him to sue. This discovery has probably cost the parties not less than £1,000."

From which last remark we assume that the judges there are more liberal than they are here in the way of costs.

The leading article discusses what is called "another loose proceeding" on the part of the Court in a case of infanticide, where the question of the *corpus delicti*, *&c.*, came up. We should imagine, either that this plucky Editor has very little business, and does not want any more, or that the Judges of the Court are blessed with sweeter tempers than fall to the lot of most of the Judges that we know of.

SELECTIONS.

NEUTRALITY.

Neutrality, as Lord Chief Justice Cockburn explained at Geneva, is not a mere continuance of pacific relations with the belligerents, but a *status* involving special and important obligations. The Proclamation issued on Monday night sets forth several reasons for the due observance of those obligations. There are numbers of Her Majesty's subjects who reside and carry on commerce, and possess property and establishments, and enjoy various rights and privileges within the dominions of the belligerent sovereigns, who are protected by the faith of treaties, and who would no longer be entitled to such protection if pacific relations ceased; and the non-observance of neutrality, at least when such non-observance is sanctioned or connived at by the Government, is a *casus belli*; and this is intimated in the next paragraph of the Proclamation, which assigns, as a ground for maintaining a strict and impartial neutrality, the desire of preserving to this country the blessings of peace. Another reason for being faithful to the obligations of neutrality is that England has always claimed to exercise the belligerent rights which we now concede to Russia and Turkey. Thus, the bargain is not altogether one-sided. True, the belligerent gives the neutral no direct compensation for the exercise of those belligerent rights which interfere with the commerce of the neutral; but, on the other hand, the belligerent continues, in time of war, to protect the persons and property of neutrals within his jurisdiction; and, further, the neutral only suffers the inconvenience and injury that he will inflict on other nations when he is a belligerent. In a word, neutrality is not only the duty, but also the interest of the neutral. The Alabama affair is a warning not to be neglected by a neutral Government. The Act 33 & 34 Vict. c. 90—which is 'An Act to regulate the conduct of Her Majesty's subjects during the continuance of hostilities between foreign States with which Her Majesty is at peace,' and which repeals the 59 Geo. III. c. 69—is an evidence of the desire of the country to fulfil the obligations of neutrality; and it is noteworthy that the Act was in force during the war between Germany and France, and that during that war England was not guilty of such breaches of neutrality as called for the remonstrances of either of the belligerent Governments. The Proclamation of Her Majesty, and the letter of the Foreign Secretary to the Lords of the Admiralty, and other departments, are evidences that the Government intends to exercise due vigilance. We may here remark that it is necessary for the Government to observe the rights of the belligerents, in order that it may be in a position to protect neutral rights; such as the rights accruing under the Declaration of Paris, the right to use a port that is not *effectively* blockaded, and we apprehend the right of transit by water-way to the territories of other neutrals. Among the few settled principles of international law is this, that no nation has a right to do anything to injure another; and though, as we have remarked, a belligerent may, and is allowed to, inflict some direct as well as indirect injury on neutrals, the foregoing fundamental principle is still so far in force that the rights of the belligerent in derogation of it are definite and limited. For example, the right of the belligerent to prevent neutral commerce with his foe is incontestable; but he cannot exercise that right by a mere prohibition, or in some way that is convenient to himself, but which inflicts needless injury on neutral commerce. Thus, a port is not blockaded by a mere announcement of the blockade; for the object of the declaration of blockade is only to give neutrals proper and requisite notice that they must cease to trade with that port. What constitutes a blockade is an effective blockading force. A mere paper blockade would be a loss to the nation which observed it, and a gain to the nation which disregarded it. And, further, to treat a paper blockade as a real blockade would be a breach of neutrality; for, why should the neutral treat the port of a belligerent as blockaded when it is in fact open? It might be convenient for Turkey to blockade the Danube; but why should the commerce between neutrals be interrupted in order that Turkey may be spared the trouble of ascertaining whether the vessels using the Danube are or are not engaged in a neutral traffic? The neut-

ral has to assert the rights of neutrality as well as to fulfil its duties.

The Proclamation does not make the law, but is a declaration of the law. The Proclamation does not suggest that the Act was in abeyance, for it says: 'Now, in order that none of our subjects may unwarily render themselves liable to the penalties imposed by the said statute, we do hereby strictly command that no person or persons whatsoever do commit any act, matter, or thing whatsoever contrary to the provisions of the said statute, upon pain of the several penalties by the said statute imposed, and of our high displeasure.' The Proclamation is a recital of the law, and an admonition to obey it; and the preamble only sets forth the reasons for issuing it. But though a proclamation of neutrality is only declaratory of the law, it alters the position of the shipbuilder; for the Act provides that 'a person building, causing to be built, or equipping a ship in any of the cases aforesaid, in pursuance of a contract made before the commencement of such war as aforesaid, shall not be liable to any of the penalties imposed: 1. If forthwith upon a proclamation of neutrality being issued by Her Majesty he gives notice to the Secretary of State that he is so building, causing to be built, or equipping such ship, and furnishes such particulars of the contract and of any matter relating to, or done, or to be done under the contract as may be required by the Secretary of State. 2. If he gives such security, and takes and permits to be taken such other measures, if any, as the Secretary of State may prescribe for insuring that such ship shall not be despatched, delivered or removed without the license of Her Majesty until the termination of such war as aforesaid.' This does not assert that the work of building or equipping is lawful even on a contract entered into before war, after war is commenced; but that, in such a case, the person offending against the Act—that is, illegally building or illegally equipping after the commencement of war and before the Proclamation of neutrality—shall be free from liability to the penalties if he complies with certain conditions when the Proclamation is issued. The law is prohibitory, not mandatory. The neutral obligation is not to do anything, but to abstain from certain acts that would aid and abet either of the belligerents. Neutrality is not mere impartiality. Equipping ships of war for both belligerents is not neutrality. For many reasons, which we need not specify, the law of neutrality prohibits the neutral from giving either belligerent any aid. The Act forbids enlistment in the service of any foreign State at war with any foreign State at peace with Her Majesty; leaving the Queen's dominions with intent to take such service; inducing any person to quit the Queen's dominions, or to embark on any ship within the Queen's dominions, under a false representation, of the service in which such person is to be engaged, with the intent or in order that such person may accept, or agree to accept, any commission or engagement in the military or naval service of any foreign State at war with a friendly State; taking persons illegally enlisted on board a ship; illegal shipbuilding, or illegal expeditions—that is, building a ship for a belligerent that is to be used as a ship of war, or fitting out a warlike expedition—aiding the warlike equipments of foreign ships; and any person who aids, abets, conceals, or procures the commission of any of the offences against the Act, is liable to be tried and punished as a principal offender. No one can complain that the Act is not comprehensive with respect to the offences and also to the offenders.

The Act deals mainly with offences that are, by that Act, violations of the municipal law, as well as breaches of neutrality. The Proclamation also refers to breaches of neutrality that are not municipal offences, and that are not punishable by our courts. The non-municipal offences are breaking, or endeavouring to break, any blockade lawfully and actually established by or on behalf of either of the said sovereigns, by carrying officers, soldiers, despatches, arms, ammunition, military stores or materials, or any article or articles considered and deemed to be contraband of war according to the law or modern usages of nations, for the use or service of either of the said sovereigns. What is the penalty for such offences? The Proclamation says: 'All persons so offending, together with their ships and goods, will rightfully incur, and be justly liable to, hostile capture, and to the penalties denounced by the law of

nations in that behalf. And we do hereby give notice that all our subjects and persons entitled to our protection who may misconduct themselves in the premises will do so at their peril and of their own wrong; and that they will in nowise obtain any protection from us against such capture, or such penalties as aforesaid, but will, on the contrary, incur our high displeasure by such misconduct.' The trade in contraband is not unlawful—at least not municipally unlawful—but it is carried on at the risk of the trader and of all concerned in it. The neutral sovereign warns her subjects that if they commit any breach of neutrality which is not a breach of municipal law, though a breach of the law of nations, they will forfeit the protection of their own Government, and will be liable to the penalties decreed by the law of nations. It would no doubt tend to shorten wars if the municipal law were made coextensive with the law of nations, and could be enforced; for then the belligerents would be cut off from all foreign supplies, and their means of continuing the conflict would be limited to their own stores and resources. But it would be difficult to devise an Act that would make the municipal law coextensive with the law of nations in respect to neutrality; and, further, it would be utterly impossible to prevent the breach of such a law. No legislation and no vigilance on the part of neutral Governments can stop trade in contraband. The neutral Government is fortunately only responsible for those breaches of neutrality which are also breaches of its municipal law, and which it ought to have prevented by due vigilance.—*Law Journal.*

RUFUS CHOATE.

Although endowed with great intellectual powers, Mr. Choate was as careful, methodical and solicitous in regard to mental helps as any student who might have been less conscious of innate strength. He would seem to have been mindful that the summit of excellence was to be approached by a road open to all; that those who could pass on easily and swiftly, and those less favored by nature, but of superior diligence, might finally reach the same destination. Thus, regarding genius as a mere capacity to acquire knowledge and to use it, he gave himself up to continuous toil.

Some perils attend students who possess great intellectual powers. From the hour when such a one first realizes how receptive he is to suggestions of truth and beauty, how readily the barriers which impede others yield to his touch, he is liable to become the victim of a delusive self-confidence, and to accept the notion that the harmony and fruitfulness of his life will be of spontaneous growth. As he seems to apprehend the less occult relations of things by intuition, he regards close and prolonged study as unnecessary. So, content with some appearance of culture, he falls into easy ways, goes through life as the lounger saunters through the streets. He bears to true learning the relation which the slothful miner has to the mine as he gathers up the bits of precious metal exposed to view, without acting upon the hints nature has given of the wealth hidden below the surface. Another student, of like gifts, moves on earnestly, acquires knowledge, does some good work. Having found that what he should learn is easily attained, he assumes that there need be no end to his acquisitions. Like the student in Faust, he confers with the evil spirit, and is encouraged to enquire into mysteries too deep and profound for his apprehension. He takes to such studies, and, thenceforth, swims not with the current but against it. He is vain, superficial, weak in proportion as he shakes off the influence of natural laws, the checks and hindrances designed to hold him in restraint, and which are as necessary for his safety as the wall built at the edge of the precipice, or of the road by the river is for the protection of travellers. He undertakes to inform the schoolmen in their specialties, and his speculations upon religion, science, the nature and relation of man, partake of the artificial texture of his life, but they are printed and in the hands of inquiring readers. As he has performed some good work in other departments, his speculations secure respect and confidence. So his best efforts have an evil influence.

As Mr. Choate escaped the perils which beset students in their early growth, it would be interesting could we know to what that good fortune may be ascribed.

Some may refer it to the incentives of ambition, of self-respect, of pride, taste or temperament, and such incentives may enter largely into the question. But in this instance beneficent influences acting upon a delicate, docile, susceptible, emotional nature, had been at work in advance of the schools. The boy went into those schools with his mind stored with good examples. The family training had given a proper bias to the affections; lessons from the Bible, from Watts' hymns and psalms, from the church service, from the poets and from history, had inspired a love of the true and beautiful, and he had read enough of biography, of travels, to impress him with the dignity of earnest efforts, self-sacrifice and heroism. The case is not thus stated too strongly. What should be said of the strength and maturity of one who, as Professor Brown tells us, had devoured the "Pilgrim's Progress" before he was six years old, had nearly exhausted the village library before he had reached his tenth year; whose taste and delicate sense of the use of words were such that when nine years of age he could point out an inappropriate word in a discourse? The preacher, after citing Paul, had added, "Even James says, etc." The young critic thought that the word *even*, as thus used, implied some disparagement of the Apostle James. But, without extending these statements, it is apparent that young Choate went out into the world with large moral and intellectual preparation. He carried the devotion, the genial spirit of his home life into the schools. The light of the early love never faded from his brow. He was thus prepared to exercise the manly patience given to his riper studies. The methods observed, as he sought to store his mind with lessons of the ancient and modern prudence, with such examples, maxims, images, analogies, such conceptions of principles as should enlarge his range of thought, enrich and vivify his language, chasten his style and make his public ministrations more efficient and acceptable, deserve the attention of students.

Mr. Choate knew the need and use of study; he also knew the limitations which were to be respected. A conservative spirit held him in restraint, repressed longings to slake his thirst at fountains placed beyond his reach. With firmness and prudence he refused to follow a friend into the labyrinths of German mysticism or to explore the extended domains which Swedenborg had made his own. This economy was becoming in him, not simply because he did not wish to be "shocked, waked, or stunned" out of settled convictions, but because the duties before him, with the related studies, would consume his time and strength. Whatever his estimate of his own powers might have been, he knew that the Universal Genius, so called, was as fabulous as the Scandinavian Troll or as the Schamir, the worm that ate stone, and which, according to a Jewish superstition, had been used in preparing the stones for Solomon's Temple. So he put by studies that seemed too remote from his purpose, as ostentatious or improvident. He never lost his balance by reaching out too far, or, like one of old, walked into the water while gazing at the stars.

Mr. Choate's study of the cases in which he was to appear as counsel was exhaustive. Each case was tested and tortured until every conceivable shade of strength and of weakness was revealed. His son-in-law, Mr. Bell, has described the method, and Judge Fancher's statement of the preliminary examinations of the case in which Mr. Choate was associated with him, is of a like character. He studied the cases, pen in hand. The facts and qualifying circumstances, with the decisions and principles applicable, were noted in a little book. A like book was kept by Erskine. Mr. Espinasse says that Erskine brought his arguments into court in a little book, and even after long experience as a barrister, used to read and cite cases from it. On one occasion his opponent affected to ridicule that method, and, with a sneer, said he wished Erskine would lend him his little book. Lord Mansfield said "it would do you no harm, Mr. Baldwin, to take a leaf out of that book, as you seem to want it." Mr. Erskine may have been in the habit of citing cases from his memorandum books to a greater extent than Mr. Choate. He thus used his book in debate when he claimed that the trial of Warren Hastings had ended with the dissolution of Parliament. Edmund Burke, not able to control his temper when excited by opposition of any kind in reference to that trial, had a

fling at "ideas which never travelled beyond a *nisi prius* case," and a sneer for the note book. But in this relation it is pleasant to recall the spirit in which, a short time before his death, Burke called on Erskine, and holding out his hand said, "Come, Erskine, forget all! I shall soon quit this stage, and wish to die in peace with everybody, and especially with you." But we confess that we have always had great respect for Mr. Choate's little books as evidencing the care given to the preparation of his cases, the security against possible confusion or forgetfulness. How else could counsel who goes into the argument of case after case on the same day, do full and exact justice to each of them? It is said that Sugden once got hold of the wrong brief, and argued in support of his adversary. A like mistake is reported of Dunning. Neither of them had kept the little books. Neither did our former attorney-general, Samuel A. Talcott, who made a like blunder. As he was about to close, the attorney of the party came into court and in a troubled whisper told him of his mistake. Not at all disconcerted, and artfully concealing his error, Mr. Talcott re-arranged his papers and said: "May it please the court, I have thus presented fully and fairly, the case as understood by my learned friends opposed. I shall now proceed to show that that view of the case is utterly erroneous." The late B. Davis Noxon, who was present, told me that the promise was made good; that the argument that followed was one of the most able and brilliant he ever heard from that distinguished counsel.

Mr. Choate's study of the law, apart from his preparation in particular causes, and from those in which he had been concerned, was extraordinary. In the range of legal biography to which we have had access, we do not recall an instance of equal devotion. His methods of noting the facts of cases reported in the books, and writing out opinions, as if for judicial use, of preparing arguments in support of the decisions or against them, of criticising the authorities cited, and finding others to confirm or qualify them, of seeking to discove how far a doctrine underlying a series of adjudications might have been fortified or made to appear more just in the light of history, reason, and of scientific tests, have been from time to time so fully stated in this Journal that present illustration is unnecessary. Such a course of study, so close, symmetrical, critical, deserves great respect. But an entry here and there, in his diary and journal, as he notes how he applied his morning hour, seems articulate with admonitions. He has a few moments with the poets, with historians, with the critics, and then the genius of the law beckons him away. Thus, he says, "I have read and digested a half-dozen pages of Greenleaf on Evidence, and as many of Story on the Dissolution of Partnership;" and, later, "I read Phillips' Evidence, beginning at title 'Incompetency,' and commonplaced a reference or two;" and, yet again, later, and while in London, after saying, "Mr. Bates called and made some provision for our amusement," he adds, "I read bible, prayer book, a page of Bishop Andrews' prayers, a half dozen lines of Virgil and Homer, and a page of Williams' Law of Real Property." All this and more, to keep the law, even in its simplest elements, fresh in mind, a purpose from which not even the delights of travel, of new scenes, of courteous fellowship, could wholly divert him.

The fruit of such devotion was wholesome and nutritious. Thus trained and strengthened, his vision could take in, as from a tower of observation, the domain of the law. It lay before him as a familiar and inviting landscape. The practical benefit was obvious. On a trial or an argument, when unexpected difficulties might arise and an appeal be made to principles and noted in his "little book," the countervailing doctrine was in his mind ready for use.

The law thus faithfully pursued, leads to logic, to ethics, to metaphysics, and in a word, to the whole scope of special sciences. Even such views of it may not indicate adequately, certainly not with precision, Mr. Choate's estimate of the law as pervading all space, and subordinating to its use all knowledge. If so, that estimate may reveal to us the reasons which led him to more enlarged and liberal studies than are commonly regarded as necessary to the profession.

—*Am. Ex.*

NOTES OF CASES.

IN THE ONTARIO COURTS, PUBLISHED IN ADVANCE, BY ORDER OF THE LAW SOCIETY.

QUEEN'S BENCH.

[Dec. 29, 1876.

Regina v. Jackson.

Indictment for obstructing highway—Previous conviction—Estoppel—Costs—Fine.

Where a defendant had been convicted of nuisance in obstructing a certain highway by a fence, and after removal of such fence by the thing under process, replaced it upon the same highway, though not precisely in the same line as before—*Held*, that the former conviction was conclusive against the defendant as to the existence of the alleged highway, and that he could not again raise the question on this.

Where the indictment was removed into this Court *by the prosecutors*: *Held*, that the defendant was not liable to costs; but the Court ordered that one-third of the fine imposed should go to the prosecutors, and suggested that the Government might on application order the remaining two-thirds to be paid to them, the whole fine being less than the costs incurred.

Ferguson, Q.C., for Crown.
M. C. Cameron, Q.C., for defendant.

Regina v. Portis and Gilbert.

Forgery—Evidence.

On an indictment for feloniously offering, &c., a forged note commonly called a Provincial note, issued under the authority of 29 & 30 Vict. cap. 10, D., for the payment of $5. It appeared that the prisoners had passed off a note purporting to be a Provincial note under the statute, knowing that the figure 5 had been pasted over the figure 1, and the word five over the word one. No evidence was given that the note so altered was a note issued by the Government of Canada, but it was shewn further, that when the attention of the prisoners was called to the alteration they said "give it back if it is not good," and that on its being placed on the counter one of them took it up and refused to return it, or substitute good money for it. *Held*, that looking at the particular character of the forgery—*i. e.*, an alteration—and the conduct of the prisoners, the onus was on them to dispute the validity of the writing; and the conviction was sustained.

J. K. Kerr, Q.C., for Crown.
Glass, Q.C., for prisoners.

Regina v. Starr.

Larceny—Recent possession—Evidence.

On an indictment for stealing cooper's tools on the 5th of November, 1874, it appeared that the prisoner was not arrested for nearly two years afterwards. During that time—it was not shewn precisely when—he was proved to have sold several of the tools at much less than their value, representing that he was a cooper by trade, and was going to quit it, which was proved to be untrue: that he was in the shop from which the tools were stolen the night before they were taken, and frequently; and that when arrested he offered the prosecutor $35 to settle and buy new tools, and offered the constable $100 if he could get clear.

Held, that though the mere fact of the possession by the prisoner, after such a lapse of time, might not alone suffice, yet that all the facts taken together were enough to support a conviction for larceny.

J. K. Kerr, Q.C., for Crown.
No one appeared for the prisoner.

In Re Bates.

Conviction—Certiorari—38 Vict. cap. 4, O.—By-law.

In the case of a conviction for an offence not being a crime, affirmed on appeal to the Sessions, the writ of *certiorari* is not taken away by the 38 Vict. cap. 4, O.

Where the conviction purported to be for an offence against a by-law, but shewed no such offence, it was quashed; and it was held, that it could not be supported as warranted by the general law.

Osler for the applicant.
M. C. Cameron, Q.C., for the convicting magistrate.

Parkinson v. Higgins.

Mortgage of vessel—Purchase by mortgagee—Loss of vessel—Right to sue for mortgage money.

Declaration on defendant's covenant by deed to pay money. Plea: that the deed mentioned was a mortgage and re-conveyance of a vessel sold by plaintiff to defendant, to secure the purchase money therefor; and that while the plaintiff was mortgagee the said vessel and all defendant's interest therein was sold, and the plaintiff became the absolute owner of said vessel, whereby the mortgage became merged and satisfied. Replication, on equitable grounds,

that the vessel, being a British ship, was seized for wages due to the crew, and sold at Detroit, in the United States, solely through defendant's default: that by the law of the United States the wages formed a lien prior to the mortgage, and the plaintiff, wholly to protect himself, and not to gain any advantage over defendant, became the purchaser: that he offered and was always willing to reconvey and deliver her to defendants on being paid the mortgage money and the sum paid by him at such sale, which defendant refused to pay: that the plaintiff, having possession of the vessel, insured her, and on her loss by the perils of the sea received the insurance money, which the plaintiff is and always has been ready to apply on the purchase money.

Held, on demurrer, affirming the judgment of Gwynne, J., a good replication, for that the plaintiff, under the circumstances stated, was not precluded from recovering on the covenant.

Ferguson, Q.C., for plaintiff.

H. J. Scott, for defendant.

Regina v. Cooper.

Indictment for obstructing highway—Costs—5-6 W. & M. cap. 11—Fine.

A township municipality prosecuting an indictment for obstructing a highway in the township, which indictment had been removed on defendant's application into this Court, and the defendant convicted thereon: *Held*, to be "the party aggrieved" within the 5-6 W. & M. cap. 11, sec. 3, and the defendant, having to pay their costs and his own, amounting to over $400, was fined only $1.

Badgerow for Crown.

No one appeared for defendant.

[Jan. 2, 1877.

Hallett v. Wilmot and Brown.

Action against Magistrates—Pleading—Damages.

A count alleging that defendants were justices of the peace, &c., and assuming to act as such justices, but without any jurisdiction or authority in that behalf, caused a distress warrant to be issued against the plaintiff's goods for $56, which they had adjudged the plaintiff to pay under and by virtue of a certain conviction made by them without any jurisdiction, and caused the plaintiff's goods to be sold thereunder, which conviction was afterwards duly quashed on application of the plaintiff to this Court, whereby the plaintiff lost the use and value of his goods, and was put to costs in getting the conviction quashed:

Held, a count in trespass; and that the plaintiff was properly non-suited, the cause of action being the seizure of the plaintiff's goods under three warrants, given upon conviction of the plaintiff, for alleged offences under the Act relating to the sale of spirituous liquors, two only of which had been quashed, and a conviction for assault; and therefore an act done by defendants in the execution of their duty, as justices, with respect to matters within their jurisdiction.

Quære, if the plaintiff had been entitled to succeed in trespass, whether he could have recovered the costs of quashing the convictions as damages.

H. Cameron, Q.C., for plaintiff.

Armour, Q.C., for defendants.

Beltz v. Molson's Bank.

Cheque—Alterations in date—Payment by Bank—Negligence.

The plaintiff, a merchant and customer of defendants' bank, having a note payable there on the 28th January, 1873, made a cheque payable to himself or bearer, and left it with defendants to meet the note. The cheque however was not used for that purpose nor returned to the plaintiff, but the note was paid by defendants charging it to the plaintiff's account. The cheque was afterwards, on the 31st January, 1874, presented to the defendants by some one unknown, the year having been changed from 1873 to 1874, and it was paid by defendants without noticing the alteration, and charged to the plaintiff's account. How it got out of defendants' bank was not ascertained.

Held, that the alteration avoided the cheque that defendants therefore were not warranted in paying it; and that the plaintiff was entitled to recover back the money.

Quære, whether if the check had not been void, the defendants on the ground of negligence, would in the facts more fully stated in the case, have been liable to the plaintiff for paying it.

Per Wilson, J., the cheque must be considered to have been paid when the note for which it was given, was handed over by defendants to plaintiff, and on that ground defendants could not have been made liable upon it.

Robinson, Q.C., and *Rock*, Q.C., for plaintiff.

Magee for defendants.

MECHANICS' BUILDING AND SAVINGS SOCIETY v. GORE DISTRICT MUTUAL FIRE INSURANCE CO.

Mutual insurance policy—Assignment to mortgagee—Subsequent insurance by mortgagor—Effects of on rights of mortgagee—Pleading.

A mortgagee, becoming assignee of a policy under the Mutual Insurance Act 36 Vict. cap. 44, O., by an assignment duly ratified by the company, becomes—whether he has given his own note, or the directors had assented to retain the premium note of the mortgagor—a person insured to the extent of his own interest, and is, in the event of loss, entitled to recover in his own name to the extent of his claim. By such assignment he acquires a separate independent interest under the policy, and he is not bound by a contract for further insurance made by the mortgagor without his knowledge, and which he could not prevent, nor by any acts of a similar kind beyond his control.

Held, that although the assignment might by agreement so bind him, the terms of the assignment here were not sufficiently clear to have that effect.

The declaration alleged that defendants by their policy insured one B. for $3,000 on a manufactory and stock: that afterwards with defendants' knowledge and consent, he assigned all his interest in the policy to the plaintiffs, as collateral security for a mortgage by B. to them for $3000, or the property insured: that defendants ratified and confirmed said policy to and in favor of the plaintiffs: that the premises were burned: and that by force of the statute the plaintiffs became under the said assignment interested in the said policy as the insured, and entitled to all rights as if they had been the original parties insured.

Defendants pleaded that the assignment was accepted by plaintiffs, and the consent given by defendants, subject to the condition that the plaintiffs should be bound by all the terms and conditions of the policy, as B. was bound by the same, and that the policy should continue voidable as though such assignment had not been executed, and that said policy was not otherwise ratified or confirmed to the plaintiff: that it was a condition of the policy that any insurance on the premises by the act or with the knowledge of the insured in any other company, without the consent of defendants, should avoid the policy; and though B. effected other insurances specified with defendants' consent.

The plaintiffs replied, that the said assignment was not accepted by the plaintiff, nor was defendants' consent thereto and the ratification by them to the plaintiffs, as in the declaration and plea mentioned, on the terms or subject to the condition that the plaintiffs should be bound by any terms which would render the policy voidable by any act or omission of B.; but by virtue of said assignment, consent and ratification, the plaintiffs became entitled to all the rights and subject to all the conditions to which B. had been subject, before the assignment, &c., but not otherwise; and that the said insurances effected by B. were without the plaintiffs' consent or knowledge; 3. that the alleged insurances effected by B. were not of the same interest as that insured by the plaintiffs under said policy in the declaration mentioned, and said insurances were not effected by plaintiffs or with their knowledge or consent.

Held, that the second replication was bad, as being in effect a demurrer to the plea, and neither traversing nor confessing and avoiding it; and that the plea was bad and the third replication good.

D. McCarthy, Q.C., and *B. B. Osler*, Q.C., for plaintiffs.

F. Osler and *Durand* for defendants.

[Feb. 6.

JOHNSTONE v. WHITE.

Husband and wife—Separate estate—C. S. U. C. cap. 73, 35 Vict. cap. 16—Ejectment—Outstanding term.

The plaintiff was married to her present husband in 1859, without any marriage settlement, and he before that year had reduced into possession the land in question.

Held, that she was not entitled to sue for it without joining her husband in ejectment. Either under C. S. U. C. cap. 73, or 35 Vict. cap. 16, O., such land not being her separate property, and the husband's interest not being divested by the last mentioned Act, and that she would not have been entitled even if her husband had not reduced it into possession.

The patent issued in 1836 to C., who apparently had made some agreement for sale to D.; who transferred it to the plaintiff. The plaintiff in 1846 conveyed the land to her sons, and in 1862 a deed for a nominal condition, was executed by C. to the plaintiff. The learned Judge, who tried the case without a jury, having found that this last deed was made to the plaintiff as a trustee to enable the title of her sons to be perfected: *Held*, that on this ground also the land could not be her separate estate.

The evidence shews that the plaintiff's son had for some time been in possession as a tenant under lease, at a year's rent. *Semble*, per HAR-

RISON, J., that this also would have been a bar to plaintiff's action.

Bethune, Q.C., for plaintiff.

Beaty, Q.C., for defendant.

IN RE JOHNSON AND THE CORPORATION OF LAMBTON.

Temperance Act of 1864—Voting for By-law—Poll closed too soon.

Where a by-law under the Temperance Act of 1864 had been carried in a county by 193 majority, but it appeared that in one township where the names of the qualified municipal electors on the assessment roll were more than 800, the poll was left open only two days, leaving 250 votes unpolled there, the by-law was set aside.

The names of owners appearing in the sixth column of the roll, under the heading "Owners and address," should be counted, in order to ascertain the number of electors, although not appearing in the second column headed, "Name of occupier or other taxable party," and not bracketed or numbered in the first column.

C. Robinson, Q.C., for applicant.

Bethune, Q.C., for county.

STONESS V. LAKE AND WALKER.

Conviction—Insufficiency of information—Waiver of—Variance between conviction and warrant—C. S. U. C. cap. 126, sec. 17.

The plaintiff, on an information against him under 37 Vict. cap. 32, O., for selling liquor without a license, was brought before the defendants, magistrates. It was proved that this was his second offence, though the information did not charge it as such. The plaintiff disputed the evidence as to the first conviction, but did not object to the information, and the magistrates convicted and adjudged him to be imprisoned for ten days, which they had power to do only for a second offence. *Held*, that the plaintiff had waived the objection to the information, and that defendants were not liable in trespass.

Held, also, that the variance between the conviction and warrant, the former saying nothing as to hard labor and the latter providing for it, could not deprive the defendants of protection under the statute Con. Stat. U. C. cap. 126.

Held, also, that in any event defendants could not have been liable for plaintiff's suffering caused by the harsh regulations of the prison during his confinement; and that having been proved to have been guilty of the offence for which he was convicted, he could have only recovered three cents and no costs, under Con. Stat. U. C. cap. 126, sec. 17.

Bethune, Q.C., for plaintiff.

Britton, Q.C., for defendants.

BROWN V. GREAT WESTERN RAILWAY CO.

R. W. Co.—Two lines crossing—Collision—Use of brakes—Negligence.

The defendants' railway crossed the Grand Trunk Railway on a level—the train on the defendants' line was approaching the crossing, and the air brakes for some reason did not act. It was too late after discovering this to stop the train with the hand brakes, or by reversing the engine, though every effort was made, and a collision occurred with a train on the other line, of which the plaintiff was a conductor, by which he was seriously injured. It was shewn that these brakes were in common use on railways, and that the brakes in question had been twice examined and frequently used on that day, and found all right and effective. The learned Judge, who tried the case without a jury, held that defendants were liable, for that the air brakes should have been applied at a sufficient distance to enable the train to be stopped by other means in case of these brakes giving way.

Per HARRISON, C.J.—The finding was right. Per MORRISON, J.—There was no evidence of negligence, for the defendants were not bound to have any other than the air brakes, and were justified in depending upon them. Wilson, J., being absent, and the court thus equally divided, Morrison, J., withdrew his judgment, so as to avoid the expense of a re-argument, and enable the defendants to appeal.

Rock, Q.C., for plaintiff.

Barker for defendants.

[March 10.

STEWART V. COWAN ET AL.

Division Court bailiff—Interpleader issue—Detenti of goods after judgment for plaintiff—Notice of action—Liability of attorney.

Defendant C., a Division Court bailiff, was employed by the plaintiff to sell certain goods under a chattel mortgage given to the plaintiff by one L., advertised and took possession of them, and afterwards executions came into his hands against L., under which the attorney for the execution creditors told him to seize these goods. The plaintiff claimed them, and obtained judgment in his favour upon an interpleader issue. Defendant C. refused on demand

to give up the goods to the plaintiff until he should consult the attorney, who told him to use his own judgment. The plaintiff having brought trespass and trover.

Held, that C. was liable: that he was not entitled to a demand of perusal and copy of the warrants under which treated, for the action was not brought by reason of any defect in the process: that the jury were warranted in finding as they did, that he did not believe that he was discharging his duty as bailiff in refusing to give up the goods after the decision of the interpleader, which entitled him to notice of action: that the execution creditors were also liable; but that the attorney was not, for he had told C. he ought to use his own judgment.

Ferguson, Q.C., for plaintiff.

D. B. Read, Q.C., and *Osler* for defendant.

Stephens v. Stapleton.

Division Court bailiff—Notice of action—Sale of business—Evidence of bona fides.

The Consol. Stat. U. C. cap. 126, sec. 10, requiring notice of action, does not apply to the case of a Division Court bailiff acting under an execution, which is specially provided for by cap. 19, sec. 194; and a notice, therefore, to such bailiff, not having endorsed upon it the name and place of abode of the plaintiff, as required by the former, but not by the latter Act, was held sufficient.

Upon the evidence set out in the case, the jury having found that the business carried on by the execution debtor was that of his brother, and carried on by the execution debtor as his agent, a new trial was granted, with costs to abide the event.

J. K. Kerr, Q.C., for plaintiff.

Armour, Q.C., for defendant.

Re Johnson and Monteal and Ottawa Junction Railway Co.

Award—Motion to set aside—Practice.

A rule to set aside an award must be drawn up on reading the award or a copy of it.

The objections taken to the award were that having been made *ex parte* and without hearing witnesses it was void, and it was urged that it might therefore be set aside without producing it; but, *Held* otherwise.

Re Hinton v. *Meade*, 24 L. J. Ex. 140, not followed.

M. C. Cameron, Q.C., and *Beaty*, Q.C., for plaintiff.

Armour, Q.C., and *Kerr*, Q.C., contra.

DIGEST.

DIGEST OF THE ENGLISH LAW REPORTS

FOR NOVEMBER AND DECEMBER 1876, AND JANUARY 1877.

(*From the American Law Review.*)

Acceleration.—*See* Remainder.

Accommodation Bill.—*See* Bills and Notes, 3, 4.

Accumulation.—*See* Devise 2.

Act of God.

The defendant owned land upon which had been built embankments for the purpose of damming up a natural stream which ran through the land, thereby forming large pools. A storm occurred, accompanied with rain, heavier than ever known to have taken place there previously; and in consequence the stream was so swelled that it carried away the plaintiff's bridges. The jury found that there was no negligence in the construction or maintenance of the embankments, and that the storm was of such violence as to constitute the cause of the accident *vis major*. *Held*, that the defendant was not liable for the damage.—*Nichols* v. *Marsland*, 2 Ex. D. 1; s. c. L. R. 10 Ex. 255; 10 Am. Law Rev. 286.

Ademption.—*See* Settlement, 3.

Advowson.—*See* Trust, 1.

Ancient Lights.—*See* Prescription.

Annuity.

1. A testator bequeathed his residuary estate to trustees in trust to purchase thereout from government an annuity for M. for life; and he directed that M. should not be entitled to elect to receive the price or value of said annuity in lieu of it, and he declared that the annuity was given for the sole and separate benefit and disposal of M., and that if M. should at any time sell, alien, assign, transfer, incumber, or in any way dispose of or anticipate the annuity, it should thereupon cease, be void, and sink into the residue of the testator's estate. *Held*, that M. was not entitled to such sum as would purchase said annuity; but that said trustees should purchase an annuity for M. to be paid to her for life or until she should alien it.—*Hatton* v. *May*, 3 Ch. D. 148.

2. A testator gave an annuity to E. for life, and after her death to her children during their lives, and after the decease of the survivor to the testator's nephew and two nieces, equally between them. E. died without having had children. *Held*, that the gift to the nephew and nieces was not void for remoteness; and that the nephew and nieces were absolutely entitled to a principal sum which would produce said annuity.—*Evans* v. *Walker*, 3 Ch. D. 211.

3. A testatrix bequeathed stock to trustees to be laid out in an annuity for H. for life, and she directed that H. should not be entitled to have the value of his annuity in lieu thereof, and that if he should sell, mortgage, pledge, or anticipate his annuity, the same should cease and form part of the testatrix's residuary estate. *Held*, that H. was absolutely entitled to the annuity and could sell it.—*Hunt-Foulston* v. *Furber*, 3 Ch. D. 285.

See Priority, 2.

Digest of the English Law Reports.

Appointment.

1. By marriage settlement, personal property was assigned to trustees upon trust to pay the income to the wife to her separate use for life; and after her decease, in case the husband should survive, to pay him so much of the income as the wife should by deed or will appoint for his life; and subject thereto the trustees to hold the property for children of the marriage; and in case there should be no children (which event happened) to trustees to hold the property in trust, in case the wife should survive the husband, for the wife, her executors, administrators, and assigns, absolutely, for her sole and separate use. The wife executed a will during her husband's lifetime, in which she exercised her power of appointment; and she survived her husband without having had children. *Held*, that the will was a valid exercise of her power of appointment. Under the settlement the wife had the whole estate in the property to her separate use, and could therefore dispose of the property by her will; and her will made during coverture did not require re-execution after the husband's death.—*Bishop* v. *Wall*, 3 Ch. D. 194

2. Under a marriage settlement, E. had a power of appointment among his children over certain funds in the hands of trustees. The trustees lent said funds, amounting to £6,000, to E., upon mortgage of E.'s farm. Many years later, E. in order to dispose of his property in favor of his two sons, executed three deeds of even date. By the first, to which both his sons were parties, E. settled said farm on his elder son for life, remainder to such son's children as he should appoint, and in default of appointment to all such son's children as tenants in common, remainder in default of such children to E. and his heirs. By the second deed, E. appointed said £6,000 to his eldest son absolutely; and E. and said son and the trustees released said farm, freed from the mortgage, to a trustee to the uses of said first deed. By the third deed, E. gave the residue of his property to his second son. By his will, bearing the same date, E. confirmed said deeds; and referring to the contingency upon which, under said first deed, said farm was limited to himself and his heirs, he declared that upon the happening of such contingency said farm should be charged with £3,000 in favor of his daughter, and subject thereto should belong to his second son. E. died, and his daughter filed a bill against her two brothers, alleging that E.'s appointment was made, not for the benefit of his elder son, but with the object of relieving his farm from the payment of said £6,000, and was therefore fraudulent and void; and that she was entitled to one-third of said $6,000. *Held*, that it did not appear that E. had made said deeds with corrupt or improper intention; that his disposition of said £6,000 under his power was not so improper as to be void if there were no fraudulent intent; and that although E., if he had not become a party to said deed, might have claimed the benefit of the appointment in his favor, free from the condition that he should release said farm from said charge, yet having signed the deeds he was bound by the condition.—*Roach* v. *Trood*, 3 Ch. D. 429.

3. M. had the power of appointment over a fund among her children, and in default of appointment the fund was to go to her children in equal shares. M. appointed that trustees should stand possessed of the whole of said fund in trust to pay the income of £1,200, part of the fund, to M.'s son J. for life, and after his death in trust for all the children of J. equally. And in case J. should die without children, then said £1,200 "to be added to and form part of the residue" of her trust estate. The residue of said fund M. appointed upon certain trusts for her daughters. J. died, leaving children. It was admitted that the appointment to J.'s children was beyond M.'s power and void. *Held*, that upon J.'s death said £1,200 fell into the residue of M.'s estate, and was included in the appointment in trust for M.'s daughters.—*In re Meredith's Trusts*, 3 Ch. D. 757.

4. Legacy to V., the testatrix's daughter for life, and after her death "to and amongst my other children or their issue in such parts, shares, and proportions, manner and form, as V. shall by deed or will appoint." The testatrix left three children besides V. *Held*, that V. had the right to appoint in favor of one of the testatrix's other children, and that said power was exclusive.—*In re Veale's Trusts*, 4 Ch. D. 61.

See Settlement, 1, 7.

Appropriation of Payments.—*See* Bills and Notes, 1; Estoppel, 1.

Attorney's Lien.—*See* Lien, 1.

Bank.—*See* Bills and Notes, 5; Partnership.

Bankruptcy.—*See* Hotel-Keeper; Partnership; Settlement, 6.

Bequest.—*See* Annuity, 1, 2; Appointment, 3; Charity; Contingent Remainder; Divorce; Election; Illegitimate Children; Legacy; Partnership; Priority, 2; Remainder; Settlement, 3; Trust, 3; Will.

Bills and Notes.

1. E. in London ordered cotton of A. in Bombay, and A. accordingly sent the cotton with bill of lading to his correspondent in London, together with a bill of exchange drawn on E. containing the direction that the amount of the bill should be placed to "account cotton shipments as advised." E. accepted the bill, received the bill of lading, and raised money upon it from C., who subsequently sold the cotton. E. failed. A. claimed the proceeds of the cotton as having been specifically appropriated to the payment of the bill of exchange. *Held*, that there was no such specific appropriation. *In re Entwistle. Ex parte Arbuthnot*, 3 Ch. D. 477.

2. By agreement between brewers and an ale merchant, the latter was to be allowed 20 per cent discount on the invoice price of ale sold to him on payment in cash within one month. The merchant, on purchasing ale of the brewers, gave them certain bills of exchange drawn by the brewers upon the merchant and accepted by him. The bills were not paid at maturity. *Held*, that the bills were not payment, as they were dishonored at maturity, and that the merchant was not entitled to said discount.—*In re Cumberland. Ex parte Worthington*, 3 Ch. D. 803.

3. Action on a bill of exchange by an indorsee against an indorser. Defence, want of notice of dishonor. Reply, that neither drawer, acceptor, nor any indorser prior to the defendant had at any time any effects of the defendant in his hands; and that the bill was drawn, accepted, and indorsed by the defendant and prior indorsers, for the purpose of raising money for the defendant, the drawer, and the acceptor, and the persons who indorsed before the defendant, jointly; and the defendant was in no way dam-

nified, even if there was no notice of dishonor. Demurrer sustained.—*Foster* v. *Parker*, 2 C. P. D. 18.

4. In an action against an indorser of a bill of exchange, the indorser set forth in his defence that the bill was an accommodation bill, drawn, accepted, and indorsed to enable another indorser to raise money upon it, and that such other indorser had promised to meet the bill, but had failed to do so, and that the said indorser, the defendant, had never received notice of the dishonor of the bill. *Held*, that the defendant was entitled to notice of dishonor of said bill.—*Turner* v. *Samson*, 2 Q. B. D. 23.

5. M. bought on Feb. 11 from L. drafts by L. upon a Cadiz merchant. By custom of the London money market such bills are paid for upon the first postday after their purchase, which in this case was Feb. 14. On Feb. 12, L. was pressed by his bankers to reduce the debt he owed them, and accordingly on Feb. 14 gave them an order requesting M. to pay them the amount of said drafts. On Feb. 14, M. gave said bankers his check for the amount of said drafts, and the bankers delivered to M. the said order of L. on M. On the same day, L. failed, whereupon M. stopped payment of the check he had given to said bankers. *Held*, that the bankers were entitled to recover from M. the amount of his check.—*Misa* v. *Currie*, 1 App. Cas. 554.

Broker.—*See* Insurance, 2.

Calls.—*See* Will, 2.

Carrier.—*See* Estoppel.

Charity.

A testator directed that certain funds, over which he had power of appointment, should, unless otherwise specifically disposed of by a codicil to his will, become part of his residuary estate. By a codicil, the testator gave legacies out of said funds to certain societies, and the residue he directed to be given to such charitable institutions as he should by any future codicil direct, and, in default thereof, to be distributed by his executors at their discretion. The testator made no further codicil. *Held*, that the gift of the residue was to be distributed among charitable institutions as the executors should direct.—*Pocock* v. *Attorney-General*, 3 Ch. D. 342.

Charge.—*See* Priority, 2.

Check.—*See* Bills and Notes, 5.

Children Ventre sa Mere.—*See* Legacy, 1.

Class.—*See* Legacy, 1, 8; Perpetuity.

Codicil.—*See* Will, 1.

Colonies, English.—*See* Limitations, Statute of.

Common Carrier.—*See* Carrier.

Company.

A Single shareholder cannot constitute a "meeting" of a company under 32 and 33 Vict. c. 19, § 4.—*Sharp* v. *Dawes*, 2 Q. B. D. 26.

See Judgment; Will, 2.

Condition.—*See* Annuity, 1; Appointment, 2; Vendor and Purchaser, 1.

Confirmation.—*See* Settlement, 1.

Construction.—*See* Annuity; Appointment; Charity; Contingent Remainder; Devise; Illegitimate Children; Insurance, 2, 3; Legacy; Mortgage, 1; Perpetuity, Remainder; Settlement, 4, 5; Statute; Trust; Will, 2.

Contingent Remainder.

A testator devised one moiety of his real estate to two trustees and their heirs, "to the several uses and upon the several trusts, and for several ends, intents, and purposes thereinafter declared," for the term of one hundred and twenty years next after his decease, if S. should so long live, and after the expiration of said term, and in the meantime subject thereto to the use of J., the husband of S., for life, with remainder to the use of said trustees during the life of J., to preserve contingent remainders, remainder to the use of all the children of S. living at her decease, as J. and S. should appoint, and in default of appointment to the use of all the children of S. living at the decease of the survivor of J. and S., and the issue of such of them as should be then dead, leaving issue then living, such issue to take their parent's share as tenants in common, with divers remainders over. The trustees were authorized to "convey in exchange" the devised property, and to convey "in fee-simple upon partition" any of the testator's undivided shares in property, and for such purposes to revoke the aforesaid trusts and to grant and convey the premises whereof the uses should be revoked to such person and to such uses as should be necessary, or to declare such uses, estates, or trusts of the premises as should be necessary. The other moiety was devised upon like trusts for other parties. J. died, leaving his wife S. surviving; and two years later S. died, leaving children. *Held*, that there was no legal estate in the trustees to support the contingent remainder in the children of S. during the period between the death of J. and the death of S.—*Cunliffe* v. *Braucker*, 3 Ch. D. 393.

See Remainder, 2; Settlement, 5.

Contract.—*See* Bills and Notes, 2; Frauds, Statute of; Insurance; Principal and Surety.

Covenant.

The vendee of a piece of land adjoining other land of the vendor, covenanted to erect a pump and reservoir, and supply water from a well on the vendee's land to houses on the vendor's land. *Held*, that a purchaser of said land from said vendee, with notice of said covenant, was bound by it; and that the court would enforce the performance of the covenant indirectly by making such an order that the purchaser of said land would be guilty of contempt if he did not supply water according to said covenant.—*Cooke* v. *Chilcott*, 3 Ch. D. 694.

See Mortgage, 1; Settlement, 5.

Cumulative Legacy.—*See* Will, 1.

Custom.—*See* Insurance, 2; Negotiable Instrument.

Cy-pres.—*See* Charity.

Damages.—*See* Release of Damages.

Debenture.—*See* Judgment; Priority, 1.

Deed.—*See* Release of Damages.

Devise.

1. A testator devised "my property which is not under settlement as follows;" and after specific pecuniary legacies gave "the rest and residue of my unsettled property" to A. The

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testator held certain copyholds as trustee. *Held*, that the copyholds passed under the devisee.—*In re Brown and Sibly's Contract*, 3 Ch. D. 156.

2. A testator gave his real and personal estate to trustees upon trust to accumulate rents for twenty-one years, and, at the expiration thereof, in trust for the second and every other younger son successively of W. in tail male, and, failing such issue, in trust for the first and every other son of H., in tail male; limitations over. At the expiration of said term, H. and W. were both living, and each had one son only. *Held*, that until it should be ascertained whether W. would have a second son, the rents of the real estate went to the heir-at-law, and the income of the personal estate went to the next of kin.—*Wade-Gerry* v. *Handley*, 3 Ch. D. 374.

3. Devise to E. and her heirs; but, if E. should die without leaving issue living at her death, then upon E.'s death to "the nine children of A., to be equally divided among them." The residuary estate was devised to P. E. died without leaving issue; and only one of said nine children survived E. *Held*, that the surviving child of A. took a tenancy for life only, subject to which the estate passed to E. and her heirs.—*Gatenby* v. *Morgan*, 1 Q. B. D. 685.

See Annuity, 1, 2; Appointment, 3; Charity; Contingent Remainder; Election; Illegitimate Children; Legacy; Perpetuity; Priority, 2; Remainder; Settlement, 1, 3; Trust, 3; Will.

Discovery.

Ship-owners who had shipped goods bearing counterfeits of the plaintiff's trade-mark were ordered to discover the name of the consignor, in aid of proceedings to be taken against the consignor.—*Orr* v. *Diaper*, 4 Ch. D. 92.

Domicile.

"A man having acquired a domicile of choice may abandon it, without it being incumbent on him to require a new domicile of choice; that is to say, he may abandon his domicile of choice without acquiring, in strictness, any new domicile; because his domicile of origin reverts.—Jessel, M. R., in *King* v. *Foxwell*, 3 Ch. D. 518.

Dower.—*See* Priority, 2.

Easement.—*See* Grant Prescription.

Election.

A testator who was entitled under a settlement to a life estate in certain cottages devised all his real estate to his wife for life, and after her death he devised said cottages to R. in fee. On the testator's death, his wife who survived him became absolutely entitled to said cottages under said settlement. R., in ignorance of said settlement, sold his supposed reversionary interest to the plaintiff. After the wife's death, the plaintiff first ascertained that the wife had sold the cottages to a purchaser without notice of said devise in the testator's will; and the plaintiff claimed compensation from his estate. *Held*, that the wife had elected to take said cottages against said will, and must make compensation to the plaintiff for the loss he had sustained by not getting possession of said cottages at the death of the widow, to the extent of the benefit she, the wife, received under said will.—*Rogers* v. *Jones*, 3 Ch. D. 688.

En Ventre sa Mere.—*See* Legacy, 1.

Equity.—*See* Discovery; Grant; Jurisdiction; Law, Mistake of; Release of Damages.

Estoppel.

1. W., who had intrusted £7,700 to P. for investment, was informed by P.'s clerk that P. proposed to lend the money upon security of leaseholds at Camden. P. subsequently wrote to W., stating that said sum had been put on mortgage as arranged by his clerk with W. P. died; and it was found that no mortgage existed in favor of W., but that leaseholds at Camden were mortgaged to P. to secure £100,000. *Held*, that P. and those claiming under him were estopped from denying that said £7,700 formed part of said £100,000, and that it must be paid to W. from the larger sum.—*Middleton* v. *Pollock*. *Ex parte Wetherall*, 4 Ch. D. 49.

2. A railway company carried certain pictures to a station where they were loaded in a van to be forwarded to their destination. There a man, falsely representing himself as in the employ of M. who carried for the company, obtained from the company's delivery clerk a pass enabling him to drive the van from the company's yard and steal the pictures. *Held*, that the company was not estopped from denying that the thief was their servant.—*Way* v. *Great Eastern Railway Co.*, 1 Q. B. D. 692.

Evidence.

1. The defendant was licensed by the plaintiff to make certain machines of which the plaintiff held the patent. The defendant made machines, but contended that they were not within said patent, on the ground that if the patent were constructed so as to cover the machines he had made, it would be void for want of novelty; and in proof of this he offered in evidence certain specifications of American patents which were to be found in the English Patent Office Library, but which were not known of by the plaintiff. *Held*, that the evidence was inadmissible.—*Adie* v. *Clark*, 3 Ch. D. 134.

2. In the private account-book of a deceased person, entries were found, in the writing of the deceased, of payment of interest from W., together with another entry to the effect that W. had on a certain day "acknowledged a loan to this date." *Held*, that these entries were admissible in evidence, although the effect might be to show that W. was indebted to the deceased.—*Taylor* v. *Witham*, 3 Ch. D. 605.

See Will, 1.

Exchange.—*See* Partition.

Executors and Administrators.

A creditor of a testator filed a bill stating that A. and B. were appointed executors by the testator, but that they had not proved the will; that they had taken possession of part of the personal estate and had paid therefrom certain legacies, but had not paid the testator's debts. The creditor further alleged that other defendants, C. and D., had obtained possession of part of the testator's personal estate, and threatened to dispose of it without paying the testator's debts; and he set forth his own debt and prayed for administration of the testator's personal estate, payment of his debts, and an injunction restraining all said defendants from parting with said estate in their hands. Demurrer, on the grounds that the executors had not yet proved the will, and that there could not be a suit for administration without a properly constituted legal representative before the Court; and that persons could not be sued for misappropriating a testator's assets without joining the legal representative and alleging fraud or collusion between them. Demurrer overruled.—*In re Lovett.*

Ambler v. *Lindsay*, 3 Ch. D. 198; s. c. L. R. 10 Ex. 76, 337.

See Law, Mistake of; Legacy, 9.

Executory Advice.—*See* Settlement, 1.

Fixtures.

A tenant became bankrupt and his trustee sold the tenant's fixtures in the leased premises to the plaintiff, who sold them to the defendant, the landlord, but no memorandum of the sale was signed by the defendant. *Held*, that the sale of the fixtures during the tenancy was neither the sale of an interest in land within § 4, nor a sale of goods and chattels within § 17, of the Statute of Frauds, 29 Car. 2, c. 3, § 4, 17.—*Lee* v. *Gaskell*, 1 Q. B. D. 700.

Foreign Government.—*See* Negotiable Instrument.

Frauds.—*See* Appointment, 2; Release of Damages; Settlement, 6.

Frauds, Statute of.

K. informed his daughter and her intended husband that he had bought a house which should in the event of the marriage be his wedding present to his daughter. After the marriage the daughter and her husband entered into possession of said house, a lease of which K. had bought subject to payment of certain instalments. K. paid all instalments which fell due in his lifetime, and died leaving a sum of £110 still to be paid, which fell due after his death. *Held*, that possession following K.'s promise took the promise out of the Statute of Frauds; and that K.'s agreement was to give a house free from incumbrances, and that therefore said £110 must be paid out of K.'s estate.—*Ungley* v. *Ungley*, 4 Ch. D. 73.

See Fixtures; Vendor and Purchaser, 2.

Freight.—*See* Mortgage, 2.

Grant.

A piece of land was conveyed to a grantee who covenanted to build a cotton-mill thereon; but the right was reserved to the grantor to work all mines and minerals under the land, making compensation for damage. The mill was built and the defendants who claimed under said grantor began to work the mines, thereby causing damage to the mill. The plaintiff prayed an injunction restraining the defendants from so working the mines as to cause injury to the plaintiff. Injunction refused. There was a remedy at law.—*Aspden* v. *Seddon*, 1 Ex. D. 496; s. c. L. R. 10 Ch. 394; 10 Am. Law Rev. 115.

See Prescription.

Guaranty.—*See* Principal and Surety, 2.

Hotel-Keeper.

A professional nurse kept a house for the reception of invalids, whom she supplied with provisions on which she made a profit, and she also superintended the nursing of the invalids. *Held*, that she was a "keeper of a hotel," and, therefore, a "trader" within the Bankruptcy Act, 1869.—*Ex parte Thorne. In re Jones*, 3 Ch. D. 457.

Illegitimate Children.

A testator made a bequest in trust for the child or children of his daughter M. the wife of J., as M. should appoint. M. was the sister of the deceased wife of J., and therefore their marriage was illegal. M. appointed in favor of two children born before the date of said testator's will, and also in favor of a child of which she was *enceinte* at said date, and of another child begotten and born after the testator's death. The House of Lords decided that the first two children could take under said bequest although they were illegitimate. *Held*, that the child *en ventre sa mère* could also take under said bequest and appointment, but not the child begotten after the testator's death.—*Crook* v. *Hill*, 3 Ch. D. 773; see 6 H. L. 265; L. R. 6 Ch. 311.

Income.—*See* Lease.

Injunction.—*See* Covenant; Grant.

Insurance.

1. M. insured his life in the B. association, which subsequently, without consultation with its policy-holders, amalgamated with the E. Society and ceased to carry on business. Two years afterwards the E. society by its directors indorsed a memorandum on M.'s policy, declaring that it should be liable for the payment of the amount insured by the policy, provided that the premiums were duly paid. *Held*, that there was a complete novation of said policy, and that M. had lost his claim against the B. association.—*In re European Assurance Society. Miller's Case*, 3 Ch. D. 391.

2. In an equity suit the plaintiffs, who had effected insurance on vessels belonging to the defendant, claimed the full amount as charged in their accounts of premiums paid by them with interest, without deducting from the amount so charged five per cent. brokerage allowed to them by the insurance offices on the premiums and ten per cent. discount for ready money also allowed by the insurance offices. Said allowances by insurance offices were usual; and the defendant had never inquired before said suit was begun the terms upon which the plaintiff had effected said insurance. *Held*, that the defendant could not object to the plaintiffs retaining said percentage, and charging him with the full amount of the premiums.—*Baring* v. *Stanton*, 3 Ch. D. 502.

3. Insurance was effected upon a steamship "lying in the Victoria Docks, with liberty to go into dry dock." The only dry dock into which the vessel could go was two miles up the Thames, and to go there it was necessary to remove the paddle-wheels. This was done in the Victoria Docks and the vessel was then towed to the dry dock. Repairs were made and the vessel towed down the river and moored, and while so moored the paddle-wheels were brought in a barge to be refitted, as was the custom of ship-owners in similar cases, because of the expense being less than if the wheels were refitted in docks. Before said wheels were refitted and while the vessel was lying in the river, the vessel was burned. *Held*, that the loss was not covered by the policy, as the vessel was moored in the river not in accordance with the ordinary mode of effecting the transit to or from the Victoria Docks, but for a collateral purpose.—*Pearson* v. *Commercial Union Assurance Co.*, 1 App. Cas. 498.

Interest.—*See* Judgment.

Judgment.

A railway company issued debentures for certain sums which with interest at six per cent. were charged upon the railway. A debenture holder brought an action upon an unpaid debenture and recovered judgment. The company was wound up and said debenture holder allowed to prove his judgment debt with four per cent. interest thereon. He claimed to prove an additional two per cent. interest on the judgment debt. *Held*, that the original debt was merged

in the judgment debt, which by statute only bore four per cent. interest.—*In re European Central Railway Co. Ex parte Oriental Financial Corporation*, 4 Ch. D. 33.

JURISDICTION.

The court of chancery has no jurisdiction to sell chattels settled in strict settlement, although the sale would be for the benefit of all parties interested.—*D'Eyncourt* v. *Gregory*, 3 Ch. D. 635.

LAPSE.—*See* LEGACY, 9.

LAW, MISTAKE OF.

An executor and a legatee severally took the advice of their counsel upon the construction of the will, and in accordance with the opinions they received the executor transferred and the legatee received a certain share of the bequeathed property. Two years later, said legatee filed a bill against the executor and another legatee, alleging that on the true construction of the will she was entitled to a larger sum than that which she had received, and praying repayment from the other legatee. *Held*, that the bill could not be maintained.—*Rogers* v. *Ingham*, 3 Ch. D. 351.

LAY DAYS.—*See* CHARTERPARTY, 1.

LEASE.

A testator gave to trustees a tithe rent-charge to which he was entitled on a twenty-one years' lease, which was renewed in practice every seven years on payment of a fine, upon trust to renew the lease out of the proceeds of the tithes, and divide the surplus equally during the life of his wife between her and the testator's grandchildren; and after his wife's decease said tithes were to form part of the testator's residuary estate. The trustees were given power to sell the rent-charge. The lease ceased to be renewable. The trustees accumulated a renewal fund from the income. *Held*, that the trustees must sell the leasehold interest and apply the income of its proceeds and of said renewal fund for the benefit of those entitled during the life of the testator's widow. *Maddy* v. *Hale*, 3 Ch. D. 327.

LEGACY.

1. Bequest "to each of the three children of my niece L. of one thousand pounds." At the date of the will L. had three children living and a fourth *en ventre sa mère*. The testatrix died before the birth of the fourth child. *Held*, that the three children born at the date of the will only were entitled to legacies.—*In re Emery's Estate. Jones* v. *Emery*, 3 Ch. D. 300.

2. A testator bequeathed all his household furniture which should be in his capital messuage at his death to trustees in trust to permit the same to be enjoyed as heirlooms with said messuage. The testator, who was occupying shortly before his death a house not his own, moved his furniture to his said messuage with the intention of leaving it there; but the tenant of the messuage, which was then under lease, refused to permit the furniture to be placed in the house during his tenancy, and it was accordingly stored in farm buildings belonging to the testator. *Held*, that said furniture in the farm buildings passed under said bequest.—*Rawlinson* v. *Rawlinson*, 3 Ch. D. 302.

3. Bequest of "all my personal property, all sums of money which I may possess, or may be owing to me at the time of my decease, together with all the furniture, farming implements, stock, and crop, belonging" to the testator's estate. *Held*, that the legacy was not specific.—*Fairer* v. *Park*, 3 Ch. D. 309.

4. A testator held £1500 upon trust to pay the interest of £1000 to his sister E. for life, and after her death in trust for her children, with a similar trust as to the remaining £500 for his sister A. By his will the testator directed that £1000 should be paid to his sister E. and £500 to his sister A. *Held*, that the bequests to E. and A. were not to be taken in satisfaction of the sums held by the testator in trust for said legatees.—*Fairer* v. *Park*, 3 Ch. D. 309.

5. A testatrix directed her debts and funeral and testamentary expenses and the legacies thereby bequeathed, to be paid by her executors; and after bequeathing certain pecuniary legacies and specific articles, she made a specific devise, and then gave her residuary real and personal estate to A. and B. upon certain trusts, and appointed A. and C. her executors. *Held*, that the residuary real estate was charged with the legacies, although the executors, who were not the trustees of the will, were directed to pay such legacies.—*In re Brooke. Brooke* v. *Rooke*, 3 Ch. D. 630.

6. A testator gave his real and personal property to his wife for life, and directed the principal to be equally divided after his wife's death "amongst all my family that shall be then living, when they shall attain the age of twenty-one years." At the date of the will, the testator's wife and seven children were living, some twenty-one, some under that age, and one married and having children. At the death of the wife, three children were surviving; two had died unmarried; one had died leaving a widow; and one had died leaving a widow and children. *Held*, that the testator's children could alone take under the words "my family."—*Pigg* v. *Clarke*, 3 Ch. D. 672.

7. A testator directed that his debts and funeral expenses should be paid by his executors "from money or promissory notes, or bills due at the time of my decease at the bank and elsewhere, the remainder to be equally divided to my surviving children." There were previous gifts in the will of various portions of the testator's property. *Held*, that the above gift of the remainder only included the remainder of said money notes and bills, and was not a general residuary gift.—*Jull* v. *Jacobs*, 3 Ch. D. 703.

8. A testatrix bequeathed to each of the three children of "Mrs. W., widow of the late W.," £100. At the date of the will the said Mrs. W. had been married for fifteen years to a second husband, to the testatrix's knowledge, and had had by him six children. By her first husband she had had five children of whom two were living at the date of said will. *Held*, that said two children by the first husband were alone entitled to the legacy.—*Newman* v. *Piercey*, 4 Ch. D. 41.

9. Legacy from B. to "the executors or executrix of C., the sum of £100." At the date of B.'s will C. was dead, and in his will had appointed an executor and two executrixes, all of whom predeceased B. It was contended that B. had made a gift to *personæ designatæ*, and that by their death the legacy lapsed. *Held*, that the legacy was given to the legal personal representatives of C and did not lapse.—*Trethewey* v. *Helyar*, 4 Ch. D. 53.

10. A bequest of "foreign bonds" by an Englishwoman, was held not to include bonds issued by the colony of New South Wales.—*Hull* v. *Hull*, 4 Ch. D. 97.

See ANNUITY, 1; APPOINTMENT, 3; CHARITY; CONTINGENT REMAINDER; DEVISE; ELECTION; ILLEGITIMATE CHILDREN; LAW, MIS-

TAKE OF; PERPETUITY; PRIORITY, 2; REMAINDER; SETTLEMENT, 3; TRUST, 3; WILL.

LICENSE.—*See* EVIDENCE, 1.

LIEN.

1. C., a solicitor, was instructed to prepare a mortgage, and the mortgagor deposited with him the title-deeds of the property for that purpose. C. also acted as solicitor of the mortgagees, and after the mortgage was completed, held the deeds on their behalf. The mortgagor became bankrupt, and his trustee directed C. to sell the equity of redemption, and it was accordingly sold and the money paid to C., who claimed a lien on the deeds as against the mortgagor for the amount of his costs due from the mortgagor. *Held*, that the solicitor was entitled to such lien and to retain his costs from said money in his hands.—*In re Messenger. Ex parte Calvert*, 3 Ch. D. 317.

2. S., who was a timber merchant, agreed to carry on business as the agent of a firm, but in his own name as before, and the firm agreed to remunerate S. for his services by a share in the profits in the business. No notice of this arrangement was given to outside creditors. Timber was forwarded by the firm to S. for sale, and dealt with by him as absolute owner. The firm drew bills on S., which were accepted by him on the firm's undertaking to protect such acceptances, according to a term of the agreement between S. and the firm. The firm and subsequently S. went into liquidation. S. claimed a lien on timber in his hands, which had been sent to him by the firm as above, to the extent of certain bills accepted by him as aforesaid and of a further sum due him from said firm as his share of profits in the business. *Held*, that S. was entitled such lien.—*In re Fawcus. Ex parte Buck*, 3 Ch. D. 795.

See PARTNERSHIP.

LIGHT AND AIR.—*See* PRESCRIPTION.

LIMITATION.—*See* ANNUITY, 1.

The English Statute of Limitations (3 & 4 Will. 4, c. 27) does not apply to the island of Jamaica, because the island is not referred to in the English statute.—*Pitt* v. *Lord Dacre*, 3 Ch. D. 295.

MARRIAGE.—*See* FRAUDS, STATUTE OF.

MARRIAGE SETTLEMENT.—*See* APPOINTMENT, 1.

MARRIED WOMEN.—*See* APPOINTMENT, 1.

MARSHALLING ASSETS.—*See* PRIORITY, 1.

MASTER AND SERVANT.—*See* ESTOPPEL, 2.

MINE.—*See* GRANT.

MORTGAGE.

1. A power of sale mortgage contained a proviso that, upon any sale purporting to be made in pursuance of said power, the purchaser should not be bound to see as to whether there had been default in payment of principal or interest by the mortgagor, and that notwithstanding any impropriety or irregularity in said sale the same should, so far as regarded the safety and protection of the purchaser, be deemed to be within said power and to be valid and effectual accordingly; and that the mortgagor's remedy should be in damages only. The mortgagee conveyed the mortgaged property under said power to the defendant for valuable consideration. The plaintiff who was an incumbrancer of said mortgagor subsequent to said mortgagee, filed a bill to establish his priority over the defendant, alleging that if the accounts were examined it would appear that the prior mortgagee's debt was satisfied, and that the sale under said power was therefore invalid. *Held*, that said sale was valid, although the mortgage debt might have been paid.—*Dicker* v. *Angerstein*, 3 Ch. D. 600.

2. On Dec. 1, 1874, M., the owner of a vessel, mortgaged it to the plaintiffs for £7,500. On Jan. 4, 1875, the defendants, in ignorance of said mortgage, advanced M. £3,000 on security of a cargo shipped by M. on nominal freight of one shilling a ton. Feb. 2, 1875, M. again mortgaged said vessel to the plaintiffs for £4,000. February 19, M. and the defendants sold said cargo to J. on terms of freight being paid at fifty-five shillings a ton. On February 22, the defendants advanced £9,000 further to M. On February 26, M. assigned to the defendants said freight at fifty-five shillings per ton as security for their advances. On March 6, the plaintiffs registered their mortgage, and on the vessel's arrival took possession. The defendants acquired J.'s rights. *Held*, that the plaintiffs were entitled to said freight of fifty-five shillings per ton as against the defendants.—*Keith* v. *Burrows*, 1 C. P. D. 722.

See ESTOPPEL, 1; LIEN, 1; PRIORITY, 1; TRUST, 3.

NATURALIZATION.—*See* DOMICILE.

NEGLIGENCE.—*See* ACT OF GOD.

NEGOTIABLE INSTRUMENT.

The Russian Government issued scrip which upon its face undertook to give the bearer a bond for a certain sum when all instalments due on the scrip had been paid. By the custom of the English and Foreign Stock Exchanges, such scrip was treated as a negotiable instrument transferable by delivery. The plaintiff purchased some of said scrip and left it in the hands of C., who raised money upon it by pledging it as security with the defendants, and absconded. *Held*, that the defendants were as against the plaintiff entitled to said scrip and its proceeds.—*Goodwin* v. *Robarts*, I App. Cas. 476.

NOTICE OF DISHONOR.—*See* BILLS AND NOTES, 3, 4; PRIORITY, 3.

NOVATION.—*See* INSURANCE, 1.

PARTITION.

Trustees of one undivided moiety of an estate were authorized to make a partition; other trustees of the second moiety were authorized to sell, dispose of, convey, and assign, by way of sale for money or of exchange for an equivalent or recompense in lands. The two sets of trustees executed a partition deed. *Held*, that said partition was valid.—*In re Frith and Osborne*, 3 Ch. D. 618.

PARTNERSHIP.

Shares in a certain bank were subject to a lien in favor of the bank for all moneys due from the shareholder alone or jointly. Certain of such shares stood in the name of A., one of the firm, which became bankrupt owing money to the bank. The shares were originally the property of A., but after the formation of said partnership were entered upon books of the firm as its property. Of this the bank was ignorant, and it had no knowlekge that the firm claimed any interest in the shares until after the bankruptcy proceedings were begun; but the whole of said debt to the bank was contracted after said shares became partnership property. The bank contended that it was entitled to treat the shares

standing in A.'s name as his separate property. *Held*, that said shares were the joint property of the firm, and that the bank could only prove in the bankruptcy proceedings for the balance of their debt after giving credit for the value of the shares.—*In re Collie. Ex parte Manchester and County Bank*, 3 Ch. D. 481.

PATENT.

1. In a question of validity of a patent granted in England, it appeared that an American work containing a "claim," together with a short and imperfect description of the invention was sent to the Patent Office in London two years before the English patent was granted, and a book of illustrations containing a drawing of the invention five weeks before the English patent. *Held*, that the invention had not been so published as to deprive the English patent of novelty. Consideration of the sufficiency of a specification and description, and the requisite amount of novelty of a patent.—*Plimpton* v. *Malcolmson*, 3 Ch. D. 531.

2. If there is a patent for a combination, the combination itself is *ex necessitate*, the novelty; and the combination is also the merit, if it be a merit, which remains to be proved by evidence, By Lord Chancellor Cairns; and see the remarks of the Lords on new combinations, in *Harrison* v. *Anderston Foundry Co.*, 1 App. Cas. 574.

See EVIDENCE, 1; TRADE-MARK.

PAYMENT.—*See* BILLS AND NOTES, 2.

PERPETUITY.

A testator devised his real and personal estate to trustees upon trust to pay the income to his wife until her death or second marriage, remainder upon trust for all the testator's children living at such death or second marriage and the issue of any child then dead, such issue to take their parent's share in equal proportions; the shares of such of the testator's children or grandchildren as should be sons, to become vested in and payable to them when they respectively attained the age of twenty-four years, and the shares of the testator's daughters or the female issue of any deceased child to be settled upon certain trusts. *Held*, that all the gifts after the death or second marriage of the testator's wife were void for remoteness.—*Hale* v. *Hale*, 3 Ch. D. 643.

See ANNUITY, 2.

PLAN.—*See* VENDOR AND PURCHASER, 2.

PLEADING.

The plaintiff and defendant exchanged benefices under an agreement according to which no payment was to be made by either for dilapidations. The plaintiff sued the defendant for the cost of repairs which had to be made on the building of the benefice which he received from the defendant, and the defendant pleaded said agreement. The plaintiff replied that at the time of making said agreement and exchange the defendant stated to the plaintiff that the repairs of the buildings of his benefice were merely nominal or equal in amount to the repairs of the plaintiff's benefice, whereas in fact the defendant "knew or ought to have known" that the repairs of his benefice greatly exceeded in amount those of the plaintiff's benefice. *Held*, that the plaintiff's replication was bad as it did not allege that said inequality in the amount of the respective dilapidations was known to the defendant at the time of said agreement.—*Wright* v. *Davies* 1 C. P. D. 638.

POWER.—*See* APPOINTMENT; MORTGAGE, 1; PARTITION; SETTLEMENT, 1, 7.

PRESCRIPTION.

The plaintiff purchased houses more than twenty years old abutting at the rear upon a private way. Subsequently and by a different title he acquired other houses in the rear of the first houses, and abutting at their rear on said way. The plaintiff sold the latter houses to the defendants together with the land up to the back wall of the first houses, and including the land over which said way ran; and no easement was reserved to the plaintiff. The defendants pulled down their houses, and erected partly on their site and partly on the site of said way, a large building which obstructed the plaintiff's light. *Held*, that the defendants had a right to obstruct the plaintiff's light.—*Ellis* v. *Manchester Carriage Co.*, 2 C. P. D. 13.

PRINCIPAL AND AGENT.—*See* ESTOPPEL, 2.

PRINCIPAL AND SURETY.

1. D. contracted to purchase tar from a gas company and to pay within fourteen days from the monthly making up of accounts, unless the company should allow a longer time for payment. The defendant was a surety on the bond given by D. for the due performance of said contract. One of said accounts was made up on August third, and on the twenty-first of the month the secretary sent D. a note for the amount due and which had not been paid, with the request that D. would sign and return the note; which D. did. *Held*, that if taking the note was giving time by the company, such time was given after the fourteen days had expired and the liability of the surety had attached; and that he was therefore absolved from his agreement altogether. *Croydon Gas Co.* v. *Dickinson*, 1 C. P. D. 707.

2. N., who was a creditor of the plaintiffs, agreed among other things to transfer to them certain shares in a company, and redeem them before Jan. 1, 1874, and that his book debts should be collected, and one-half applied toward the redemption of the shares; and, whenever the par value of one or more of said shares was received by the plaintiffs, they were to deliver to N. the shares so redeemed. The defendant guaranteed N.'s performance of his part of said agreement. Subsequently, in consideration of certain of said shares and a sum in cash, the plaintiffs released their interest in said book-debts. *Held*, that the defendant's rights were so varied by the new agreement between N. and the plaintiffs, that the defendant was discharged.—*Polak* v. *Everett*, 1 Q. B. D. 669.

PRIORITY.

1. A testator bequeathed an annuity to his wife in lieu of dower, and gave other annuities to his children, and he gave certain other legacies. The testator gave right of distress and entry to said annuitants, and charged his real estate with all his bequests. The only real estate which the testator owned had been conveyed to him with declarations against dower, which was thereby barred by virtue of the 6th section of the Dower Act. *Held*, that the testator's widow was not entitled to priority in respect of her annuity; and that said annuitants were not entitled to priority over the other legatees.—*Roper* v. *Roper*, 3 Ch. D. 714.

(*To be continued.*)

CORRESPONDENCE.

Re Voters' Lists.

To the Editor of the Law Journal:

Sir,—The 4th Sec. of the Act of last session (1877) of Ontario Parliament, amending the Voters' Lists Act of 1876, will, I am afraid, somewhat puzzle some of the clerks whose duty it may be to act thereunder. It provides that the alphabetical list to be made by the clerk of every municipality, etc., shall hereafter be in three parts:

1. The first part is to contain the names of *all male* persons * * * appearing to be assessed for the real property or income requisite to entitle them to vote in the municipality at *both* municipal and parliamentary elections.

2. The second part is to contain the names of all *other* persons appearing * * * to be entitled to vote at municipal elections *only*.

3. The third part is to contain the names of all *other male* persons * * * appearing, etc., to be entitled to vote at parliamentary elections only, etc.

The qualification for electors for parliamentary elections is given in sub-sec. 1 of sec. 5 of 32 Vict. (O.) cap. 21, as follows: In cities, $400; in towns, $300; in villages, $200; in townships, $200. For municipal elections, in sec. 78 of 36 Vict. (O.) cap. 48, as follows: In cities, $400; in towns, $300; in villages, $200; in townships, $100.

In cities, towns and villages, therefore, the qualification for municipal and parliamentary electors seems to be identical. How then, in such places, can a clerk make up either a second or third part as directed by sub-secs. (b.) and (c.)? How can a list be made which shall contain the names of persons appearing by the assessment roll to be municipal electors *only*? or parliamentary electors *only*? and these are to be *other* persons besides those whose names are contained in the first part, which apparently must contain the names of *all* electors in the places mentioned.

Did the Legislature intend any special meaning by using the expressions, "all *male* persons" in sub-sec. (a.), "all *other* persons" in sub-sec. (b.), and "all *other male* persons" in sub-sec. (c.)? Why was the form of expression so varied? Should the second part of the list contain the names of *females*, such being expressly excluded from the other parts?

By giving the above matter your kind attention, and an expression of your opinion thereon through the Law Journal, you will, I am sure, confer a favour on many of your readers.

Yours truly,

E. M.

[We do not think the Legislature intended any special meaning by omitting the word "male" in sub-sec. (*b*). It was doubtless omitted by the draughtsman, and the omission was carelessly passed over by a Legislature remarkable for its careless legislation. The context shews that it can only refer to those entitled to vote, to wit: *males*.

As to the previous question asked, it is apparently intended that the first part of the list shall contain the names of all persons entitled to vote at *both* elections; the second part those not contained in the first part, but who are entitled to vote at municipal elections only, but are in some way disqualified for voting at parliamentary elections; and the third part is to contain those who in like manner are qualified to vote at parliamentary elections, but not at municipal elections. In townships, the second part will evidently contain a list of voters below $200, who are not entitled to vote at *both* elections.]

FLOTSAM AND JETSAM.

The throwing of an egg at Mr. Vice Chancellor Malins has been the subject of many pleasantries. It is said that after the egg was thrown, the usher of the Court was ordered to examine the debris; having done so, he said "It smells quite sweet, my lord." One of the Counsel present thereupon remarked, "The fellow must be mad, there is no precedent for pelting with sound eggs."

Now that St. Patrick's Day has come and gone, the case of *R.* v. *Slater* may be safely recalled. As reported in 6 C. & P. 334, "Mary Slater was indicted for cutting and wounding Johanna Moriarty. The prisoner was found guilty, but recommended to mercy on the ground that the parties were Irish, and on account of the excitement of the day, it being St. Patrick's Day." Verily, Mary Slater aforesaid must have found the four-leaved shamrock. Another fortunate law-breaker was John Kitelay, who, at the Huntingdonshire Assizes last week, was convicted of stealing some clover hay, value 14*s.* Sir Baliol Brett sentenced him to one month's imprisonment, but after the prisoner was removed from the dock, a juryman remarked, "That was rather stiff, my lord." "Do you think so, gentlemen?" said the judge. The jury, after consulting, said they did think so. "What sentence would you suggest, gentlemen?" asked his lordship. "Cut it in halves, my lord," said they. "Very well, gentlemen," said the pliant judge, "it was your verdict, and it shall be your sentence. Let the prisoner be brought back." Upon this being done, the judge said to him—"The jury think a month too stiff; take fourteen days." And that sentence was recorded. James Mulligan, however, has been luckier still. He was indicted at Galway Assizes, on Tuesday last, for assault and robbery, but the Crown counsel agreed not to proceed with the prosecution provided the prisoner enlisted if liberated. The recruiting-sergeant was in waiting at the dock door, and immediately on the prisoner making his appearance, formally swore him in, and thus invested with the rank of private he was discharged. "Thou must marry either a she-truand or the halter," was the alternative proposed to "Maitre Pierre Gringuoire," when in an evil hour he had penetrated the terrible *Cour des Miracles*. Bear the bayonet, or the sword of Justice shall perform its office, was the dilemma presented to poor James Mulligan. And so "Gringuoire" married a Gypsy, and Mulligan follows the drum.—*Irish Law Times.*

RULES OF COURT.

EXCHEQUER COURT OF CANADA.

GENERAL ORDER.

February, 28, 1877.

It is Ordered that the suppliant in any petition of right, and the plaintiff in any other case shall on the first day of the sittings of the Court for the trial of any cause to be tried out of the city of Ottawa, file with the acting Registrar of the said Court a copy of all the pleadings in the causes certified by the Registrar of the Court at Ottawa.

That at the time of delivering the said pleadings to the acting Registrar, the suppliant or plaintiff shall pay over to him the sum or fee of $6, and on each day at the opening of the Court a like sum of $6 for every day during which the said trial continues.

If the suppliant or plaintiff omits or refuses to pay in such sum, then the defendant may do so, and it shall be taxed or allowed him in the costs of the suit.

If both parties neglect or refuse to pay such sum, then the Judge trying the cause may order that the same be struck out of the list and not further proceeded with at the said sittings, making such order as to the costs incurred at the trial up to that time as he may think fit or he may in his discretion reserve the question of costs or make no order respecting the same.

The acting Registrar shall out of the said money be paid a fee of $6 per diem for each day actually engaged in Court.

If at the termination of the sittings or at any time thereafter, it is found that a sum has been paid to the acting Registrar on pursuance of this order in excess of that which may have been required to pay the fees of such acting Registrar and other charges payable thereout, then the Court or a Judge may order such excess to be refunded to the party who may have paid the same.

(Signed) WM. B. RICHARDS, C.J.
W. J. RITCHIE, J.
S. H. STRONG, J.
J. T. TASCHEREAU, J.
W. A. HENRY, J.

LAW SOCIETY OF UPPER CANADA.

Osgoode Hall, Hilary Term, 40th Victoria.

During this Term, the following gentlemen were called to the Bar; the names are given in the order of merit.

Albert Clements Killam.
Thomas Hodgkin.
Cornelius J. O'Neil.
Francis Beverley Robertson.
Henry Ernest Henderson.
Hamilton Cassels.
Francis Love.
William Wyld.
Thomas Caswell.

The following gentlemen were called to the Bar under the rules for special cases framed under 39 Victoria, Chap. 3.

George Edmonson.
Frederick W. Colquhoun.
Edward O'Connor.
John Bergin.

The following gentlemen received Certificates of Fitness:

J. H. Madden.
H. Cassels.
J. W. Gordon.
J. Dowdall.
C. J. O'Neil.
T. M. Carthew.
T. J. Decatur.
T. D. Cowper.
A. W. Kinsman.
C. McK. Morrison.
C. Gordon.
F. S. O'Connor.
G. S. Hallen.

And the following gentlemen were admitted into the Society as Students-at-Law and Articled Clerks:

Graduates.

Charles Augustus Kingston.
John Henry Long.
James J. Craig.
William Fletcher.
Leonard Harstone.
Patrick Anderson Macdonald.

Junior Class.

Benjamin Franklin Justin.
John F. Quinlan.
John Williams.
Joseph William MacDowell.
Phillip Henry Drayton.
Thomas A. Gorham.
James R. Brown.
George J. Sherry.
Hector McKay.
D. Henderson.
Alexander Carpenter Beazeley.
John Bertram Humphries.
Lauren G. Drew.
Herman Joseph Eberts.
Solomon George McGill.
David Johnson Lynch.
Thomas Henry Luscombe.
John Vashon May.
George Moir.
J. H. Macallum.
Hugo Schliefer.
David Robertson.
Angus McB. McKay.
Charles Rankin Gould.
William James Cooper.
Edward Stewart Tisdale.
Francis Melville Wakefield.
Alexander Stewart.
Thomas Miller White.
John Arthur Mowat.
Henry Bogart Dean.
George Robert Knight.
Humphrey Albert L. White.
John Wood.
George Benjamin Douglas.
Alexander Humphrey Macadams.
Hugh Boulton Morphy.
William Henry Brouse.
George J. Gibb.
Frederick E. Redick.
William Masson.
Edward Guss Porter.
Thomas Robert Foy.
Henry Albert Rowe.
Thomas H. Stinson.
Stewart Masson.
Francis Evans Curtis.
William Steers.
Robert Taylor.
Henry M. East.
Armour William Ford.

Law Society, Hilary Term.

Wm. Martin McDermott.
Charles W. Phillips.
Wellington Smaill.
John Clyde Grant.
George Merrick Sinclair.
George Walker Marsh.
Edward Albert Foster.
Frank Russell Waddell.
Francis P. Conway.
Henry Dexter.
William T. Easton.
Albert Edward Wilkes.
James Lane.
John Henry Cooke.
Alexander Howden.
Douglas Buchanan.
John Alexander Stewart.
Arthur Mowat.
John McLean.
Robert Cockburn Hays.
William Aird Adair.
Ernest Wilbert Sexsmith.
John Baldwin Hand.
James Barrie.
George Frederick Jelfs.

Articled Clerks.

Noble A. Bartlett
Owen M. Jones.
Eugene Maurice Cole.
Ernest Arthur Hill Langtry.
John Oberlin Edwards.
J. A. Lougheed.

Ordered, That the division of candidates for admission on the Books of the Society into three classes be abolished.

That a graduate in the Faculty of Arts in any University in Her Majesty's Dominions, empowered to grant such degrees, shall be entitled to admission upon giving six weeks' notice in accordance with the existing rules and paying the prescribed fees, and presenting to Convocation his diploma or a proper certificate of his having received his degree.

That all other candidates for admission as Students-at-Law shall give six weeks' notice, pay the prescribed fees, and pass a satisfactory examination upon the following subjects:—

CLASSICS.

Xenophon Anabasis, B. I.; Homer, Iliad, B. I. Cicero, for the Manilian Law; Ovid, Fasti, B. I., vv. 1 300; Virgil, Æneid, B. II., vv. 1-317, Translations from English into Latin; Paper on Latin Grammar.

MATHEMATICS.

Arithmetic; Algebra, to the end of quadratic equations; Euclid, Bb. I., II., III.

ENGLISH.

A paper on English Grammar; Composition; An examination upon "The Lady of the Lake," with special reference to Cantos v. and vi.

HISTORY AND GEOGRAPHY.

English History, from Queen Anne to George III., inclusive. Roman History, from the commencement of the second Punic war to the death of Augustus. Greek History, from the Persian to the Peloponnesian wars, both inclusive. Ancient Geography: Greece, Italy, and Asia Minor. Modern Geography: North America and Europe.

Optional subjects instead of Greek:

FRENCH.

A paper on Grammar. Translation of simple sentences into French prose. Corneille, Horace, Acts I. and II.

or GERMAN.

A paper on Grammar. Musaeus, Stumme Liebe Schiller, Lied von der Glocke.

Candidates for admission as Articled Clerks (except graduates of Universities and Students-at-Law), are required to pass a satisfactory examination in the following subjects:—

Ovid, Fasti, B. I., vv. 1-300,—or
Virgil, Æneid, B. II., vv. 1-317.
Arithmetic.
Euclid, Bb. I., II. and III.
English Grammar and Composition.
English History—Queen Anne to George III.
Modern Geography—North America and Europe.
Elements of Book-keeping.

A Student of any University in this Province who shall present a certificate of having passed, within four years of his application, an examination in the subjects above prescribed, shall be entitled to admission as a Student-at-Law or Articled Clerk, (as the case may be) upon giving the prescribed notice and paying the prescribed fee.

All examinations of Students-at-Law or Articled Clerks shall be conducted before the Committee on Legal Education, or before a Special Committee appointed by Convocation.

THOMAS HODGINS, *Chairman.*

Osgoode Hall, Trinity Term, 1876.

Adopted by the Benchers in Convocation August 29, 1876.