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TABLE OF CASES.

DIARY FOR JANUARY.

1. Mon.. *Circumcision.* County Court Term beg. Heir and Devisee Sittings begin. Master and Registrar in Chancery and Clerks, and Deputy Clerks of Crown to make returns. Taxes to be computed from this date. Municipal Elections.
6. Sat... *Epiphany.* Christmas vacation in Chancery ends. County Court Term ends.
7. SUN . *1st Sunday after Epiphany.*
8. Mon.. Election of Police Trustees in Police Villages. County York Assizes begin.
10. Wed.. Master and Registrar in Chancery to pay over fees to the Provincial Treasurer.
12. Fri... Court of Error and Appeal Sittings.
13. Sat... Treasurers and Chamberlains of Municipalities to make returns to Board of Audit.
14. SUN.. *2nd Sunday aftr Epiphany.*
15. Mon.. Municipal Councils (ex-Councils) and Trustees of Police Village to hold first meeting.
16. Tues.. Heir and Devisee Sittings end.
20. Sat.... Articles, &c., to be left with Secretary of Law Society.
21. SUN.. *3rd Sunday after Epiphany.*
23. Tues.. First meeting of County Council.
28. SUN.. *Septuagesima Sunday.*
30. Tues.. Last day Non-Residents to give list of their lands.
31. Wed.. Last day for City and County Clerk to make yearly returns to the Provincial Secretary. Last day for Councils to return debts, &c.

THE

Canada Law Journal.

JANUARY, 1872.

PROCEEDINGS OF THE LAW SOCIETY.

On another page will be found a report of the proceedings of the Benchers in Convocation, which has been handed to us for insertion, under an order to that effect.

Without doubt it will be read with interest, not merely because it contains in itself information on matters of professional interest, and is an evidence of the vitality of the Law Society, but because it throws open to all who care to know, what is the inner working of a Society which has so much power to advance and maintain the welfare and present high standing of the Bench and Bar in this Province.

This order for the publication of the proceedings in Convocation may also be looked upon as a proper sequence from the elective system which has lately been introduced, that those who send their representatives to Osgoode Hall should be able to learn from an authentic source what they do when they go there; and as to the order for publication in this journal, it is proper that it should be the medium for the conveying this information to the profession, and the only medium, as being the only exclusively legal publication in the Province.

THE LAW REFORM COMMISSION.

Thomas Moss, Barrister-at-Law, of this city, has been appointed an additional member of the Law Reform Commission. It was objected by some that there was too great a preponderance of Common Law men on the Board, as at first constituted. This objection, though we must confess not to have been pressed with the importance of it, can no longer be raised, and so far as the recent appointment is concerned, it cannot but be considered as a most desirable one. Though a very young man, Mr. Moss has attained a position at the Equity Bar, which is scarcely second to that of the present leader of the Government of Ontario, during whose auspices the appointment has been made. What renders Mr. Moss peculiarly fit for the duties required by the Commission is, that he has an intimate knowledge of both Law and Equity, which few, if any, members of the Bar possess in the same degree.

As a whole, the composition of the Commission is excellent. Our only fear is that the members, being all men full of business of a pressing and engrossing nature, judicial and professional, will scarcely be able to give to the subjects of their labours that degree of time and attention, which its importance demands.

DECISIONS IN THE OFFICE OF THE MASTER IN CHANCERY.

We propose to insert in our columns, from time to time, decisions of the Master upon questions of importance to the profession, arising before him. One very obvious necessity for this is the desirability of securing uniformity of practice in the offices of the various Masters throughout the Province.

Under the old system in England, when there were half-a-score of Masters in ordinary of the Court of Chancery, one of the great grievances of the profession was that each Master had his own practice. Each one, in the way of regulating and conducting the business before him, did that which seemed good in his own eyes. To compare small things with great — the Masters acted the *rôle* of the Chancellors in olden time, as set forth in the biting language of Selden: "For law we have a measure, and know what we have to trust to. Equity is according to the conscience of him that is Chancellor; and as that is larger or narrower, so is equity. 'Tis all one as if they should

make the standard for the measure of the Chancellor's foot. What an uncertain measure would this be! One Chancellor has a long foot, another a small foot, a third an indifferent foot. It is the same thing with the Chancellor's conscience." In this Province are some twenty-four local Masters, and we think that it will greatly further the maintenance of a uniform practice to report the decisions made in the head office by the Master at Toronto.

SECURITY FOR COSTS FROM FOREIGNERS WITHIN THE JURISDICTION.

FIRST PAPER.

The reason of the law requiring security for costs is given by Alderson, B., in *Barratt* v. *Power*, 9 Exch. 339, viz., that in the event of judgment going against a person residing abroad, he cannot be taken in execution under the process of the court. Under the present state of the law in this province this reason is not applicable, as all process of a personal nature for the enforcement of judgments is quite abolished. Nevertheless, the practice continues of requiring security for costs in all cases of an absent plaintiff. With this branch of the practice generally it is not our intention now to deal, but with that particular part of it merely, which is set out in the caption of this article.

It was held by the late Sir John B. Robinson, sitting in Chambers in 1855, that when a plaintiff whose residence was in England came out to this country merely for the purpose of attending to the suit, and intending to return when it was over, he must give security for costs: *Gill* v. *Hodgson*, 1 Prac. R. 381. In 1863, this case was doubted by Mr. Justice Adam Wilson, sitting in Chambers, and he refused to be bound by it: *Hawkins* v. *Patterson*, 3 Prac. R. 262, 9 U.C.L.J. 324. There the true rule was held to be, that if a plaintiff be actually a resident in the province at the time of the application, and if he intend to remain here until after trial or judgment in the cause, then security should not be ordered.

This conflict of authority has not been pronounced upon by the full court; and the question arises, which case correctly represents the law. This question we shall deal with,—and to do so properly a short historical review of the cases touching upon this branch of practice had better be made. In the English Common Pleas it has always been held that the court will not require the plaintiff to give security for costs on account of his being a *foreigner*, if he be actually in England; *Porrier* v. *Carter*, 1 H. Bl. 106 (1789): *Jacobs* v. *Stevenson*, 1 B. & P. 96 (1797); *Maria* v. *Hall*, 2 B. & P. 236. In *Ciragno* v. *Hassan*, 6 Taunt. 20, s. c. 1 *Marsh.* 421 (C. P. 1815), the court refused to order security where the plaintiff was a foreigner about to go abroad, but who was yet in the country. This case was followed by the same court in 1819, in *Anon.* 3 Moo. 78, s. c. 8 Taunt. 737. In the same year the court refused the order even when the plaintiff, being a foreigner, was absent from the country; but it was shewn that he resided in England four months in the year: *Durell* v. *Matheson*, 8 Taunt. 711.

In 1840, the Court of Exchequer adopted the practice of the Common Pleas, refusing to order security in a case where the plaintiff was a foreigner usually resident abroad, and was out of the jurisdiction at the time the suit was commenced, though within it when the application was made: *Darling* v. *Harman*, 6 M. & W. 131. This case was followed by the same court in 1852, when the principle was laid down that security for costs should not be exacted from a foreigner unless he be actually out of the jurisdiction: *Tambisco* v. *Pacifico*, 7 Exch. 816. The court here refused to follow (the leading case on the other side of the question) *Oliva* v. *Johnson*, 5 B. & Ald. 908, decided in the Q. B. in 1822, where security was ordered: the plaintiff there being a native of Canada, and though then in England, yet having no permanent residence in that country.

The court of Common Pleas has been careful to mark the distinction between the general rule, that if the plaintiff being a subject is not domiciled in England he will have to give security; and the case of a *foreigner*, whose temporarary residence is sufficient to exempt him from giving security: see *Naylor* v. *Joseph*, 10 Moo. 522; *Mahonz* v. *Martine*, 4 Moo. 357; Chitty's Archb., 12th ed. 1415. The case of *Gurney* v. *Key*, 3 Dowl. 559, decided by Williams, J., in 1835, appears to have been the case of a British subject who was out of the country at the time of the application: see 9 U.C. L. J. 325. An exceptional case is to be found among the decisions of the Common Pleas, in *St Leger* v. *Di Nuovo*, 2 Sc. N.

R. 587 (1841), where a foreigner, at the time within the jurisdiction, was ordered to give security, as it was sworn and not denied that he had no permanent residence in the country. No cases were cited, and the decision seems to be based on the special circumstances.

Of later cases, *Drummond* v. *Tillinghast*, 16 Q. B. 740 (1851), recognizes *Oliva* v. *Johnson*, though being a case where the plaintiff was a *mariner* as well as a foreigner, the decision proceeded upon special grounds. So in *Rylander* v. *Barnes*, 6 H. & N. 509, the plaintiff was a foreign *sailor*, and as he did not swear that he intended to remain in the country till the termination of the suit, but merely that he was in the habit of remaining in England for considerable periods, security was ordered.

(To be Continued.)

LAW SOCIETY OF ONTARIO.

Michaelmas Term—1871.

The following is a *resumé* of the proceedings of Convocation, during last Term, published by order of the Benchers:

Monday, 20th November. — The application of Hon. J. H. Gray, for call to the Bar, was deferred for want of notice.

Ordered, that the second Thursday and Friday in Michaelmas Term be examination days for Scholarships.

Tuesday, 21st November.—The resignation of Edward Blake, Esq., Q. C., was presented by Mr. Morrison, and accepted.

Messrs. J. D. Armour, Crooks, C. S. Patterson, McCarthy and McKenzie, were appointed Examining Committee for next Term.

Report of Examining Committee of this Term adopted.

Abstract of balance sheet laid on the table.

Mr. Treasurer reported the sale of Sterling bonds, and deposit of proceeds in the Bank of Toronto.

Hour of meeting of Convocation ordered to be half-past ten in the forenoon.

Ordered, that a list of Attorneys and Solicitors taking out certificates be delivered by the Secretary to the Solicitor of the Society by the first day of January yearly, and any found practising without certificates to be proceeded against.

Mr. Crooks was placed on the Legal Education Committee, and Mr. Moss on Committee on Reports, in the place of Mr. E. Blake.

A meeting of Benchers ordered to be had for last Friday in this Term, for election of a Bencher in the place of Mr. E. Blake.

Wednesday, 22nd November—Ordered, that the Committees of Finance and Economy be consolidated, and be called the Finance Committee, and that three be a quorum.

Report of the Finance Committee was brought up, and ordered for consideration on Wednesday next.

Friday, 24th November. — The intermediate examinations for the third and fourth years were held.

Convocation adjourned to 29th instant.

Wednesday, 29th November.—Mr. Treasurer laid on the table a rule of the Court of Queen's Bench, striking John Edward Stark off the roll of Attorneys, with certificate of R. G. Dalton, Clerk of the Crown, that he had been struck off, and an order of the Court to transmit the rule to the Law Society; when it was ordered that John Edward Stark be suspended from practice at the Bar, and certificates to that effect be sent to each of the Superior Courts, and the County Court of Haldimand, in which county he was practising.

Reports of the Committees on Legal Education and Reports received, and ordered to be considered, as well as reports of Finance Committee, at next meeting.

Ordered, that the Chairmen of the Committees of Finance, Reports and Legal Education, be a Special Committee to prepare any bill to be submitted to the Legislature, that may be necessary to carry out all or any of the reports of the Commitees of which they are Chairmen.

Ordered, that Mr. Molloy be paid fifty dollars per annum, in lieu of the fees which he lost by the abolition of lectures.

Convocation adjourned to Wednesday next.

Friday, 1st December.—The Scholarship examinations resulted as follows:

Fourth year..... None awarded.
Third year..... Mr. Barker.
Second year..... Mr. McMillan.
First year..... Mr. Pepler.

Wednesday, 6th December.—Report of Finance Committee was considered and adopted, but not to apply at present to Secretary and Sub-Treasurer.

Report of Library Committee was adopted.

Report of Committee on Reports was adopted, subject to future action of Convocation as to parts thereof.

A Bill to amend the Acts of the Law Society was brought up, and ordered to be further considered by Mr. Treasurer, and reported by him on Friday next.

Report of Committee on Legal Education was adopted.

Committee of Finance ordered to provide for a complete and effective system of ventilation for Library and Convocation-room.

Mr. B. H. Vidal was allowed his terms while absent in the army.

A *resumé* of the proceedings of Convocation, signed by the Treasurer, ordered to be published in the *Canada Law Journal*, after each Term.

Messrs. Irving, Q. C., and F. Osler were appointed to audit the accounts of the current year.

Friday, 8th December.—Mr. Samuel H. Blake was elected a Bencher in the room of Mr. Edward Blake, resigned.

Messrs. Leith, Anderson and Proudfoot were appointed Examiners for 1872.

Mr. Crickmore was ordered to be paid one hundred dollars for his services as Examiner this Term.

A petition for an amended bill to the Legislature was adopted.

A draft of an amended bill was adopted, and Mr. Treasurer requested to ask the Attorney-General to take charge of the same; and a Committee appointed to look after passage of bills.

Ordered, that an additional appropriation of six hundred dollars be made in favour of the Library Committee.

Messrs. S. H. Blake and M. C. Cameron were placed on the Library Committee on Reports, instead of Messrs. Crawford and McCarthy.

Mr. S. H. Blake was placed on the Library Committee instead of Mr. M. C. Cameron.

The names of the several gentlemen called to the bar, and admitted as attorneys and students during the Term, appear officially as usual.

J. Hillyard Cameron,
Treasurer.

Osgoode Hall, Jan. 20, 1872.

LEGAL NOTES.

A Law Society has been formed for the Province of Manitoba—at least so says a paper published there. The Officers, who appear to be elective, are as follows:

President, Hon. Henry J. Clarke, Q. C., Attorney-General; Treasurer, D. M. Walker, Esq.; Secretary, W. B. Thibaudeau, Esq. (formerly of Kingston, Ontario). Board of Examiners:—J. F. Bain, Esq., Chairman; D. M. Walker, Esq., and W. B. Thibaudeau, Esq., English Examiners; Joseph Royal, Esq., and Joseph Dubuc, Esq., French Examiners.

The Society propose to establish a Library without delay. We wish them every success.

The last *Ontario Gazette* states that a commission has issued to the Judges of the Superior Courts of Law and Equity, under 34 Victoria, capter 7 (Ontario), to report to the Legislative Assembly in respect of any Bills, or petitions for Estate Bills, which may be submitted to the House. We trust that this wholesome provision of the Legislature may have the effect of stopping such measures as the Goodhue Bill and other like matters. It is a pity this provision did not come into force before legislation so discreditable in principle had taken place. There is still some hope that it may be disallowed by the Governor-General. We should be sorry to see the act ventilated on an appeal to England from our Court of Appeal, if the judgment there should sustain that of the Court of Chancery.

Skilled witnesses are generally great bores. It has been observed that medical men, as a rule, are peculiarly grandiloquent, abounding in resonant technicalities and scientific monstrosities when placed in the witness-box. We notice that an able medical witness, in an English assize court, lately furnished the opposite counsel with the burden of a telling speech, by informing him that his client's "muscular contractibility responded readily to the electro-galvanic influence."

La Revue Critique de Legislation et de Jurisprudence du Canada.—This review has been highly commended by legal writers in England, as being a very creditable production, in which the subjects are well chosen, and the articles carefully written. In judicial language, we "concur."

In giving the names of those gentlemen who passed their first intermediate examination in Michaelmas Term, we overlooked that of Mr. D. E. McMillan, of Guelph, which should have been included among the number.

By Imperial statute 34–35 Vic. cap. 112, children under fourteen, and without proper guardianship, may, under certain circumstances, be sent by the court to an industrial school. We understand some such, or rather a more extended act is to be applied for during the next session of the Ontario Parliament, in connection with the Boys' and Girls' Home. It is becoming impossible properly to deal with vagrant children, so as to cause them to grow

up with a prospect of leading useful lives. A compulsory power of detention in charitable institutions seems to be wanted.

An English statute, which came into force last November, provides for criminals being photographed in prison, and for the distribution of such photographs, with a view to facilitate identification, and thereby prevent crime.

It is perhaps not generally known among the profession in this country, that the late Mr. Justice Norman, acting Chief Justice at Calcutta, who came to a tragic end, having been assassinated by one of the natives, was the author of the well-known treatise on Patents, and was at one time a reporter in the English Exchequer, in conjunction with Mr. Hurlstone. These reports are sometimes erroneously cited as "Exchequer, New Series," and are unfortunately so lettered on the back of the copy in Osgoode Hall library.

The English *Law Journal*, referring to the late case of *Johnson* v. *Emerson & Sparrow*, 40 L. J. N. S. Exch. 201, says: "We believe no case will be found in the books, occupying greater space." The length is occasioned by the elaborate judgments upon the question whether or not the defendants were guilty of maliciously procuring the plaintiff to be adjudicated a bankrupt. The court was equally divided. One judgment was withdrawn, and the case goes to the Exchequer Chamber. As to the mere length of the report, we think the *Law Journal* will find that it is surpassed by the Admiralty case of *Banda and Kirwee Booty*, L. R. 1 A. & E. 109. The Exchequer case is reported in L. R. 6 Exch. p. 329, and there occupies 74 pages: the Admiralty case was argued by 37 counsel, representing different interests, and fills 160 pages. True, it may be said of this latter case that it is really a consolidation of several cases.

We observe that the Supreme Court of Pennsylvania has suspended an attorney rejoicing in the name "J. Charles Dickens," by reason of his attempting to intoxicate his opponent, in order to take an advantage of him, "until the offence should be thoroughly purged." The unprofessional singularity of the misconduct, and the mysterious duration of the term of punishment, are alike provocative of profound amazement.

THE REPORTERS AND TEXT WRITERS.

An industrious writer for the *American Law Review* has extracted from the judgments and sayings of eminent Judges, and other authorities, the sayings expresssd by them with reference to the Reporters and Text Writers to whom they refer. This compilation cannot fail to be of interest to those who are in the daily habit of using these books. We copy the collection in full, and may hereafter add some notes of our own on the same subject:

Abbott on Shipping, 542 note *u*, 11th ed. In the preface of this edition the late Mr. Justice Shee wrote: "With the exception of one passage (note *p*, 78) composed by the author, and one, the only one of his composition which the editor had ventured to alter, to be speedily restored by him, in submission to the opinion of the Court of Queen's Bench (note *u*, 542), he is not aware that the law, as laid down by Lord Tenterden, or offered in any edition of this work to the acceptance of the profession, has been authoritatively questioned."

Addison on Contracts.—"An able book."—Parke B. in *Ellen v. Topp*, 15 Jur. 452.

Amos and Ferard on Fixtures.—"An excellent book."—Lord Campbell, C. J., in *Martin v. Roe*, 7 El. & Bl. 247.

Angell on Watercourses.—"A very able treatise."—Lord Wensleydale in *Chasemore v. Richards*, 7 House of Lords Cases, 383.

Archbold's Criminal Pleading and Evidence.—The third edition swarms with errors, the work of an anonymous editor. They were carefully expunged in the fourth edition, which was edited by John Jervis, Esq., late Lord Chief Justice of the Court of Common Pleas.

"Precedents by persons who are deceased are had recourse to as a sort of authority, and no doubt they are justly entitled to it; but in this particular case, with all the respect I feel for Mr. Archbold and Mr. Jervis, I find that the two precedents differ, and I think the best course to adopt is not to pronounce an opinion upon them, but to look at the words of the Act."—Coleridge, J., in *The King v. Kendrick*, 3 Neville & Manning, 407 (1835).

In *Regina v. Webb*, Temple & Mew, C. C. 28, it was said at the bar that Archbold's forms have not received any public approbation, nor are they to be considered as law. Pollock, C. B., in answer, observed: "Generally speaking, Mr. Archbold's publications are remarkable for their accuracy, and I know no person who has contributed more

The Reporters and Text Writers.

to the profession, by his great diligence and learning." But in *Regina v. Ion*, 2 Denison C. C. 488, when the eleventh edition of Archbold's Criminal Pleading, by Welsby, was cited, the same learned judge said that Mr. Welsby was "not yet an *authority*."

Atkyns's Reports.—Mr. Justice Buller says: 'This case is miserably reported in the printed book; and it was the misfortune of Lord Hardwicke, and of the public in general, to have many of his determinations published in an incorrect and slovenly way; and perhaps, even he himself, by being very diffuse, has laid a foundation for doubts which otherwise would never have existed."—Buller, J., in *Lickbarrow v. Mason*, 6 East, 29, 1 Smith L. C. 739, 6th ed. See *Holland v. Holland*, 20 L. T. N. S. 59.

Bacon's Abridgment.—"It is well known that Bacon's Abridgment was compiled from the MS. of Chief Baron Gilbert."—Per Blackburn, J., in *The Queen v. Ritson*, L. R. C. C. 204. The title "Leases" is generally considered to be the best of the many valuable expositions of the law in this work. Mr. Justice Coleridge speaks of it as "admirable," in his edition of Blackstone's Commentaries, Vol. II, p. 320, note 13.

Ballow (Henry).—Treatise of Equity. London, 1737. Henry Ballow is the reputed author of this excellent old work. Of the late editions, Mr. Justice Sharswood observed that it has become "as has been well remarked, 'a rivulet of text meandering through a wilderness of notes.'" 60 Penn. State, 227.

Barnardiston.—"Is not a reporter to be relied on in all cases."—Stuart, V. C., *Holland v. Holland*, 20 L. T. N. S. 59.

Barnewall and Alderson's Reports.—In a recent case, the reference to which is mislaid, the late Baron Alderson remarked that he was not responsible for the first part of the first volume. It was reported by Selwyn and Barnewall.

Barnes's Notes.—"Much indifferent law is to be found in Barnes's Notes."—Pollock, C. B., in *Williams v. Holmes*, 22 L. J. Exch. 284.

Beck's Medical Jurisprudence.—"This is a work of high reputation, but we cannot regard its statements as evidence."—*Phillips v. Allen*, 2 Allen 456.

Best on Evidence.—Mr. Justice Willes, in *Regina v. Briggs*, Dearsly & Bell C. C. 102, characterized this as one of the best books on our laws. And Stuart, V. C., in *Marritt v. The Anchor Reversionary Co.*, 8 Jur. N. S. 52, pronounced it "a very remarkable book." See also the observations of Willes, J., in *Hollingham v. Head*, 4 C. B. N. S. 391, and in *Ex parte Fernandez*, 10 C. B. N. S. 40.

Blackburn on the Contract of Sale.—"Another authority referred to entitled to great respect."—Bramwell, B., in *Chinery v. Viall*, 5 H. & N. 294.

Bracton.—Designated by Sir William Jones, "the best of our juridical classics." Treatise on Bailments, 75.

Brooke's Abridgment.—"High authority."—Kelly, C. B., in *Martin v. Woods*, 38 L. J. Q. B. 86. As reported in L. R. 4 Q. B. 305, "Great authority."

Burn's Justice.—In *Regina v. Williams*, Temple & Mew C. C. 241, a warrant issued by justices of the peace was held to be bad. Maule, J., observed: "They follow the form in Burn's Justice; but it is not the first form in that work which has been objected to, and decided to be wrong."

Campbell's Reports.—In a very recent case, Lord Cranworth, L. C., observes: "Although that was merely a dictum in a *nisi prius* case, yet on all occasions I have found on looking at the reports, by the late Lord Campbell, of Lord Ellenborough's decisions, that they really do, in the fewest possible words, lay down the law, very often more distinctly and more accurately than it is to be found in many lengthened reports; and what is so laid down has been subsequently recognized as giving a true view of the law as applied to the facts of the case." *Williams v. Bayley*, L. R. 1 H. L. 213.

Carrington and Payne, and 'Espinasse's Reports.—Of these two reporters, Blackburn, J., said: "Neither reporter has such a character for intelligence and accuracy as to make it at all certain that the facts are correctly stated, or that the opinion of the judge was rightly understood." *Redhead v. Midland Railway Company*, 8 Best & Smith, 401; 9 Best & Smith, 531; L. R. 4 Q. B. 388. See 'Espinasse.

Carter's Reports.—In *Pennoyer v. Brace*, Comberbach, 441, Lord Holt disclaimed all knowledge of "that Carter," and would not allow his authority. 4 C. B. 592 note.

Chalmer's Opinions of Eminent Lawyers. Forsyth's Cases and Opinions on Constitutional Law.—In *Phillips v. Eyre*, 40 L. J. N. S. Q. B. 28, the Court of Exchequer Chamber allowed these works to be referred to as part of the argument of counsel, but not as possessing any authority. P. 29 n. (1).

Chitty's Archbold's Practice of the Court of Queen's Bench in Personal Actions and Ejectment.—"There is an admirable book,—Mr. Prentice's edition of Chitty's Archbold's Practice,—

a most useful book,—one of the best books ever written."—Martin, B., in *Andrews v. Saunderson.* 3 Jur. N. S. 118, 119.

Coke's Fourth Institute.—"Holt said the Fourth Institute had not my Lord Coke's last hand; the judges have not allowed that so much as the other parts; though the Second Institute be a posthumous work, yet it is more perfect."—*Rex v. Pain,* Holt, 295.

Coke's Reports.—Mr. Justice Putnam thus expressed his opinion of Coke's style of reporting: "There was no necessity for the court to have decided the various matters which were resolved in the case; but if the readings and resolutions which we find in Lord Coke's Reports, which were not necessary for the decision of the particular case, were struck out, an immense proportion of the common law there digested and clearly stated would be lost, unless with infinite labor it should be collected from the Year Books and other black-letter authorities. The extra-judicial opinions of Lord Coke contain more of the common law than is to be found in the writings of any other reporter before or since his time. His mode of reporting, however, should be considered as the exception to the general rule, rather than the one which should be adopted at this day. *Arnold v. Arnold,* 17 Pick. 9, 10. And Lord Mansfield remarked of The Reports: "My Lord Coke was very fond of multiplying precedents and authorities; and, in order to illustrate his subject, was apt, besides such authorities as were strictly applicable, to cite others, not applicable to the question under judicial consideration." *Rex. v. Cowle,* 2 Burr, 858. See also Sugden on Powers, p. 22 note, 7th ed.

Lord Coke himself thus states "the method the reporter doth use:" "I challenge that which of right is due to every reporter, that is, to reduce the sum and effect of all to such a method as, upon consideration had of all the arguments, the reporter himself thinketh to be fittest and clearest or the right understanding of the true reasons, and causes of the propositions and resolutions of the case in question." *Calvin's Case,* 7 Rep 4 *a.*

Comberbach's and Carthew's Reports.—In *Dyer v. Best,* 4 H. & C., 194 note, Pollock, C. B., referred to Clarke's Bibliotheca Legum, 355, where the authority of these reporters is impugned. Lord Denman, C. J., also has said: "Comberbach is very far indeed from being a reporter to whose doubt any importance should be attached. I remember hearing Lord Kenyon say so, very early in my professional career. Lord Erskine, then at the bar, founded an argument upon the remark of Lord Kenyon. He admitted its truth, but said that a sentence or two in the report which he then used were on that account of great weight, as they must have been really delivered by the court; for, he said, they contained something like sense, and therefore could not be Comberbach's own." *Newton's Case,* 13 Q. B. 726 and note.

Dickens's Reports.—"It is scarcely necessary to notice this case. The accuracy of Dickens's Reports is not to be relied upon, and this case is a remarkable instance of their inaccuracy."—Stuart, V. C., in *Holland v. Holland,* 20 L. T. N. S. 59.

Digest, The.—"The opinions of the great lawyers collected in the Digest afford us very great assistance in tracing out any question of doubtful principle; but they do not bind us."—Blackburn J., delivering the considered judgment of the Court of Exchequer Chamber in *Appleby v. Myers,* L. R. 2 C. P. 660.

Dyer and Lord Raymond.—"There are a good many cases in the time between Dyer and Lord Raymond (1621–1694), (which may properly be called the middle age of the law) in respect to which one hardly knows what to say. They have been doubted and denied, and then again supported and qualified; and in some instances there is a string of cases each way, so that it is difficult to say which is the best authority."—Judge Story. Letter to Simon Greenleaf, Esq., 1819. Story's Life and Letters, Vol. I. 328.

'Espinasse's Reports.—In *Small v. Nairne,* 13 Q. B. 844, Lord Denman said: "I am tempted to remark for the benefit of the profession, that Espinasse's Reports, in days nearer their own time, when their want of accuracy was better known than it is now, were never quoted without doubt and hesitation; and a special reason was often given as an apology for citing that particular case. Now they are often cited as if counsel thought them of equal authority with Lord Coke's Reports." This remark is quoted by Coleridge, J., in *Wenman v. Mackenzie* 5 El. & Bl. 453. See Carrington and Payne.

Gale on Easements.—"A very excellent book," said Lord Campbell, C. J., in *Renshaw v. Bean,* 18 Q. B. 124. "An excellent treatise," said Lord Wensleydale, in *Rowbotham v. Wilson,* 8 House of Lords Cases, 359. "A work of much ability," says that first class authority, the sixth edition of Saunders's Reports, 2 Saund. 400 *a.*

Greenleaf on Evidence.—The first volume "is to be regarded rather as a discussion and statement of the grounds and principles of proof in general than as a detail of the rules of evidence."—Shaw, C. J., in *Commonwealth v. York,* 9 Met. 106.

The Reporters and Text Writers.

Hale's Pleas of the Crown.—Very soon after the first edition of his Reports was published in 1763, Mr. Justice Foster retracted what he had said in that edition respecting Lord Hale's inaccuracy. See p. xxxii. of the 3rd ed. See also per Monahan, Attorney-General, *arguendo* in *Regina v. Mitchell*, 3 Cox C. C. 117.

"Every one who relies upon Lord Hale should remember, 1st. That he corrected his MSS. only to the twenty-seventh chapter; 2ndly. That Lord Hale, 'not having always had leisure to consult the books themselves, had frequently copied from the misprinted quotations in the margin of Lord Coke's third volume of his Institutes;' which also clearly shows that he had relied on Lord Coke's statements themselves. See the preface to Hale's Pleas of the Crown, pp. xi., xii." 2 Russell on Crimes, 182 note, 4th ed.

It may be observed that writers subsequent to Lord Hale have stated absolutely many things which he delivered under various degrees of assent and modification of doubt. They have omitted such expressions as "but this is but hearsay," "it might be a question," "it seemeth," "*sed tamen quære*," "*quære de hoc*," etc. It has been well said that these are "by no means arbitrary words, without much meaning; but are inserted with the utmost deliberation and judgment." A recent author adds: "These ancient writers advanced timidly over such slippery ways as those of the common law; but by suppressing their misgivings and rushing in where they trod with alarm, an easy passage has been opened by their successors over the legal Alps." Amos's Ruins of Time, p. 2.

Hammond on Parties to Actions.—"An extremely able work."—Martin, B., in *Fairlie v. Fenton*, L. R. 5 Exch. 171.

Hammond's Treatise on the Law of Nisi Prius.—"An admirable work on the subject of torts."—Martin, B., in *Collins v. Cave*, 4 H. & N. 234.

Hawkin's Pleas of the Crown.—"A work of high authority, and a writer that never was supposed to have taken too favourable a view to those prosecuted."—Perrin, J., in *Regina v. O'Connell*, 1 Cox C. C. 378.

"Hale and Hawkins are justly regarded, not as respectable compilers, but as standard authorities."—Gaston, J., in *The State v. Johnson*, 1 Iredell, 363.

Jarman on Wills.—An "eminent writer."—Erle, C. J., in *Roddy v. Fitzgerald*, 6 House of Lords Cases, 823. A "valuable work."—Bovill, C. J., delivering the considered judgment in *Bradley v. Cartwright*, L. R. 2 C. P. 521.

Johnson's Reports.—Williams, C. J., says: "The decisions which are found in Johnson's Reports have always come to us with a weight of authority to which the learning, talents, and exalted legal character of the learned justices who composed the court so justly entitled them."—*Ives v. Hulet*, 12 Vermont, 335.

Keble's Reports.—"It must be admitted that Keble is of no high repute as an accurate reporter; and the court would be slow to act on a case in that book, if it were unsupported by others. . . With respect to the authority of Keble, we cannot refrain from referring to the highly valuable and interesting work of Mr. J. W. Wallace, The Reporters, 207, 208, 3rd ed., from which it appears that more is to be said of this reporter as a 'tolerable historian of the law,' than from the remarks made upon him from time to time might have been supposed."—Williams, J., delivering the judgment in *Farrell v. Hilditch*, 5 C. B. N. S. 853, 855.

Lord Mansfield justly observed on one occasion: "It is objected that the books (Keble's and Freeman's Reports) are of no authority; but if both the reporters were the worst that ever reported, if substantially they reported a case in the same way, it is demonstration of the truth of what they report, or they could not agree."—*Rex v. Genge*, 1 Cowp. 16.

Kelyng's Reports.—"A book of high authority."—2 Russell on Crimes, 244, 4th ed.

"That is a book which can never be referred to without reprobating the course which appears there to have been taken, of judges and Crown counsel meeting together to settle, revise, and rule beforehand the points of the trial; and we must not forget that the book was edited by Lord Holt, and the preface written by him."—Fitzgerald, J., in *Mulcahy v. The Queen*, Irish Rep. 1 Com. Law, 64.

Law Times Reports.—"It is but right to say that, considering the celerity with which these Reports are published, they are very creditable productions."—Preface to the fourth edition of Russell on Crimes.

Levinz' Reports.—Lord Tenterden: "Levinz is a better authority than Keble." *Rex v. Russell*, 1 Moody C. C. 363. Lord Mansfield, 5 Burr. 2731, and Lord Kenyon, 3 T. R. 17, expressed the same opinion, "which indeed," writes Mr. Wallace, "is not to say a great deal." The Reporters, 206, 3d ed.

Machlachlan on the Law of Merchant Shipping.—"An excellent, able, and well-written work."—Cockburn, C. J., in *Castrique v. Imrie*, Exch. Ch. 30th November, 1860. "An acquisi-

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tion to legal literature."—Williams, J., in *Maitland v. Graham*, C. B, 14th November, 1860.

Modern Reports.—"The Modern Reports are a very loose compilation." Blackburn, J., in *Regina v. Allen*, 8 Jur. N. S. 231. "The book called 'The Modern Reports' is not of very high authority."—Best Ev. 745, 4th ed.

Modern Reports, Vol. VII.—"As to the degree of authority to be ascribed to this volume, there is a very great distinction to be made between the first edition and the last. The former appeared in a most imperfect state, and fully deserved the censures which it received from the lawyers of the period. The last edition, revised from the authentic manuscripts, appeared in 1796, under the supervision of Mr. Leach, and has always enjoyed a high authority."—Law Magazine and Law Review, November, 1868, p. 139.

Modern Reports, Vol. VIII.—"Notoriously inaccurate and of no authority."—Bayley, J., in *The King v. Williams*, 3 M. & R. 405.

Modern Reports, Vol. IX.—"The ninth Modern is worse than the tenth."—Littledale, J., in *Doe v. Asby*, 10 Ad. & El. 73. "A case in 9 Mod. with respect to which I may say that there are no reports upon which less reliance can be placed."—Dr. Lushington, *In the Goods of C. Spitty*, 16 Jur. 92.

Modern Reports, Vol. XII.—"Not a book of any authority."—Buller, J., in *The King v. Lyme Regis*, 1 Dougl. 83. Kent, J., in *The People v. Guernsey*, 3 Johns. Cas. 266. "A book of no authority and very small repute, published by an anonymous reporter."—Savage, C. J., in *Ellsworth v. Thompson*, 13 Wend. 658.

Moore (Sir Francis) Reports.—"Moore is a very accurate reporter."—Lord Ellenborough in *Whitbread v. Jenney*, 2 J. P. Smith, 126.

Noy's Reports.—"In the first place it is to be observed, that Noy's Reports are of no credit; they being, according to Mr. Hargrave, only loose notes, compiled from his papers, by Serjeant Size, and imposed upon the world as genuine. But the case itself is solitary and anomalous, and cannot be law.—Kent, C. J. in *Tillitson v. Cheetham*, 2 Johns. 72.

Oliphant on Horses.—"An excellent work."—Willes, J., in *Howard v. Sheward*, L. R. 2 C. P. 151.

Ortolan. Diplomatie de la Mer.—"The work of a French naval officer, but of which a jurist might be proud."—Willes, J., in *Lloyd v. Guibert*, 35 L. J. N. S. (Q. B.) 79.

Peere Williams's Reports.—The edition by Messrs. Morris, Lowndes, and Randall is an "excellent edition."—Lord Brougham, 3 House of Lords Cases, 130.

Phillips on Insurance.—"I take Phillips on Insurance to be a masterly book."—Erle, C, J., in *Carr v. Montefiore*, 5 Best & Smith, 430. "A very able and learned work."—Willes, J., in *Ionides v. The Universal Marine Insurance Co.* 10 Jur. N. S, 21, 22.

Pothier. Treatise on the Law of Contracts.—"It is remarkable for the accuracy of the principles contained in it, the perspicuity of its arrangement, and the elegance of its style.—Lord Tenterden. Preface to his Treatise on Shipping.

Raymond (Robert, Lord) Reports.—Fifth edition, by C. J. Gale, Vol. I., 8vo. pp. 568, London, 1832. "An excellent edition."—1 Smith L. C. 269, 6th London ed.

"A case reported by Lord Raymond himself, and therefore an authentic report."—Blackburn, J., in *Winsor v. The Queen*, L. R. 1 Q. B. 318.

Russell on Crimes, ed. Greaves.—"The editor of Russell on Crimes is known as a gentleman of great learning, ability, and research."—Pollock, C. B., in *Regina v. Curgerwen*, L. R. 1 C. C. 3.

Salkeld's Reports, Vol. III.—"The third volume of Salkeld has always been considered apocryphal."—Willes, J., in *Ilderton v. Castrique*, 14 C. B. N. S. 106. 1 Smith, L. C. 56, 5th London ed. Parsons, C. J., 8 Mass. 258.

Saunders' Reports, ed. Williams.—Martin, B.: "The omission of a case from such a book throws, in my opinion, great doubt upon its authority." *Dyer v. Best*, 35 L. J. N. S. Exch. p. 106; L. R. 1 Exch. 156.

Sedgwick on Damages.—"A most able work."—Cockburn, C. J., in *Engell v. Fitch*, L. R. 3 Q. B

Shower's Reports.—"A doubtful reporter."—Lord Abinger, C. B., in *Sunbolf v. Alford*, 3 M. & W. 253.

Siderfin's Reports. Keble's Reports.—In *Lowe v. Joliffe*, 1 W. Bl. 366 (1763), Lord Mansfield, C. J. is reported to have declared on a trial at bar, that the court "did not then sit there to take its rules of evidence from Siderfin and Keble;" whose reports begin about a century before the time when he was speaking. Best Ev. sec. 109, 5th ed.

Smith's Leading Cases.—Sir Fitzroy Kelly observed, *arguendo*, in the House of Lords, "that he believed that there was not an error to be found in the notes from beginning to end."—*National Exchange Company of Glasgow v. Dick*, 2 Macqueen, 114, note (1855).

The Reporters and Text Writers.

Smith's Mercantile Law.—"A text-book of very great value."—Byles, J., in *Leverson v. Lane*, 13 C. B. N. S. 284.

Starkie's Criminal Pleading.—This book is cited as direct authority in England.—*Regina v. Drury*, 3 Cox, C. C. 546; 18 L. J. N. S. (M. C.) 193 (1849).

State Trials.—The cases in the State Trials before the Revolution, 1688, on the law of evidence, are of no authority.—Lord Campbell, C. J., in *Regina v. Scaife*, 2 Denison, C. C. 283. Wilde, J., in *Cooley v. Norton*, 4 Cush. 95.

Staunforde's Book on Prerogative.—"This book (as well as his Treatise on Pleas of the Crown, which is often cited in the text of Lord Coke's Reports), is a work of considerable authority. I cite it as an evidence of what in his time was the opinion of the profession on the subject."—Pigott, C. B. in *Regina v. Toole*, 11 Cox C. C. 78.

Taunton's Reports, Vol. VIII.—"Parke, B., has frequently observed of late that the 8th Taunton is but of doubtful authority, as the cases were not reported by Mr. Taunton himself."—Reporter's note, 9 Exch. 347. "Is an apocryphal authority. It was made up from Mr. Justice Taunton's notes, and was not revised by him."—Parke, B., in *Hadley v. Baxendale*, 23 L. J. Exch. 180. 18 Jur. 358; see 6 Best & Smith, 444.

Termes de la Ley.—The first edition was printed in 1563. In ædibus Richardi Tottelli. A book said by Mr. Justice Bayley to be "of great antiquity and accuracy."—*Hewlins v. Shippam*, 5 B. & C. 229.

Text Writers.—"No additional weight is given to decisions by the insertion of the doctrine thereof in legal treatises, however eminent may be their authors."—*Fullam v. West Brookfield*, 8 Allen, 7.

Tidd's Practice.—"This is a book of a very superior kind. It is a work in which the author has treated the subject in a scientific and masterly manner, and has illustrated and explained upon clear principles those rules of practice, which, in most other works of this nature, appear to be a collection of a mere positive and arbitrary institution."—Mr. Serjeant Williams, 1 Saund. 318 *b*, 6th ed. This book is cited in the courts, not merely as a standard text-book, but almost as an *authority*, on account of its unrivalled accuracy.

Ventris's Reports.—"This case is a mistake. The reporter was then a young man."—Denison, J., in *Wilson v. Greaves*, 1 Burr. 244.

Viner's Abridgment.—"A work of stupendous labor and research." Mr. Hargrave styles it "an immense body of law and equity, and worthy, notwithstanding all its defects and inaccuracies, of forming a necessary part of every lawyer's library." Co. Litt. 9 *a* in notes.

Wallace (John William).—The Reporters, Chronologically Arranged, with occasional Remarks on their Respective Merits. 3rd ed. 8vo. 1855. "A work remarkable for learned research."—Erle, C. J., in delivering the considered judgment of the court in the great case of *Kennedy v. Broun*, 13 C. B. N. S. 728.

"Wentworth's Pleader is a book of no authority; it is a collection of very vicious precedents."—Lord Abinger, C. B., in *Sunbolf v. Alford*, 3 M. & W. 251. And again at p. 253: "As to the supposed authority of Wentworth, it is really no authority whatever. Mr. Wentworth was not a reporter; his is a vast collection of pleadings, obtained from Mr. Lawes and one or two other gentlemen, which he threw together, and which I have found in a very long career of professional life to be in a great measure extremely incorrect; and it cannot be assumed that there is the least authority to be derived from his statement."

Wigram's Examination of the Rules of Law respecting the Admission of Extrinsic Evidence in aid of the Interpretation of Wills.—"An admirable work very well worthy of the attention and study of every student of the law."—Lord Wensleydale in *West v. Lawday*, 11 House of Lords Cases, 388.

Williams on Executors.—"A valuable work."—Blackburn, J., in *Fleet v. Perrins*, L. R. 3 Q. B. 542.

Year Books.—"Lord Chief Justice Gibbs used to say that he could get authorities in the Year Books for any side in any thing".—Lord Lyndhurst, Lord Chancellor, in *Gray v. The Queen*, 11 Clark & Finnelly, 441.

"It is much to be regretted," writes Mr. Rawle, "that some patient industry has not as yet achieved a translation of the Year Books, as they are, even at this late day, not unfrequently quoted, and not always with entire accuracy, and any one who has sought to trace in them a principle to its foundation, will be struck with the apparent contrarieties which they present, which would doubtless be to some extent explained could the contents of these volumes be presented in a more familiar shape." Covenants for Title, 207 note, 3rd ed.

NEW RULES OF THE COURT OF ERROR AND APPEAL.

We publish the General Rules and Orders of the Court of Error and Appeal, promulgated 8th September last. They are to be found in a recent number of the Chancery Reports, but, curiously enough, the assistant librarian at Osgoode Hall had not until a short time ago been made acquainted with the fact that such rules were in existence. Many of the profession also may be benefited by some enlightenment on this subject, even at this late day. They are as follows:

General Rules and Orders.

1.—Upon, from, and after this date, all Rules heretofore made, and now in force, regulating the practice and proceedings in civil cases in this Court, are annulled; and the following Rules, made under the authority of the Consolidated Statute of Upper Canada, chapter thirteen, section sixty-four, are substituted for the same.

2.—That, unless otherwise specially ordered, the security to be given in all cases of Error and Appeal, shall be personal, and by bond, and may be in the form given in the Rule numbered seven, and shall be filed in the office of the Clerk of the Court appealed from, in Toronto.

3.—That the security required by the Consolidated Statute of Upper Canada, chapter thirteen, section fifteen, shall be by bond to the respondent or respondents in the sum of four hundred dollars; such bond to be executed by the appellant or appellants, or one or more of them, and by two sufficient sureties (except in special cases, such as absence from the Province, lunacy of the appellant, or other cases of similar difficulty, to be established by affidavit to the satisfaction of the Court appealed from, or a Judge thereof; when an additional surety, in place of the appellant, may be received, by Rule or Order of such Court or Judge); and the condition of the bond shall be to the effect, that the appellant or appellants shall and will effectually prosecute his or their appeal, and pay such costs and damages as shall be awarded in case the judgment or decree appealed from shall be affirmed or in part affirmed.

4.—That when the judgment to be appealed from directs the payment of money, and the appellant desires to stay the execution thereof, then the bond shall be in double the amount of such judgment; unless the same shall be in debt on bond for a penal sum, or upon a warrant of attorney, or *cognovit actionem*, or otherwise, exceeding the sum really due, in which case the bond shall be only in double the true debt, and costs; and the amount so recovered, and of such true debt and costs, shall be stated in the condition, or recital to the condition of the bond, immediately after the statement of the nature of the action; and the condition shall be to the effect that the appellant shall effectually prosecute such appeal, and if the judgment appealed from, or any part thereof, shall be affirmed, shall pay the amount directed to be paid by such judgment, or the part of such amount as to which such judgment shall be affirmed, if it be affirmed only in part, and all damages which shall be awarded against the appellant in the appeal; provided always that, in cases where the security to be given shall be in a sum above two thousand dollars, it shall be in the discretion of the Court appealed from, or of a Judge thereof, to allow security to be given by a larger number of sureties, apportioning the amount among them as shall appear reasonable; and provided further, that, where the amount by the judgment directed to be paid exceeds ten thousand dollars, it shall be in the discretion of such Court or Judge to allow security to be given for such amount less than double, as shall appear reasonable.

5.—That when the judgment appealed from shall be in an action of ejectment, the security required by the last preceding Rule shall be taken in double the yearly value of the property in question; and in cases where the matter in question shall relate to the taking of any annual or other rent customary, or other duty or fee, or any other such like demand of a general and public nature affecting future rights, the amount in which such security shall be taken, in addition to the security required for costs, shall be fixed by order of the Court appealed from, or a Judge thereof.

6.—That in all other cases falling within any or either of the exceptions contained in the sixteenth section of the said statute, chapter thirteen, the security shall be personal and by bond, and the condition shall be made suitable to the circumstances, and shall, as well as the bond and the recitals and conditions required under the Rules numbered four and five, contain such further and other conditions as shall be directed by any special order in that behalf made by the Court appealed from, or by a Judge thereof.

7.—The bond may be in the following form, to be varied as occasion may require, under any of the foregoing Rules:

Know all men by these presents, that we (naming all the obligors, with their places of residence and additions), are jointly and severally held and firmly bound unto (naming the obligees, with their places of residence and additions), in the penal sum of ——— dollars, for which payment, well and truly to be made, we bind ourselves, and each of us by himself, our and each of our heirs, exe-

cutors and administrators, respectively, firmly by these presents.

Witness our respective hands and seals, the —— day of ———, in the year of our Lord, 18—.

Whereas the (appellant) complains, that in the giving of judgment in a certain suit in Her Majesty's Court of Queen's Bench (or of *Common Pleas*, as the case may be), in the Province of Ontario, between (naming the parties to the cause), in a plea of ———, manifest error hath intervened; wherefore the (appellant) desires to appeal from the said judgment to the Court of Error and Appeal.

Now the condition of this obligation is such, that if the (appellant) do and shall effectually prosecute such appeal, and pay such costs and damages as shall be awarded, in case the judgment aforesaid to be appealed from shall be affirmed, then this obligation shall be void, otherwise to remain in full force.

8.—That the parties to every such bond as sureties shall, by affidavit respectively, make oath that they are resident householders or freeholders in Ontario, and severally worth the sum mentioned in such bond, over and above what will pay and satisfy all their debts; which affidavit may be in the following form:

In the (*style of Court*).

A. B., plaintiff, *v.* C. D., *defendant.* } I, E. F., of ——, make oath and say, that I am a resident inhabitant of Ontario, and am a householder in (or a freeholder in ———), and that I am worth the sum of ——— (the sum mentioned as the penalty, or such sum as the deponent is bound in) over and above what will pay all my debts; and I, J. H., of ———, make oath and say, that I am a householder in ——— (or a freeholder in ———), and that I am worth the sum (as in the former case) of ———, over and above what will pay my debts.

The above-named deponents, E. F. and G. H., were sworn at, &c., the —— day of ———, 18—, before me.

———, Commissioner, &c.

9.—That in case of appeals from the Courts of law, fourteen days' notice shall be given of the time and place at which application will be made to the Court from whose judgment it is intended to appeal, or, in vacation, to a Judge, for the allowance of such security, which notice shall contain the names and additions of the obligors.

10.—That the allowance of such security may be opposed by affidavit; but that, in the absence of any such opposition, the affidavit above mentioned shall be sufficient, in the discretion of the Judge, to warrant the allowance thereof.

11.—That if allowed, the officer of the Court shall endorse on such bond the word "allowed," prefixing the date and signing his name thereto; upon which such security shall be deemed perfected.

12.—That in every appeal from either of the Courts of Common Law upon a special case, the appellant shall prepare and file with the Clerk of the proper Court, at his office in Toronto, a true copy of such case, and of the judgment or decision of the Court appealed from, and shall give immediate notice in writing of such filing to the opposite party.

13.—That in every appeal from the decision of either of the Courts of Common Law, upon a rule to enter a verdict or nonsuit on a point reserved at the trial, or upon a motion for a new trial upon the ground of misdirection, or upon a rule whereby a by-law or any part of a by-law has been quashed, the appellant shall prepare and file with the Clerk of the proper Court, as aforesaid, a statement of the case, the pleadings, evidence and affidavits, or so much thereof as shall be necessary, and of the rule, order, judgment or decision of the Court, together with the reasons of appeal, and shall give immediate notice in writing of such filing to the opposite party.

14.—That the respondent may, within eight days after being served with such notice, apply to any Judge of the Court appealed from, for a summons to alter and amend the special case, or the statement so filed, which Judge, on the return of such summons, may approve or modify the same, as to him shall seem proper.

15.—That if no such application be made within eight days next after the day of service of the notice, the copy of the special case, or the statement so filed, shall be deemed correct for the purpose of the appeal.

16.—That before the expiration of eight days from the service of notice, or if a Judge's summons has been obtained under the foregoing Rule number fourteen, then within four days after such summons shall have been disposed of, or within such longer time as may be fixed by the Judge, the respondent shall file with the Clerk of the Court whose decision is appealed against, his reasons against such appeal.

17.—Unless the appellant shall, with the memorandum required by the thirty-third section of the aforesaid statute, chapter thirteen, file a copy of his grounds of appeal, the respondent may, by notice in writing, demand the same; and if the grounds of appeal are not filed within eight days after service of such demand on the appellant, his attorney or agent, the appeal, upon proof by affidavit of the service of the demand, and that the grounds of appeal were not filed as above required, shall be dismissed with costs; but the appellant may, within the eight days, apply to the Judge for further time to file his reasons, and the Judge may in his discretion allow the same.

18.—That unless the respondent shall, within eight days after the filing of the appellant's

grounds of appeal and notice in writing thereof given to him, his attorney or agent, file his joinder thereto, and reasons for sustaining the judgment, the appellant may, in writing, demand the same; and unless the respondent file such joinder and reasons within eight days after the service of such demand, the respondent shall be precluded from filing the same without the leave of the Court, or a Judge thereof, first had and obtained upon a rule *nisi* or summons; and the Court of Error and Appeal will proceed *ex parte* to hear the cause on the part of the appellant, and to give judgment thereon without the intervention of the respondent.

19.—That the case, so stated and settled, together with the reasons of appeal and affidavit o service, shall forthwith be delivered by the Clerk of the Court, whose decision is appealed against, to the Clerk of the Court of Error and Appeal.

20.—That when error on the record is suggested and alleged, copies of the transcript of the judgment, with the suggestion and denial of error, and when any case has been stated and settled under the foregoing Rules numbered twelve and thirteen, copies of such case, with the reasons for and against the appeal, and the opinions delivered by the Judges, shall be printed; and such copies shall be deemed to be the printed cases of the appellant and respondent respectively.

21.—That as soon as the transcript of judgment or case settled shall have been delivered to the Clerk of the Court of Error and Appeal, and not less than four days before the day appointed by the Court for the actual hearing of causes (or before the first day appointed for the then next sittings of the Court), the case may be set down for hearing on the application of either party, and notice of such setting down shall be forthwith given to the opposite party.

22.—That in appeals from the Court of Chancery, all securities, under the fifteenth section of the aforesaid statute, section thirteen, shall be personal, by bond with sureties; which bond shall, as near as may be, be in the form of the bond given in the foregoing Rule number seven, and shall (together with an affidavit of justification, in the form, *mutatis mutandis*, given in the foregoing Rule number eight) be filed with the Registrar of the said Court; and notice thereof shall be served on the respondent, his solicitor or agent; and such security shall stand allowed, unless the respondent shall, within fourteen days, move the said Court to disallow the same. A special application shall be necessary to stay the proceedings under any of the exceptions in the sixteenth section of the said Act, chapter thirteen.

23.—That in every case appealed from Chancery, a copy of the pleadings and evidence, or so much thereof respectively as is material for the purposes of the appeal, shall be printed, together with the opinions delivered by the Judges on the case, and the reasons of appeal, and the reasons for supporting the decree or order; which printed copies shall, for all purposes, be considered the printed cases of the appellant and respondent respectively. The parties may join together in procuring the printing of such copies, one whereof shall be handed to the Registrar of the said Court, whose duty it shall be to examine the same, and, if necessary, to correct it; and the copy so examined by the Registrar shall be marked by him with the words, "examined and approved," to which he shall sign his name; and he shall forthwith deliver that copy to the Clerk of the Court of Error and Appeal.

24.—That where one ground of the appeal is the rejection of evidence or the reception of improper evidence, such evidence shall, where practicable, be printed in a separate part of the book, and with an extra wide margin, and be distinguished by an appropriate heading and marginal note.

25.—That in appeals from the Court of Chancery, if the parties do not agree as to what the printed case should contain, either party may apply to a Judge of the said Court in Chambers, upon notice to all parties interested, which notice is to be served according to the practice of the said Court; and thereupon the Judge will give directions as to what is to be printed.

26.—That the said Court, or a Judge thereof, shall also have the like power of making Orders for the expediting or conducting of proceedings in appeals from the Court of Chancery, as either Court of Law or a Judge thereof has in the case of appeals from such Court of Law; and in case of non-compliance with any such Order, the Court of Chancery or a Judge thereof may order the case to stand dismissed, or to be proceeded with *ex parte*, as the case may require, and as would be the course in the like case on an appeal from either Court of Law.

27.—That in all appeals from any of the said Courts, the appellant shall, within one month after the allowance of the appeal bonds, deliver to the Clerk of this Court the printed cases for the use of the Judges; and shall, at the time of such delivery, enter the case with the said Clerk for hearing at the then next ensuing sittings of this Court; and that, in case of neglect or omission by the appellant to comply with this rule, the respondent may, upon filing with the said Clerk a sworn copy of the order of allowance of

the appeal bond, or a certificate from the Clerk of the Court appealed from, of the day on which such allowance was made, or on which the bond stood allowed (as the case may be), obtain from the Clerk of this Court a certificate of such neglect or omission; and thereupon the appeal shall stand dismissed with costs without further order.

28.—Upon the application of the appellant, supported by affidavit, and after hearing the respondent, if he does not consent to such application, the Court appealed from, or a Judge thereof, may give further reasonable time for delivering the printed cases, and entering the appeal for hearing, as required by the foregoing Rule.

29.—The Clerk of the Court of Error and Appeal shall receive no appeal books unless they are printed on good paper, on one side of the paper only, and in demy-quarto form, with small pica type leaded.

30.—That the Court appealed from, or a Judge thereof, shall allow any bond, notice, appeal or other proceeding, taken or observed under these Rules and Orders, to be amended whenever such amendment shall to such Court or Judge seem reasonable.

31.—That this Court may, in its discretion, postpone the hearing until any future day during the same sittings, or at any following sittings.

32.—That if either party neglect to appear at the proper day to support or resist the appeal, the Court may hear the other party, and may give judgment without the intervention of the party so neglecting to appear, or may postpone the hearing upon payment of such costs as the Court shall direct.

33.—That all Rules and all Orders of this Court, in cases appealed, shall bear date on the day of the judgment or decision being pronounced, and shall be signed by the Clerk of the Court.

34.—That the same fees and allowances shall be taxed in appeal by the Clerk of the Court of Error and Appeal, for attorneys and solicitors, or any officer of the said Court, as are allowed for similar services in the Court from which the appeal is brought; and that counsel fees shall be taxed as follows: In appeals of a simple nature, or where judgment is given at the close of the argument, the officer is to tax a fee not exceeding forty dollars to the senior counsel, and not exceeding twenty dollars to the junior, for the hearing of the appeal; in more important or difficult cases, the fee to the senior counsel shall not exceed eighty dollars, and to the junior fifty dollars: within these limits, the fee shall be in the discretion of the taxing officer; and in all cases the amount of the counsel fees taxed by him shall be subject to be reduced on application to a Judge of the Court appealed from. Not more than fees to two counsel are to be taxed to any party entitled to be heard on an appeal.

35.—That the security to be given in cases of appeal to Her Majesty in Privy Council shall be personal, and by bond to the respondent or respondents; such bond to be executed by the appellant or appellants, or one or more of them, and by two sufficient sureties (except in special cases, as mentioned in the foregoing Rule number three), in the penal sum of two thousand dollars; the condition of which bond shall be to the effect that the appellant or appellants shall and will effectually prosecute his and their appeal, and pay such costs and damages as shall be awarded in case the judgment or decree appealed from shall be affirmed, or in part affirmed; and in cases from Chancery, application to the Court of Appeal to stay proceedings shall be by motion and notice, which motion, if granted, shall be upon terms as to security, under the sixteenth section of the aforesaid statute, chapter thirteen, or otherwise, as the circumstances or nature of the case may require.

36.—That the bond referred to in the foregoing Rule number twenty-nine, [*Qu.* thirty-five] shall be in the following form:

Know all men by these presents, that we (naming all the obligors, with their places of residence and additions) are jointly and severally held and firmly bound unto (naming the obligees, with their places of residence and additions) in the penal sum of —— dollars, for which payment well and truly to be made we bind ourselves, and each of us by himself, our and each of our heirs, executors and administrators, respectively, firmly by these presents.

Witness our hands and seals respectively, the —— day of ———, in the year of our Lord 18—.

Whereas (the appellant) alleges, that in the giving of judgment in a certain suit in Her Majesty's Court of Error and Appeal, in Ontario, between (the respondent) and (the appellant), manifest error hath intervened; wherefore (the appellant) desires to appeal from the said judgment to Her Majesty, in Her Majesty's Privy Council.

Now the condition of this obligation is such, that if (the appellant) do and shall effectually prosecute such appeal, or pay such costs and damages as shall be awarded, in case the judgment aforesaid to be appealed against shall be affirmed, or in part affirmed, then this obligation shall be void, otherwise shall remain in full force.

37.—That in every case of appeal to Her Majesty in Council, the obligors, parties to any bond as sureties, shall justify their sufficiency by affidavit in the manner and to the same effect as is required by the foregoing rule number eight.

Wm. H. Draper, C. J., Appeal.
Wm. B. Richards, C. J.
John H. Hagarty, C. J. C. P.
Joseph C. Morrison, J.
O. Mowat, V. C.
John W. Gwynne, J.
Thomas Galt, J.
S. H. Strong, V. C.

SELECTIONS.

SIR EARDLEY WILMOT.

The retirement of Sir John Eardley Wilmot from the judgeship of the Marylebone County Court is an event that calls for comment. No judge was ever more respected, or ever better deserved the respect of the profession of the public. His ability and learning were conspicuous, and he was distinguished for the zealous dischage of his onerous duties. He retires because he is unable to attend to the business of Circuit 43, and the work that overtaxes the strength of Sir Eardley must surely try the powers and endurance of his learned successor.

The Marylebone district comprises a population of upwards of a quarter of a million.

Sir Eardley, supported by memorials from the inhabitants, petitioned for a division of the Court, but the petition was disregarded; we suppose on the score of economy. Then he obtained the assistance of Mr. Abbott as deputy judge for one day in the week, but that course was not approved of; and, as Sir Eardley would not do injustice to the suitors by attempting to do more than his strength permitted, he resigned. We protest against the costly economy of the Government, but there is consolation in the case of Sir Eardley Wilmot. He is lost to the country as a County Court judge, but we apprehend that he will be of greater service as a law reformer, for which his talent, his learning, and his ripe judicial experience peculiarly fit him. His farewell address to the Court shows that he has well considered the subject. He proposes that the plaintiff should in any case have the option of of bringing his action in a County Court, and that when the case involved debt and damages above a certain amount, the defendant should have the power to remove to a Superior Court on giving security for costs. To this proposal we strongly object. When the case is of a certain importance the defendant has a right to a trial before a judge of a Superior Court, and to have a verdict of a superior jury.

Because a man is poor, that is no reason why he should put up with a trial in a County Court. Those who go to law must take the risk of the costs being paid in the event of success. Besides, if a man is too poor to pay costs, what is the use of suing him for a large debt or for heavy damages? The next suggestion we hold to be worthy of serious consideration. Sir Eardley proposes that civil and criminal business should be associated in the local Courts, the criminal business being such as is now dealt with by quarter sessions.

We regard it as most important that there should be no delay in the disposal of criminal business. Nothing is so deterrent as swift justice, and the wrongfully accused are entitled to a speedy trial. The next recommendation refers to the of the business in County Courts. Sir Eardley proposes that there shall be fixed days for the actions under £5, and cases above that amount and jury cases to be taken on other days. He remarks that with the present system counsel who attend County Courts frequently have to wait for hours and and then go away unheard. The cases in County Courts are now so important that the aid of counsal is indispensable, and it is monstrous that their time should be wasted whilst the Court is engaged in disposing of a long list of petty actions. Sir Eardley is of opinion that it would be advantageous to occasionally promote a County Court judge to a judgeship at Westminster Hall. Better men, he contends, would accept County Court judgeships if they knew that step was not a bar to further advancement. With this we agree, and for two reasons:—1. We require first-rate men for the County Courts, as in some respects their position is more difficult than that of a puisne judge. In a Superior Court the judge usually has the assistance of counsel, while in the County Court the judge has generally to do without that assistance. 2. If first-rate men took County Court judgeships, they would be well qualified for Westminster Hall. We do not mean, of course, that all the judges should be taken from the County Courts, and to carry out the plan there must be a system of promotion in County Court judgeships—*id est*, meritorious judges should be transferred from less to more important circuits. Sir Eardley says that he left Bristol for the London Court that he might not be debarred taking his small share in legal improvements. We hope, and indeed we are confident, that his retirement from the office of judge will enable him to render greater service in the much needed work of legal reform. —*The Law Journal.*

CARRIERS.

PASSENGERS' LUGGAGE.

Macrow v. *G. W. R. Co.*, Q.B., 19 W. R. 873.

The plaintiff, returning with his household from Canada to England, had among his luggage various articles of bedding, with which he intended to provide his new settlement, wherever it might be. The defendant, by whose line he travelled, lost his goods, and then he sued them for damages; and having on the trial recovered damages, from the calculation of which the bedding was (among other things) excluded, he obtained a rule to increase the damages by the value of the excluding articles.

After hearing the rule argued the Court took time to consider, and at length delivered a judgment in which an attempt is made to settle some general rule by which to determine what is "passengers' luggage." "Whatever," says Cockburn, C.J., delivering the judgment of the Court, "the passenger takes with him for his personal ease or convenience, according to the habits or wants of the particular class to which he belongs, either with reference to the immediate necessities or to the

ultimate purpose of the journey, must be considered as personal luggage." Apparel for use or ornament, the sportmans's gun and fishing-rod, the artist's easel, and the student's book are mentioned as instances," and other articles of an analogous character, the use of which is personal to the traveller, and the taking of which has arisen from the fact of his journeying." "On the other hand, the term *ordinary luggage*, being thus confined to that which is personal to the passenger and carried for his use or convenience, it follows that what is carried for the purpose of business, such as merchandise or the like, or for larger or *ulterior purposes*, such as articles of furniture or household goods, would not come within the description of ordinary luggage, unless accepted as such by the carrier." It is to be feared that notwithstanding this careful attempt at discrimination the question is not much nearer a settlement than it was before, and the case cannot be safely cited to prove anything except that bedding is not ordinary passengers's luggage. When the term is allowed to include what the passenger carries for *ultimate* purposes, but not what he carries for *ulterior* purposes, inasmuch as the superlative is larger than the comparative, it must be assumed that ultimate and ulterior are used with a different reference, and that by the latter term is signified something beyond any purpose, even an ultimate purpose, of the journey. But the ultimate purpose of the journey is something to be done after the journey is accomplished, and is thus distinguished from the necessities of the journey itself, and this is shown by the instances put; in fact, almost everything a passenger ever carries is carried for such purposes. But where these ultimate purposes end, and the purposes which are ulterior to them, and are therefore not purposes of the journey at all, begin, is far from clear.

The distinction might be drawn between a permanent settlement at the journey's end and a mere temporary sojourn, but this is not expressed in the judgment, although it would apparently suit the facts of the case. That distinction would not, however, apply to merchandise carried for sale, for there the sojourn is only intended to be temporary. It would be open also to this objection—that a passenger might recover for a loss, on his journey out, of that in respect of which he could not recover on his journey home; or if things originally taken out were held to retain their character on their way back, this would not apply to anything newly acquired and on the road to its destination. If, again, the test of *personal* use is applied, it is hard to say that a man does not as much personally use his bed as any article of clothing. And if it is said that the things must be such as people ordinarily carry, it was answered in this case that emigrants ordinarily do carry their bedding, and emigrants are just as much a class as artists or sportsmen. It is not therefore easy to see that this case has really contributed to the solution of the vexed question, What is passengers' luggage? and we cannot help entertaining a doubt whether the case was rightly decided, whether the true application of the test personal use would not have given the plaintiff his damages, and whether the test of ulterior and ultimate purposes was not an entirely false and impossible ground of distinctonn. It may at first sight appear that the qualification, " the taking of which has arisen from the fact of his journeying," gives some assistance; but on examination the test will be found to fail, for if it means anything to the purpose it must mean that the traveller takes the things for the sake of the journey, and does not take the journey for the sake of the things. But though this would exclude merchandise carried for sale, it would equally exclude many other things which are certainly included in passengers' luggage and most of the things mentioned as such in the judgment; indeed, it would exclude everything not required by the fact of moving about from place to place. If, on the other hand, it only means that the journey must form the occasion or create the necessity of taking them, then certainly the plaintiff's goods would have fallen within the description, would in fact be as wide as any passenger could desire.—*The Solicitors' Journal.*

FREIGHT IN ADVANCE.

We may be inclined in our hearts to sneer at the law of the Medes and Persians, "which altereth not," but we must remember that there is no evidence whatever that the judges of the Medes and Persians thought the particular law bad and deserving of amendment.

Our Courts go far beyond these immutable orientals. What can we say, when arraigned by the "intelligent foreign jurist," in defence of the Court of Exchequer Chamber in the case of *Bryne* v. *Schiller*, which has already called forth comment and rebuke, but which becomes more acutely aggravating when we sit down calmly to read the report of it in the current number of our Reports (40 Law J. Rep. (N.S.) Exch. 177). "Held," says the head-note, "that a payment in advance on account of freight cannot be recovered, even though the voyage fail." "That," says the Lord Chief Justice, "is settled by the authorities."

It is exactly contrary to the law of all other European nations; and even across the Atlantic, where people make up for contempt of all things old by excessive veneration of the common law, the Courts have discarded our rule, and have decided that a payment of freight in advance must be repaid if not earned. The Lord Chief Justice regrets our rule, thinking it founded upon an erroneous principle, and anything but satisfactory. Mr. Justice Byles says that the current of authority is too strong even for the House of Lords to resist. Mr. Justice Keating says that it is unfortunate that we should be left out in the cold, but there is

the law, and it ought not to be shaken"; and Mr. Justice Lush winds up the argument by declaring that it is highly important that a rule of commericial law, established so long as the one in question, should be adhered to. After all we are only dealing with the foreign tribunals as the immortal recruit did with his brethren in the militia:—"Bill," said the squad," you are out of step." "Well," replied Bill," then change yours."—*The Law Journal.*

CANADA REPORTS.

ONTARIO.

ELECTION CASES.

COUNTY OF GREY (SOUTH RIDING) ELECTION PETITION.

HUNTER, *Petitioner*, *v.* LAUDER, *Respondent.*

(Reported for the Canada Law Journal by C. A. BROUGH, *Barrister-at-Law.)*

Controverted Elections Acts—Adjournment—Power of judge to change place of hearing—Evidence of bribery—Responsibility for acts of agents and sub-agents—Payment of expenses of voter—Treating—Destroying election accounts.

When a rule of Court has been granted in pursuance of 34 Vic., cap. 3, sec. 14, appointing a place for the trial, not within the Division, the election for which is in question, the judge by whom the petition is being tried has no power to adjourn, for the further hearing of the cause, from the place named in the Rule of Court to a place within such division.

Where a charge of bribery is only the unaccepted offer of a bribe, the evidence must be more exact than that required to prove a bribe actually given or accepted.

The Respondent entrusted about $700 to an agent for election purposes without having supervised the expenditure. *Held:* that this did not make him *personally* a party within 34 Vict. cap. 3, sec. 46, to every illegal application of the money by the agent, or by those who received money from him. But if a very excessive sum had been so entrusted to the agent, the argument of a corrupt purpose might have been reasonable.

When a candidate puts money into the hands of his agent, and exercises no supervision over the way in which the agent is spending that money, but accredits and trusts him, and leaves him the power of spending the money although he may have given directions that none of the money should be improperly spent, there is such an agency established that the candidate is liable to the fullest extent, not only for what that agent may do, but also for what all the people whom that agent employs may do.

The payment of a voter's expenses in going to the poll is illegal, as such, even though the payment may not have been intended as a bribe.

The distribution of liquor on the polling day, with the object of promoting the election of a candidate, will make his election void.

When all the accounts and records of an election are intentionally destroyed by the respondent's agent, even if the case be stripped of all other circumstances, the strongest conclusions will be drawn against the respondent, and every presumption will be made against the legality of the acts concealed by such conduct.

Where bribery by an agent is proved, costs follow the event, even though personal charges made against the respondent have not been proved, there having been no additional expense occasioned to the respondent by such personal charges.

[Owen Sound—Sept. 12, 13, 14, and Nov. 7, 8, 1871—*Mowat, V. C.*]

The petition in this case was presented by Alexander Hunter, a voter at the election, against the return of Abraham William Lauder.

By virtue of a rule of the Court of Queen's Bench, the case came on for hearing at Owen Sound, a place not within the electoral division, in September, but owing to the absence of a material witness was adjourned until November. Upon the adjournment the question was raised whether the presiding judge could adjourn from Owen Sound to a place within the electoral division, for the further hearing of the case. But the learned Vice-Chancellor decided that he had no power to grant such an adjournment, as by so doing he would in effect override a rule of court.

It was alleged in the petition (amongst other things) that corrupt practices within the meaning of section 46 of "The Controverted Elections Act of 1871," 34 Vic. cap. 3, had been committed by and with the knowledge and consent of the respondent himself, and also by his agents.

The corrupt practices with which Mr. Lauder, the respondent, was personally charged, were direct offers of bribes, and treating meetings of electors.

The offers of bribes were said to have been made to one Alexander McKechnie and one James Black, who were examined as witnesses. The evidence of both was contradicted by Mr. Lauder on his own oath. McKechnie had actively supported the respondent at the previous election for the riding, and Mr. Lauder seemed to have expected a like support from him at the election now in question. In this expectation Mr. Lauder (according to McKechnie's evidence) asked him to "*come into our committee to-night*," and added, "we'll furnish you with plenty of means." McKechnie did not go to the committee, and did not give Mr. Lauder his support. He deposed that he considered Mr. Lauder's observation "in the light of bribing" him.

James Black deposed that he had heard that Mr. Lauder had a large sum of money to spend on the election; that he applied to Mr. Lauder for some of it; that he offered to work, if paid; and that he (the witness) said that money would "do good" in his section; but he also deposed that Mr. Lauder would not give him any money; said it would be illegal to do so, and made him no offer. The witness added that Mr. Lauder told him to "go to Perry." He stated that he did go to Mr. Perry, and that Mr. Perry said he had no money. And it further appeared that the witness in fact got no money either from Mr. Lauder or from Mr. Perry, and that he in consequence voted for Mr. McFayden, the opposing candidate.

As to the treating, it was proved that on various occasions Mr. Lauder expressly forbade all treating, as well as everything else of an illegal kind being done to promote his election. But it appeared that on the nomination day, at a meeting held after the nomination, in the Orange Hall in the village of Durham, refreshments were brought into the room by one Woodland, and were partaken of by the persons present. Mr. Lauder deposed that he knew nothing of these refreshments before they were brought in; that he told the parties bringing them in to be careful, and that they might be "coming too near the law." He further deposed that he did not pay for these refreshments, and that no account for them had been rendered to him. There was no evidence to the contrary of what Mr. Lauder thus deposed. There was, however, evidence that he did pay for refreshments provided for various committees at their business

meetings. The central committee at Durham consisted of about nine persons; the local committees did not seem to have respectively comprised so many. There was evidence, also, that on some other occasions there was a general treating of electors at the close of public meetings of electors, which Mr. Lauder had been addressing, and while he was in the house where the treating took place. There was no other evidence of knowledge or consent. One Thomas Smith swore that after a meeting held at a tavern in Egremont, which meeting had been addressed by Mr. Lauder, he had given a treat for which he paid $5; that some time after the treat he received $20 from Mr. Lauder; that he had paid the $5 at the time the treat was given, and before he received the $20; and that the treat was given on his own responsibility, and Mr. Lauder was no party to it; that Mr. Lauder gave the $20 to pay for the use of the room in which the meeting was held, for his (Mr. Lauder's) own personal expenses at the tavern, and for refreshments which had been furnished for a committee which held a meeting at the tavern that evening. It was not shown that Mr. Lauder was aware that Smith had treated when he gave him the $20. Smith also swore that he had expended more than $20 for refreshments for committee-men, for feed for their horses, &c., in addition to the $5 paid for the treat.

The corrupt practices said to have been committed by Mr. Lauder's agents were chiefly these: 1. bribery; 2 treating meetings of electors; and 3. giving spirituous drinks during the polling day.

In regard to bribery, the principal instances proved were committed by one George Privat. Privat was the principal canvasser for Mr. Lauder in that part of the township of Normanby called the "Old Survey." Privat was called on by one William Scott and one Charles Grant, and was either asked to go on the committee (for securing Mr. Lauder's election), or was told by Scott that he had been put on the committee. The former was his own recollection, the latter was Grant's recollection of what had occurred. He sent word to Durham by these persons "that it would take $100 to work up the Old Survey." In reply, he was told that so much could not be given He was told also to go to one Meddaugh, whom he knew. He went to Meddaugh accordingly, and at Meddaugh's instance Mr. Perry gave him $50. Privat "was not told what he was to do with the money," but he received it "to spend on the election." He went into the canvass, and in the course of it he committed the alleged acts of bribery.

The alleged bribery was this: it appeared from his own evidence that after conversing with certain named voters severally, a day or two before the election, he dropped money for them on the ground, and then walked away; that in each case he meant this money to be picked up by the voter; that his chief or only purpose in this was to secure the voters' support for Mr. Lauder; and that he dropped the money instead of handing it to the voter, because he imagined that this indirect mode would enable the voter, if sworn, to say that he had received no money Meddaugh, to whom he referred Privat as to money, was another member of the central committee. Perry, who gave Privat the money, was a distant relation of Mr. Lauder's; he was the secretary of the central committee; kept all accounts; was the treasurer for the contest, and received from Mr. Lauder, and disbursed most of the funds which Mr. Lauder from time to time supplied for the purposes of the election. Mr. Lauder stated in his evidence that he had "refused to have anything to do with committees." The only instructions which he appeared to have given with reference to the expenditure of the money were those implied in his forbidding any treating, hiring of teams, or paying for votes. Two of these voters were examined, and proved the finding of the money which Privat had dropped. Privat stated that he had some talk with the voters referred to about their doing some ploughing for him.

The Vice-Chancellor considered that if this part of his evidence were correct, the suggestion about ploughing was, like the dropping of the money, a colourable pretence by which it was proposed to evade the law.

William Scott, who solicited Privat to take part in the active work of the election, was a member of the central committee. He "went round to the different places and brought in returns, sometimes written and sometimes verbal, of how the other committees were getting on."

Mr. Perry paid out about $1700 for the purposes of the election, and after the election he claimed credit for that amount from Mr Lauder. Mr. Lauder allowed and settled $625 only, but objected to the balance as unnecessarily spent (not, he said, as illegally spent), and had not yet paid it. Perry swore that he, notwithstanding, expected to be paid, though he had not yet received any promise to that effect.

It appeared that the letters and accounts with reference to the election had been destroyed. Mr. Lauder stated that he had destroyed all the letters written to him, and had kept no copies of the letters written by him, in which reference was made to money matters; and Perry swore that he had destroyed all papers connected with the election about ten days after it took place, including a list of the members of the central committee, a record of their proceedings, and an account of moneys expended.

It is thought unnecessary to state the evidence on points involving no question of law, or no question upon which the Vice-Chancellor in giving judgment expressed an opinion.

J. K. Kerr appeared for the petitioner.

The Respondent appeared in person.

Mowat, V. C.—I am satisfied that no case has been made out against Mr. Lauder personally.

With regard to the Orange Hall meeting, the weight of evidence goes to show that it was a meeting of committees; and besides, no refreshments for the meeting were ordered or furnished by Mr. Lauder, or paid for, or promised to be paid for, by him. I do not think that reasonable refreshments furnished *bona fide* to committees are illegal.

As to the alleged treating at Normanby, Smith's evidence is unsatisfactory, but there is no ground for believing that Mr. Lauder knew that Smith had treated when he gave him the money.

The case of McKechnie, as stated by himself, is not sufficient to prove Mr. Lauder guilty. McKechnie states that Mr. Lauder said, "come over to our committee to-night, and you shall be furnished with plenty of means," and McKechnie swears that he considered this an offer of a bribe to him. He did not go to the meeting, and no other conversation on this point took place. Now, where the charge is only the unaccepted offer of a bribe, the evidence must be more exact than is required to prove a bribe actually given or accepted. A very little difference in the language employed might make a great difference in the intention of the supposed offer. Where a conversation is not followed by the act spoken of, we are not, unnecessarily, to presume a bad intention. In an election, means are required for legitimate purposes; and I am not at liberty to infer that Mr. Lauder meant "I shall furnish you with plenty of means for illegal purposes."

The case of Black is weaker than that of McKechnie. He says—"I heard Mr. Lauder had a large amount of money for election purposes, and I asked him for some. He refused it, and said it was illegal, and told me to go to Perry." Black applied to Perry, and Perry neither gave him money nor a promise of any. It would be preposterous to say judicially on this evidence that Mr. Lauder or Mr. Perry offered or promised to give the money which they both refused to give. Both McKechnie and Black voted against Mr. Lauder.

Next it is said that Mr. Lauder entrusted large sums to Perry: that he should have supervised the expenditure, and that his failure to do so makes him personally a party within section 46 of the Act of 1871 (34 Vic. c. 3), to every illegal application of money by Perry or by those who received money from Perry. The sum which Mr. Lauder gave was under $700; there is no evidence before me that that sum was an excessive one for legitimate expenses; and a certain amount of discretion must be placed in a candidate's agents. If he had put £7000 into Perry's hands, the argument of a corrupt purpose might have been reasonable. The facts do not suggest to my mind any idea that Mr. Lauder intended his money to be employed illegally.

For these reasons I think the personal charges not made out.

The Respondent then addressed the court as to bribery by agents.

Mowat, V. C.—I may dispose of this case on the ground of the illegality of Privat's acts. He was asked by Scott to assist in the canvass, and was referred to Durham for money. He went there, and got the money from Perry, through the intervention of Meddaugh. These three persons were the members of, or connected with the committee at Durham. Mr. Lauder argues that it does not appear that Perry paid the money with the concurrence of the committee; but there is no evidence that Mr. Lauder had said or done anything to create a necessity for this concurrence, and there is evidence to the contrary. Perry received no instructions as to the mode of the distribution of the money. That was left to his discretion; and Mr. Lauder in his evidence distinctly repudiated all committees, and stated that he had made his payments through Perry. But even if Perry had been directed to carry out the instructions of the committee, and had disobeyed, he being the treasurer for the election, the secretary of the committee, and the confidential agent of the candidate, his acts would still bind the candidate. This is laid down in the *Staleybridge case*, 1 O'M. & H. 69. There Mr. Justice Willes said:—"I have already in the *Bewdley case* (*Ib.* 18). had occasion to decide this much. There it appeared that the sitting member had put a sum of money into the hands of his agent, and that he exercised no supervision over the way in which that agent was spending that money; that he had given him directions, and I thought really intended, that none of that money should be improperly spent; but that he had accredited and trusted his agent, and left him the power of spending the money, and I came to the conclusion upon that, that there was such an agency established as that the sitting member was responsible to the fullest extent, not only for what that agent might do, but for what all the people whom that agent employed might do: in short, making that agent, as far as that matter was concerned, himself, and being responsible for his acts. I see no reason to doubt at all that that is perfectly correct."

This is no new law: it has been the rule ever since there was a record of the law of Parliament; it is founded on reason, and if another rule were adopted, a candidate might give his agent money, take the benefit of the expenditure, and afterwards say that he did not authorize the mode in which the money had been spent, claim freedom from responsibility in respect of the use made of it, and thus evade the whole law against corrupt practices. I cannot hold otherwise in this instance (in which there is no dispute as to the the facts), than that Mr. Lauder is responsible for the acts of Privat.

As to these acts: Privat talked to certain voters about the election, and dropped the money for them, so (as he explains it) that they might be able to swear that they had received no money. To constitute the offence, it is not necessary that voters should accept an offered bribe. The two voters called confirm all that was necessary in Privat's evidence to make out the charge against him. His purpose was to secure the votes by means of this money. I have no alternative but to hold that Privat has been guilty of such acts as agent as render the election void.

So far the case is free from doubt.

As to some other points, it may be proper that, for the information of parties concerned, I should intimate the impression I have formed.

As to Ray, I do not consider the $2 given to him to have been a bribe, as distinguished from a payment for the expenses of himself and the other voters who were going with him to the polls; but the payment would be illegal either way, according to the decision of Chief Justice Richards at Picton, and of my brother Strong at Barrie.

As to the treating by agents of meetings of electors, in order to promote the election, if the validity of the election had in my view depended on that question, I would, in consequence of the decision in the *Glengarry case*, have reserved the point for the opinion of the Court of Queen's Bench.

If it had been necessary for me to decide as to the effect of distributing liquor on the polling day, I do not at present see how I could avoid holding that the object was the promotion of the election of Mr. Lauder, and that the election was void on that ground.

With regard to the destruction of the accounts and papers, I consider the matter a very grave one. If the case were stripped of all other circumstances but the destruction of the records of the committee and the accounts, by a person holding the position of Mr. Perry in the election, I incline at present to think that it would be my duty to draw the strongest possible conclusions against the respondent; and that I should make every presumption against the legality of the acts which were concealed by such conduct. The only safe course for an honest candidate to pursue, is to have all papers preserved, and to be able to show how all the money was expended. For such a candidate, or any agent of his, to be content with saying he does not know how the money is spent, is very unwise.

But I pronounce no decision on these points, as the conduct of Privat has rendered it unnecessary. On the ground of Privat's acts I declare the election void, and I shall report that it was not established to my satisfaction that corrupt acts were committed by or with the knowledge of Mr. Lauder personally.

The English practice is that costs follow the event where bribery by an agent is proved, and I follow that practice.*

The respondent then urged that there should be an apportionment of the costs, as, according to the judgment of the court, the petitioner had been successful on some only of the issues.

Mowat, V. C., said that there did not appear to have been any increase of the costs on account of the issues on which the petitioner had failed; that his observations as to the destruction of papers were to be borne in mind, and that, under all the circumstances, he did not think there should be any apportionment.

WEST TORONTO ELECTION PETITION.

Armstrong, *Petitioner*, **v. Crooks**, *Respondent*.

(Reported by Henry O'Brien, Esq., *Barrister-at-Law.)*

Controverted Elections Act—Particulars.

Where particulars of alleged corrupt practices, &c., have been delivered under an order for that purpose, better particulars will not be ordered, if those delivered substantially comply with the spirit of the order by giving all reasonable information.

Nor will better particulars be ordered, even when the order is not complied with in furnishing certain detail, provided the judge to whom the application is made thinks these details unnecessary or unreasonable, nor unless the respondent can shew on affidavit that the want of such information will prejudice him in his defence.

Semble, that the powers of the judge at the trial as to amendment of the petition, and particulars, and postponement of the trial should be liberally exercised so as to prevent a failure of justice to either party.

[Chambers, July 12, 1871.—*Richards, C.J.; Hagarty, C. J., C. P.; Morrison, J.*, and *Mowat, V. C.*, Judges on the *rota*.]

Cattanach, for the respondent, obtained a summons calling on the petitioner to show cause why he should not give better and fuller particulars of the charges contained in the petition, and directed to be given by a judge's order in that behalf.

Harrison, Q C., shewed cause.

The particulars furnished are sufficient, and at least are the best we can give. The information must be obtained from those opposed to us, and we cannot be reasonably asked for more. The order for particulars was too strict in its terms, but we have complied with the spirit of it by giving all reasonable information.

Cattanach, contra.

The particulars furnished do not comply with the order made; and though the cause now shewn might have applied to the application for the order in the first instance, it is not an answer to the present application: *Bristol Case*, 22 L. T. Rep., N.S. 729, and a note of *Nottingham Case*, in 47 L. T. 241. [Richards, C. J., and Hagarty, C. J., C. P.—We will not hold parties rigorously to orders made, unless injustice will be done. We have not acted in the view you contend for; and if the order is too strict, can we not re-mould it now?] The order as made must be followed, and the particulars ask very explicit answers, which are not complied with. [Counsel read the order and particulars, pointing out where the latter were in his opinion defective. Mowat, V. C. — It really makes no matter, as the evidence would be heard by the judge who may try the case. Richards, C. J.—Admitting that the original order is more strict than we now think it should have been, the question is now whether you have not got all the particulars you can reasonably ask. We will carry out spirit of the Act and rules, without regard to technicalities. Hagarty, C. J. C. P.—Many of these orders were made before any practice was settled in this country in relation to them.] The practice in England and Ireland is in favour of our contention. See *Bradford Case*, 19 L. T. Rep. N. S. 723, 728, and the cases there referred to.

Richards, C. J. — We will not defeat enquiries on any technical grounds, and we are not prepared to make any further order unless Mr. Crooks can shew by affidavit that he will be prejudiced; nor do we think he will be prejudiced. If, at the trial, the contrary is shewn, the trial can be postponed, and there can be little difficulty or expense in a city case: in a case tried in a country place, there might be some difference in this respect. If the particulars delivered are in reasonable compliance with the spirit of the order—and we think they are—we must hold that the order has been sufficiently complied with.

Summons discharged.

COMMON LAW CHAMBERS.

(Reported by Henry O'Brien, Esq., *Barrister-at-Law.]*

Armstrong v. Montgomery.

Security for costs—Ejectment Act, sec. 76.

Held, that the mere fact of a second action of ejectment being brought between same parties and for the same land, is no reason for ordering security for costs, if the costs of the first action have been paid, and the second action brought in good faith.

[Chambers, Sept. 18, 1871—*Mr. Dalton.*]

* See *Norwich case*, 1 O'M. and H. 11; *Bewdley case*, *Ib.* 21; *Ib.* 34; *Bridgewater case*, *Ib.* 116; *Dublin case*, *Ib.* 273; *Sligo case*, *Ib.* 302.—Eds. C. L. J.

Ejectment. The plaintiff had brought a former action of ejectment against the same defendant for the recovery of the same premises, but failed, owing, as he alleged, to some defect in the evidence then adduced. Having paid the costs of the former action, he commenced the present one, claiming under two additional modes of title.

The defendant applied under sec. 76 of the Ejectment Act for security for costs.

Osler shewed cause. This case does not come within the Act, and in the discretion of the judge security should not be ordered. There is no pretence that this second action is vexatious.

Mr. Strathy (Cameron & McMichael), *contra*, relied on Con. Stat, U. C. cap. 27, sec. 76.

Mr. Dalton.—I do not find any authority for saying that the mere fact of an action of ejectment being brought after a previous unsuccessful one between the same parties, is a reason for ordering security for costs, when the costs of the first action have been paid; and I cannot see any cause for it when there is no reason to suppose that the second action is otherwise than in good faith to assert the plaintiff's right to the land.

Summons discharged.

Colville v. Johnston.

C. L. P. Act, secs. 184, 188—Right to cross-examine.

On an examination of a witness, under C. L. P. Act, secs. 184, 188, his evidence will not be read if the right of cross-examination has been denied.

[Chambers, Sept. 18, 1871.—*Mr. Dalton.*]

It was charged, in this suit, that there was a collusive settlement between the parties to deprive the attorney for the plaintiff of his costs; and the plaintiff asked for an order on the defendant for his costs, &c.

The plaintiff's attorney, desiring to obtain, for the purposes of this application, the evidence of a witness who refused to make an affidavit of certain facts, had him examined under an order obtained pursuant to C. L. P. Act, secs. 184, 188. After the witness had been examined in chief, the defendant expressed his desire to cross-examine him; whereupon the plaintiff's attorney objected, on the ground that there was no right of cross-examination in such a case; and the objection was upheld by the County Judge before whom the examination was held.

The report of this examination being tendered as evidence on the present application.

Spencer, for the defendant, objected to it on the ground that the defendant had not been allowed to cross-examine the witness.

Holmested, contra.

Mr. Dalton.—I must decline to read this evidence for the reason given. I think the defendant had a right to cross-examine the witness, and I cannot read the evidence until he has had an opportunity of doing so.

Yeoman v. Chesley B. Steiner and Anson Steiner.

Jurat—Style of Cause—Irregularity.

A jurat stating the affidavit to have been sworn "at Toronto," without giving the name of a county, *held* sufficient.

Where in ejectment a landlord is allowed to come in and defend, the order not saying whether it is instead of, or as well as, the original defendant, it is irregular to omit the name of the latter.

[Chambers, October 28, 1871.—*Mr. Dalton.*]

Ejectment against Chesley B. Steiner. Anson Steiner was allowed by judge's order to appear to the action, as landlord of the present defendant, and to defend for the property claimed.

The plaintiff gave notice of trial, but the style of cause in the notice made no mention of the original defendant, Chesley B. Steiner. On this ground a summons was obtained to set it aside as irregular.

Mr. Ermatinger (Read & Keefer) shewed cause, and made a preliminary objection to the affidavit on which the motion was based, in that the jurat was defective in not stating the county where the oath was taken. The jurat was as follows: "Sworn before me at Toronto, this 26th October, 1871. Samuel B. Clark, a Commissioner, &c."

As to the alleged irregularity in the notice of trial, he cited *D'Arcy* v. *White*, 24 U. C. Q. B. 570; *Peebles et al.* v. *Lottridge et al.* 19 U. C. Q. B 628.

Spencer, contra. As to the form of the jurat it is a common practice to draw them in the same form as this one. For all that appears it may be Toronto township that is meant, and the township would be judicially recognised.

The notice of trial is irregular on the authority of *Haskins* v. *Cannon et al*, 2 Prac. Rep. 334; *Jones* v. *Seaton*, 26 U. C. Q. B. 166. It will be presumed that the name of the tenant was intended to be retained as a defendant.

J. K. Kerr, amicus curiæ. A jurat similar to the one under discussion was used in an affidavit in the case of *Gray* v. *Brown* (not reported), and was objected to on the same ground, but after full argument it was held sufficient by the Court of Common Pleas.

Mr. Dalton.—As to the first objection, though the point seems arguable, I must hold the affidavit regular; but the notice of trial is irregular in not giving the names of both defendants, and must be set aside with costs.

Order accordingly.

CHANCERY.

In re A. B., a Solicitor.

Practice on solicitor and client taxations.

If charges in a solicitor's bill of costs are unusual or exceptional he has to make out a very clear case to have them allowed.

If the usual charges are made, but the client complains of negligence or unskilfulness, not apparent in the face of the bill, then the *onus* rests in him to establish his case.

[Master's Office, Dec. 4, 1871.—*Mr. Boyd.*]

The question discussed in this case was upon whom the *onus* of proof rested in the course of proceedings for the taxation of a solicitor's bill. Nothing turned upon the facts farther than appears in the judgment.

Mr. Foster, for the client, cited *Allison* v. *Rayner*, 7 B. & B. 441.

Mr. Bain, for the solicitor.

The Master.—In a reference to tax a bill of costs between a solicitor and his client, the Master in Chancery has special jurisdiction to determine questions of disputed retainer, and

of alleged negligence or unskilfulness on the part of the attorney, with a view to the total or partial disallowance of the bill, or of classes of items in the bill; matters which at common law are disposed of at Nisi Prius before a reference to taxation is had. He has also the usual jurisdiction common to the taxing affairs of all courts, of moderating the charges made, and of disallowing the costs of proceedings which in his judgment are unnecessary or altogether inapplicable and unproductive: see *Marshall*, pp 229, 230

In my opinion, when a bill of costs is brought into this office for taxation, it will be proper first to ascertain the matters which the client disputes in the bill, and for this purpose that he be directed, by underwriting in the warrant, to file and serve a notice containing his several objections some days before the taxation is to be proceeded with. The solicitor and the Master will thus know what are the issues raised, and the proceedings will be regulated accordingly. If the objections are merely to the rate of charge, which can be disposed of as the account is gone through with, and vouched item by item by the taxing officer, then that stage of the proceedings may be at once entered upon, and the bill moderated and taxed as in ordinary cases. But if the objections served dispute the retainer, and set up conduct in the solicitor which may disentitle him to the whole bill, or to any group of items, or to any particular proceeding severable from the rest of the bill, then until the principles are settled on which the bill is to be taxed, it seems needless to vouch the bill, as has been done in the present case. These objections should be first dealt with, evidence given thereupon, and the ruling of the Master had, before the item by item work is commenced. When the solicitor sees what issues are raised, it will be for him to establish his claim, or to call upon the client to make out his case of negligence or otherwise, so as to warrant the disallowance of the objectionable items. The *onus* of proof will depend altogether on the nature of the objections. Under ordinary circumstances, the attorney suing at law when there are no special pleas, gets a verdict on his bill of costs upon proving the retainer, and that the work charged for was done.

The case of *Allison* v. *Rayner* 7 B. & C. 441, is an exceptional one in this respect; but is explained by the fact that the costs in question had been incurred in a suit which not only failed, but proved utterly useless to the client, by reason of the attorney failing to take certain preliminary steps which were essential to the maintenance of that suit. In other words, it appeared upon the face of the bill of costs that the action had been improperly instituted (see *Gill* v. *Lougher*, 1 Tyr. 125), and it lay upon the attorney to give affirmative evidence to account for this to the satisfaction of the Court: see the report of the case in 1 M & Ry. Substantially the same principle is laid down in *Re Pender*, 10 B. 390, where the M. R. says: "When a solicitor makes any charge against his client not authorized in the usual and regular mode of procedure, the burden of proof is upon the solicitor." And also in *Re Smith*, 2 D. & L. 379, where Pollock, C.B., says: "It will be the duty of the Master, when unusual directions are alleged to have been given [by the client to the attorney] very strictly to inquire into the circumstances, and to have them proved by the most satisfactory evidence, so as to leave no doubt in his mind that the client was duly informed that he would recover none of the costs from the opposite party, and that with full knowledge of that fact he required the additional assistance for which the charge is made."

If upon the face of the bill of costs the charges or the proceedings complained of appear to be unusual or exceptional, it lies upon the solicitor to explain or justify them: if nothing of the kind appears on the face of the bill, the client should give some evidence shewing that the proceedings he objects to pay for were utterly useless, or unskilfully and carelessly managed, or failed entirely through the negligence of the solicitor, or have been needlessly incurred by his want of caution, or by his inexperience, or inadvertence, in the same way as he would have to do at Nisi Prius.

These remarks indicate the general rules to be observed in proceeding upon the objections to a bill of costs, though by the terms of the order of reference, great discretionary powers are vested in the Master, who can call for such kind of evidence, and at such times as he deems desirable, in order to satisfy his own mind as to the points in contest.

In the present case, I find, that the solicitor has not, in fact, closed his case upon the bill—though the greater part of the bill has been vouched—so that it becomes unnecessary for me to go through the objections *seriatim*, and rule as to the *onus* of proof upon each. Mr. Bain is now entitled to proceed with his evidence, and close his case, and he can, as of right, give such evidence as he deems necessary to support his right to the bill of costs as brought in.

The costs of the former day will abide the result of the taxation, as costs of the reference.

ENGLISH REPORTS.

COMMON PLEAS.

Oppenheim, Appellant, v. White Lion Hotel Company (Limited) Respondents.

Inn, money lost by guest at—Evidence of negligence of guest—Leaving bed-room door unlocked.

Plaintiff, a guest at defendant's inn, went to bed, leaving a bag containing about £27 in his trousers' pocket. He left his trousers on the ground at the side of his bed furthest from the door. There was a key in the lock of the door, but plaintiff only shut the door, and did not lock it. Plaintiff had previously pulled the bag containing the money out of his pocket in the commercial room for the purpose of paying somebody some money. In the course of the night, somebody entered plaintiff's bedroom through the door, and stole plaintiff's bag of money:

Held, that there was evidence to go to the jury of negligence on the part of the plaintiff, which occasioned the loss in such a way that it would not have happened if plaintiff had used the care that a prudent man might reasonably be expected to have taken under the circumstances.

[25 L. T. N. S. 93.]

On appeal from the ruling of the judge of the County Court at Bristol, the following case was stated:

1. This is an action brought against the de-

fendants, who keep a common inn for the accommodation of travellers, to recover for the loss by the plaintiff when a guest therein of £27. The case came on on the 13th December, 1870. The following are the particulars annexed to the summons:

In the County Court of Gloucestershire, holden at Bristol.

Between Samuel Oppenheim, plaintiff, v. The White Lion Hotel Co. (Limited), defendants.

The plaintiff sues the defendants for that the said defendants, being innkeepers, the said plaintiff, on the 31st August last, became and was the guest of the defendants for reward to be paid by the plaintiff to the defendants, and it thereupon became and was the duty of the defendants to provide the plaintiff with a safe and properly secured apartment for the reception and safe keeping of himself and his moneys and other personal belongings; yet the defendants did not provide a safe and properly secured apartment for the purpose aforesaid, and did not properly secure the personal belongings of the plaintiff, but were so negligent in the premises, and so wrongfully and negligently acted as such innkeepers as aforesaid, that the plaintiff as such guest as aforesaid became dispossessed and deprived and lost the benefit of certain property, to wit, a bag containing £22 6s., and was and is greatly damnified in and about the said premises. And the plaintiff also sues the defendants for that the defendants, on the day aforesaid, wrongfully converted to their own use and deprived the plaintiff of the possession of certain property of the plaintiff, to wit, the said bag of money. And the plaintiff also sues the defendants for that the defendants contracted and agreed with and promised to the plaintiff that, in consideration of his becoming their guest for reward as aforesaid, they would indemnify and repay, or reimburse him for any money or other property which he might lose, or of which he might otherwise be deprived whilst their guest as aforesaid. And the plaintiff thereupon became and continued a guest for reward of the defendants, but the defendants did not keep and perform their said agreement and promise, but broke the same to the injury of the plaintiff as aforesaid. And the plaintiff claims £27.

Dated the 3rd November, 1870.

2. The plaintiff is a manufacturer and general merchant, carrying on his business in London. The defendants carry on the business of common innkeepers, in Broad-street, in the city of Brist

3. The plaintiff, who occasionally travels for the purpose of his business, had for eleven years before the commencement of this action, when he happened to be in Bristol, resorted to the inn called the White Lion Hotel, kept by the defendants when the cause of action arose.

4. On the 31st August, 1870, the plaintiff came to Bristol, and went alone to the defendants' inn (the White Lion Hotel). He arrived at about eleven o'clock in the evening, was received as a traveller, and, upon his request, a bed room for the night was appropriated for his use. The plaintiff having deposited his portmanteau in the hotel, went into the commercial room, where he remained till about twelve o'clock, when he proceeded to his bedroom.

5. When the plaintiff arrived at the defendants' inn he had with him a canvas bag, containing £22 and some odd shillings in money, and a half of a £5 note, such bag with its contents being in the pocket of his trousers which he then wore.

6. When in the commercial room the plaintiff did not exhibit his money, nor mention to any one that he had any money in his possession, but about five minutes before he went to his bedroom he took out the canvas bag from his pocket, and took sixpence from it to pay for some postage stamps. He then replaced the bag in his pocket.

7. The plaintiff was shown to his bedroom by the chambermaid, who remarked to him that the window of his bedroom was open, to which he replied that he always slept with his window open.

8. The plaintiff's bedroom was on an upper storey of the defendant's premises. The window opened on to a balcony into which two other rooms of the inn looked.

9. The door of the bedroom had attached to the inside of it a bolt and a lock with a key in it, both in good order and repair.

10. After the plaintiff came to his bed room he closed the door, proceeded to undress, and placed his trousers, in the pocket of which the bag containing the money then was, on a chair by the side of his bed, on that side furthest from the door, and in such a position that any one entering the room would have had to have gone round the bed to get to the chair.

11. The plaintiff then went to bed without having locked or bolted the door of the room, the door remaining shut.

12. There was no notice in the plaintiff's room requiring guests to lock or bolt the doors, nor had the plaintiff seen any such notice in any part of the defendant's inn, nor was he told by any of the defendants' servants that guests were required or advised to lock or bolt the doors. The plaintiff, in giving his evidence, stated that he was generally in the habit of locking his bed room doors when sleeping in an inn, but he had not done so on the occasion in question.

13 The plaintiff got up at seven o'clock the next morning. The door of the room was then shut.

14. The plaintiff then saw lying on the floor of his room some bits of paper and a small toy sample (which had been in the trousers' pocket in which the money was). The pocket of the trousers was turned half in and half out, and the bag with the money contained therein was not in the pocket nor to be found in the room.

15. As soon as the plaintiff discovered his loss he asked to see the manager of the hotel, but was told that he could not see him till between eight and nine o'clock. The plaintiff remained in his room till that time, when he went down stairs, saw the manager, and told him he had been robbed of his money. The manager then went up into the plaintiff's room and inspected it, and also the adjoining rooms.

16. The manager sent for two detectives, who, upon their arrival, examined the bed room in which the plaintiff slept, and the doors and windows, and the balcony on which the latter looked.

17. At the hearing of this case it was proved or admitted that the plaintiff had in his possession £27 in money and a note, contained in a bag which was in the pocket of his trousers when he retired to bed; that some person had during the night stolen such bag containing the money; that such person could not possibly have entered by means of the window of the bed room; and that the robbery could only have been effected by a person entering the plaintiff's bed room by the door.

18. It was upon these facts contended on behalf of the defendants that the plaintiff, in neglecting to lock or bolt his door, was guilty of negligence, so as to exonerate the defendants from their liability as innkeepers, to make good the loss incurred by plaintiff.

19. No witnesses were called on behalf of the defendants.

20. The case was tried by a jury, and the judge of the County Court, in summing up the case, after referring to the facts of the case, and explaining the law as regards the liability of innkeepers for the safe custody of the property of their guests, proceeded to direct the jury that the question they would have to consider in this case was whether the loss would or would not have happened if the plaintiff had usad the ordinary care that a prudent man might reasonably be expected to have taken under the circumstances In the former case they would find for the plaintiff, in the latter for the defendants.

The jury found a verdict for the defendants.

The plaintiff being dissatisfied with the question submitted to the jury by the learned judge, gave notice of appeal.

The question for the consideration of the Court is, was the judge of the County Court right in leaving the question of negligence to the jury in the form hereinbefore stated, without telling them (as the plaintiff contends) that the facts proved did not in law amount to such negligence as would exonerate the defendants from their liability as innkeepers to reimburse the plaintiff for the loss of the £27.

If the opinion of the Court should be in the affirmative, then the appeal to be dismissed with costs; if in the negative, then a verdict to be entered for the plaintiff for £27, with costs of the appeal, it being agreed that in that event each party shall pay his own costs in the court below.

Oppenheim for the appellant. The County Court judge ought not to have left the question of the plaintiff's negligence to the jury, as there was no evidence of negligence on his part. The defendants were bound to satisfy the jury that there was negligence on the part of the plaintiff, but for which the money would not have been stolen. That he failed to do He cited *Ford* v. *London and South Western Railway Company*, 2 F. & F. 730; *Morgan* v. *Ravey*, 2 F. & F. 283; *Cashill* v. *Wright*, 6 E. & B 895; *Burgess* v. *Clements*, 4 M. & S. 306; *Armistead* v. *Wilde*, 17 Q. B. 261; *Cayle's Case*, 1 Sm. L. C. 105.

Charles, for the respondents, was not called upon.

Willes, J.—I am of opinion that this appeal must be dismissed. It appears that the appellant went to an inn of considerable size in Bristol, and went with a sum of money in his pocket, which he did not publicly exhibit, though he took no precaution to prevent its being seen. He engaged a bedroom, to the door of which there was a lock and key; but though he shut the door on going to bed, he neglected to lock it. He left the money in a place where it could be got at by a person who quietly entered the room. The money having been stolen by somebody who entered the bed room at night while the appellant was asleep, this action was brought. As a matter of law, it is insufficient to set up in answer to the action the bare fact that the appellant had a large sum of money and yet left his door unlocked. It is the duty of the innkeeper to take proper care of the property of his guests, and it is possible that he may not have taken proper care to prevent suspicious persons from entering the inn. It might be that, though the jury might think that there was some evidence of negligence on the part of the guest, their judgment on this point might be overborne by evidence of negligence on the part of the landlord, The negligence here imputed to the appellant is that though there was a key in the lock of the door, the appellant did not turn it, and the appellant's counsel has, in answer to that cited the dictum of Lord Coke in *Cayle's case* (1 Sm. L. C 107), that in such a case "it is no excuse for the innkeeper to say that he delivered the guest the key of the chamber in which he lodged, and that he left the chamber door open." That is referred to by Erle, J., in *Cashill* v. *Wright*, 6 E. & B. 894, who asks, "Can there be such a general rule? Must not the particular circumstances be taken into consideration? Suppose an innkeeper tells his guest: 'Take care of yourself, for some pickpockets have come into the place,' and after that the guest leaves the door open." Lord Coke indeed said that the innkeeper did not get rid of his liability by giving his guest the key; but he never said that such guest, to whom a key has been given, need not, under any circumstances, use it. Supposing that, as was the case in *Burgess* v. *Clements*, 4 M. & S. 306, a stranger had once or twice looked into the room, or other circumstances had happened which ought to have excited the suspicion of the guest, can it be said that under these circumstances he is under no obligation to fasten the door? Lord Coke goes on, after using the expression cited, to give instances in which the innkeeper will be absolved. "If the guest's servant," he says, "or he who lodges with him, steals or carries away his goods, the inkeeper shall not be charged. Moreover, he intimates that a guest may by his own act, take away the responsibility of the innkeeper. "The innkeeper," he says, "requires his guest that he will put his goods in such a chamber under lock and key, and then he will warrant them, otherwise not; the guest lets them lie in an outer court, where they are taken away, the innkeeper shall not be charged, for the fault is in the guest." Therefore, it is quite clear what Lord Coke meant by saying that it is no answer for the innkeeper to say that he gave his guest the key, but that the guest did not use it, was that the innkeeper was not, as matter of law, *ipso facto*, absolved by the mere delivery of the key;

but he then goes on to give instances in which the innkeeper is absolved by reason of the guest having taken the responsibility upon himself. It was urged on the jury by the counsel for the plaintiff that it was not an unreasonable thing for the plaintiff to have left his money in his pocket, and to have left the door unlocked. Some people have an objection to locking their doors. On the other hand, it was urged that if a guest at an inn did not like to lock his door, he ought to put his money away more carefully. All these things are questions of degree and of fact. I think that the County Court judge left the question quite properly to the jury. It seems to me a mistake to say that the innkeeper is responsible unless there has been gross negligence on the part of the guest, as the term "gross negligence," as was pointed out in *Cashill* v. *Wright*, is apt, unless explained, to mislead the jury. It was very clearly laid down by Erle, J., in *Cashill* v. *Wright*, what negligence on the part of the guest absolves the landlord, where he says, that "the goods remain under the charge of the innkeeper and the protection of the inn, so as to make the innkeeper liable as for breach of duty, unless the negligence of the guest occasions the loss in such a way as that the loss would not have happened, if the guest had used the ordinary care that a prudent man may be reasonably expected to have taken under the circumstances." I think in this case it was a question for the jury whether there was not some negligence on the part of the plaintiff, but for which the loss would not have happened. The appeal, therefore, must be dismissed with costs.

Keating, J.—I am of the same opinion. Mr. Oppenheim contends that the County Court judge ought to have told the jury that there was no evidence to show want of ordinary care on the part of the plaintiff. If there was no such evidence, then the question whether the plaintiff had taken such care did not arise. I think, however, that the judge was bound to leave all the circumstances to the jury. Mr. Oppenheim has contended that, if we say the County Court judge was right, we shall be laying down as matter of law that a guest at an inn is, under all circumstances, bound to lock his door. But all that we do say is, that under the circumstances, the judge was right in leaving the question to the jury. The only question of law that arises is, whether there was any evidence to go to the jury. I think there was, and that the appeal must be dismissed.

M. Smith, J.—I am of the same opinion. I think that the direction of the judge was perfectly consistent in point of law. That is not disputed by Mr. Oppenheim, and, indeed, it could not be, for the direction was precisely in accordance with the judgment of the Court in *Cashill* v. *Wright*. But what Mr. Oppenheim says is, that there was no evidence of negligence on the part of the plaintiff conducing to the loss, and that, therefore, the judge ought to have directed the jury that they could not find for the defendants on the ground of any negligence on the part of the plaintiff. I am of opinion, however, that there was evidence for the consideration of the jury, and that they were the proper tribunal to decide the question. I quite agree with Mr. Oppenheim that a man is not bound to lock his door; that is a question for himself. At the same time, I should be far from saying, that in the present state of the travelling world, a man had taken proper precautions who left his door unlocked. I do not say that his not locking his door *ipso facto* relieves the innkeeper from his liability, still the fact is a strong one, especially when there are other circumstances of negligence. All these things depend on circumstances. What may be an ordinary act at a small inn may assume a different aspect at a monster hotel. Then, again, the plaintiff had a considerable sum of money with him, and he took out the bag containing it in the commercial room. It was a question for the jury what sort of room this was, and to what kind of people the plaintiff gave an opportunity of seeing his money. The plaintiff then went to bed, leaving the money in his pocket, and though there was a key in the lock, he did not lock his door. I think the judge would have been wrong not to have left these matters to the jury, and that the appeal must be dismissed.

Judgment for the respondent.

NOTES OF RECENT DECISIONS IN THE PROVINCE OF QUEBEC.

Alimony.

A wife has no action against her husband for alimentary allowance on the ground that she cannot be comfortable in the house of her husband. She must reside with him. (Mondelet, Mackay and Beaudry, JJ.)—*Conlan* v. *Clarke*, 1 Rev. Crit. 473.

Banking.

Held, that when a bank discounts for A. a draft by him on B., and accepts a check for the proceeds and delivers it to A., for transmission to B., to enable B. therewith to retire a draft for a similar amount, drawn by A. and accepted by B. for A.'s accommodation, and about to fall due at the branch of the bank where B. resides, on the faith of A.'s representation, assurance and undertaking (without authority, however, from B.) that B. will accept the new draft, and B. receives the check, and before using it has knowledge of the transaction as between A. and the bank, B. cannot legally use the check to retire his own acceptance on the old draft, without accepting the new one.—*Torrance et al.* v. *Bank of B. N. America*, 15 L. C. J. 169.

Bills and Notes—Alteration.

The word "months," which had been omitted in a note after the word "three," had been inserted by the holder without the knowledge of the endorser. *Held*, that this was not alteration, and that the endorser was liable. (Torrance, J.).—*Lainé* v. *Clarke*, 1 Rev. Crit. 475.

Notes of Recent Decisions in the Province of Quebec.

Bills and Notes—Procuration.

Held, that when a promissory note is signed by procuration, proof of the due execution of such procuration must be made to entitle the plaintiff to recover judgment in an *ex parte* suit on the note.—*Ethier* v. *Thomas*, 15 L. C. J. 225.

Corporation—Obstructions.

A corporation is not responsible for the negligence of others in leaving obstructions in the street, when it appears that the driver might have avoided the obstructions. (Mondelet, J.) —*Maguire* v. *The Corporation of Montreal*, 1 Rev. Crit. 475.

Dominion Arbitration.

Held, that the Superior Court of Lower Canada has jurisdiction over an arbitrator appointed by the Government of the Dominion of Canada, under section 142 of the B. N. A. Act, while acting as such within the Province of Quebec, and may enquire whether such arbitrator is in the legal exercise of his office. —*Ouimet, Attorney-General*, v. *Gray*, 15 L. C. Jur. 306.

Election Law — Disqualification of Candidates—Leases by Corporations.

Held—1. That a lease of a stall in the market with the Mayor, Aldermen and Citizens of the City of Montreal, is a contract within the meaning of the 29–30 Vic. chap. 56 sec. 7.

2. That such contract, entered into by a city councillor prior to new election, is not such a continuing contract as will disqualify him, when re-elected, from sitting under the new election, nor thereby deprive him of his seat in the said Council.

3. That, under the Act, 29–30 Vic. chap. 56 sec. 7, the words used being, "Any member of the said council who shall, directly or indirectly, become a party to, or security for any contract or agreement to which the corporation of the said city is a party, or shall derive any interest, profit or advantage from such contract or agreement, *shall thereby become disqualified* and lose his seat in the said Council," the Judge cannot oust from office a member re-elected, who had contracted with the corporation while sitting as councillor under a prior election.

4. The Mayor has not, nor has the City Clerk of Montreal, power or authority to cancel leases made by the corporation, and such deeds of cancellation will be adjudged *ultra vires*.

5. Leases by corporations, and releases, should be under the seal of the corporation.—*Smith* v. *McShane* and the *Mayor et al. of Montreal*, 15 L. C. J. 203.

Election Law—Contract.

Held—1. That the candidate is liable for services of carters engaged at his bidding to convey voters to the polls in a municipal election.

2. That a member of an Election Committee engaging the carters will be held responsible for their wages.

3. That such contracts can be enforced at law by suit.—*Ramage* v. *Lenoir dit Rolland*, 15 L. C. J. 219.

Insolvency—Provincial Legislature.

Held, that by section 91 of the B. N. A. Act of 1867, the Parliament of Canada has exclusive legislative authority in all matters of insolvency, and an Act of the Legislature of the Province of Quebec changing the constitution of an incorporated Benefit Society, so as to force a widow to receive from the Society $200 once for all, instead of a life rent of 7s. 6d. weekly, on the ground that the Society was insolvent, is unconstitutional and null, and may be declared so by the courts having civil jurisdiction within the Province.—*Belisle* v. *L'Union St. Jacques*, 15 L. C. J. 212.

Insolvency—Dower.

The decision of Mr. Justice Torrance, recorded at p. 243 of *La Revue* was reversed in Review, Mackay, J. dissenting. Messrs. Justices Mondelet and Berthelot were of opinion that section 57 of the Insolvent Act of 1869 did not apply to dower and other *gains de survie* dependent upon the contingency or condition of survivorship to the husband, these special rights of our civil laws not being expressly mentioned in the provision of the Act. Mr. Justice Mondelet further remarked, that even if they had been so mentioned, the provision of the Act would be unconstitutional, the Parliament of Canada having no control over the civil laws of the Province. Mr. Justice Mackay was in favour of Mrs. Morrison's claim, because it was founded upon our Insolvent law, interpreted in the way in which the English Courts had interpreted a similar section in the English statute, the way in which the Courts in Ontario or New Brunswick would interpret it.—*In re Morrison and Dame Anne Simpson, claimant*, v. *Henry Thomas*, 1 Rev. Crit. 474.

Insolvency—Execution Creditors.

A guardian under a writ of compulsory liquidation in Insolvency matters has a right to take out a *saisie revendication* against a seizing bailiff and the creditor, who, although well aware of the issuing of the compulsory writ, persist in holding the estate of the insolvent

under an ordinary writ of execution—in this case a writ of *saisie gagerie*. The bailiff, Mercier, was condemned, jointly and severally with the landlord, to deliver the estate to the guardian and to pay the costs. Mercier was further ordered by the court, *suo et proprio motu*, to be struck off the list of bailiffs of the Superior Court. (Mackay, Torrance and Beaudry, JJ.)—*Whyte* v. *Bisson et al*, 1 Rev. Crit. 474.

Insolvency—Book Debts.

The purchaser of the book debts of an insolvent estate cannot complain that some of these debts have been collected by the assignee previously to the auction sale, although the list of debts showed no such collection when the sale was made. (Mondelet, J.)—*Lafond* v. *Rankin*, 1 Rev. Crit. 475.

Insolvency—Guarantee.

Held, that an assignee under the Insolvent Act of 1864 cannot be sued *en garantie* in respect of a matter for which the insolvent was liable to guarantee the plaintiffs *en garantie*.—*Hutchins et al.* v. *Cohen*, 15 L. C. J. 235.

Insolvency—Composition.

Held, that a composition discharge under the Insolvent Act of 1884 affects the insolvent only, and does not relieve outside parties secondarily liable, not parties to the insolvent proceedings.—*Martin* v. *Gault*, 15 L. C. J. 237.

Insurance.

Introducing into the insured premises a gasoline machine of a dangerous character without the consent of the insurer, is a violation of the policy. (Mondelet, J.).—*Matthews* v. *The Northern Insurance Co.*, 1 Rev. Crit. 475.

Joint Stock Company.

No stock of an incorporated Company can be called for, unless the conditions antecedent to such call have been complied with. (Mouelet, J.)—*Massawippi Valley R. C. Co.* v. *Walker*, 1 Rev. Crit. 475.

Justice of the Peace—False Arrest.

An information for perjury, contained in three depositions prepared by counsel, was laid before two justices of the peace before arrest. After the arrest no examinations were made of witnesses, nor did the accused confess; yet he was committed to jail, there to be kept till discharged by course of law. The accused was discharged on *habeas corpus*, and afterwards for want of prosecution. Action in damages against the justices for $5,000. *Held*, reversing the judgment of Superior Court, that the commitment not being based upon information reduced to writing before the magistrates, was null, and that the magistrates were responsible for the false arrest. Judgment for $100 and costs. (Mackay, Berthelot, Beaudry, JJ.)—*Lacombe* v. *Ste. Marie et al*, 1 Rev. Crit. 474.

Libel—Corporations.

Action in damages for libel. The defendants demurred upon the ground that an action for libel did not lie against a corporation. *Held*, that civil corporations are governed by the laws affecting individuals. Demurrer dismissed. (Beaudry, J.)—*Brown* v. *The Corporation of Montreal*, 1 Rev. Crit. 475.

Railway Company—Common Carriers.

Notice of arrival of goods being given by the Company to the owners or consignees that they "remain here entirely at the owner's risk, and that this Company will not hold themselves responsible for damage by fire, the act of God, civil commotion, vermin or deterioration of quantity or quality, by storage or otherwise, but if stored, that a certain rate of storage would be charged for the storage of the goods," and which was paid to the Company by the owners.

Held, that though the liability of the Company as common carriers had ceased, by the arrival of the goods, the Company was still liable for damage as warehousemen and bailees for hire; but that in this cause the evidence did not show any negligence on the part of the railway company. Duval, C. J., Monk and Stuart, JJ. (*ad hoc*). *Contra*, Badgley and Drummond, who held that by law negligence was presumed if damage shown, and the onus of proof of care was on the Company, who had made no proof whatever to rebut the presumption against the Company. — *Grand Trunk Railway* v. *Gutman*, 1 Rev. Crit. 478.

Seduction.

Plaintiff being aware that the defendant was a married mon, sued him in damages for seduction. *Held*, that no action then lies. (Berthelot, J.).—*Lavoie* v. *Lavoie*, 1 Rev. Crit. 474.

Taxes—Lease.

Under a clause in a lease the tenant had promised to pay *all the taxes on the premises, ordinary and extraordinary, foreseen and unforeseen*, during the lease. *Held*, that this clause did not comprise taxes for the widening of streets, for which compensation had been paid to the landlord. Badgley, Monk, Drummond, JJ. (Dissenting, Duval, C. J., and Caron, J.)—*Shaw* v. *Laframboise*, 4 Rev. Crit. 476.

Taxes—Sale for, to Corporation Officer.

This action instituted before the Superior Court for the District of St. Francis, was

brought to annul a sale for municipal taxes and rates, made at the instance of the defendants, the corporation of the Township in North Ham, in February, 1868, and sold to the Secretary-Treasurer of that municipality at an undervalue.

Held, that the provisions of the civil code prohibiting agents and others from becoming buyers of the property, which they are charged with the sale of, apply to subordinates.—*Wicksteed* v. *The Corporation of the Township of North Ham, et al.*, 15 L. C. J. 249.

REVIEWS.

Canadian Illustrated News. George E. Desbarats: Montreal.

There has been for some time a marked improvement in this illustrated weekly paper. It is most creditable to its enterprising publishers, and deserves a generous encouragement from the inhabitants of the Dominion. What we especially admire is the absence of all that nasty, mawkish sensationalism that renders nearly all the American illustrated papers inadmissible to families of refinement and good taste. It is published by George E. Desbarats, 1 Place d'Armes Hill, Montreal, at the low price of $4 per annum.

The American Law Register. D. B. Canfield & Co.: No. 430 Walnut st., Philadelphia. $5 per annum. Nov. and Dec, 1871.

The leading articles are, "The Liability of Life Insurance Companies in case of Suicide," and an interesting sketch of the relative positions of the Legal Profession in England, written by Hon. I. F. Redfield, which we may reprint for our readers. There is also a large selection of cases, some with learned notes appended by the Editors.

APPOINTMENTS TO OFFICE.

GOVERNMENT OF ONTARIO.

THE HON. EDWARD BLAKE to be President of the Executive Council of the Province of Ontario. (Gazetted Dec. 30, 1871.)

THE HON. ADAM CROOKS to be Attorney-General for the Province of Ontario, in the place and stead of the Honorable John Sandfield Macdonald, resigned.

THE HON. ALEXANDER McKENZIE to be Secretary and Registrar of the Province of Ontario, in the place and stead of the Hon. Stephen Richards, resigned.

THE HON. ARCHIBALD McKELLAR, to be Commissioner of Agriculture and Public Works for the Province of Ontario, in the place and stead of the Hon. John Carling, resigned.

THE HON. PETER GOW to be Secretary and Registrar of the Province of Ontario, in the place and stead of the Hon. Alexander McKenzie, resigned.

THE HON. ALEXANDER McKENZIE to be Treasurer of the Province of Ontario, in the place and stead of the Hon. Edmund Burke Wood, resigned.

THE HON. RICHARD WILLIAM SCOTT to be Commissioner of Crown Lands for the Province of Ontario, in the place and stead of the Hon. Matthew Crooks Cameron, resigned.—(Gazetted Dec. 21st, 1871.)

POLICE MAGISTRATES.

JOSEPH DEACON, Esq., Barrister-at-Law, to be Police Magistrate for the Town of Brockville.

DAVID GEORGE HATTON, Esq., Barrister-at-Law, to be Police Magistrate for the Town of Peterborough. (Gazetted Nov. 25th, 1871.)

REGISTRARS.

EDWARD JOHN BARKER, of the City of Kingston, Esq., M. D., to be Registrar of the City of Kingston, in the room and place of George A. Cumming, Esq., deceased. (Gazetted Dec. 23rd, 1871.)

DEPUTY CLERK OF THE CROWN.

PETER O'REILLY, of the City of Kingston, Esq., Barrister-at-Law, to be Deputy Clerk of the Crown and Clerk of the County Court of the County of Frontenac, in the room and stead of Peter O'Reilly, Senr., Esq., deceased. (Gazetted Dec. 16th, 1871.)

NOTARIES PUBLIC FOR ONTARIO.

WALTER MATHESON, of the Town of Simcoe, Esq., Barrister-at-Law; EDWARD OSLER, of the Village of Fergus, Gentleman, Attorney-at-Law; and JOHN REID, of the Village of Edwardsburgh, Gentleman. (Gazetted Nov. 25, 1871.)

CHANCERY SPRING SITTINGS.

WESTERN CIRCUIT.

(Hon. the Chancellor.)

Toronto	Tuesday	March	12
Goderich	Tuesday	April	2
Stratford	Tuesday	"	9
Woodstock	Tuesday	"	16
Chatham	Tuesday	"	23
London	Tuesday	"	30
Sarnia	Tuesday	May	7
Sandwich	Friday	"	10
Walkerton	Tuesday	"	21

EASTERN CIRCUIT.

(Vice-Chancellor Mowat.)

Lindsay	Wednesday	April	17
Peterboro'	Tuesday	"	23
Cobourg	Friday	"	26
Belleville	Thursday	May	2
Kingston	Thursday	"	9
Brockville	Thursday	"	16
Ottawa	Monday	"	20
Cornwall	Thursday	"	23

HOME CIRCUIT.

(Vice-Chancellor Strong.)

St. Catharines	Wednesday	March	20
Hamilton	Wednesday	"	27
Guelph	Wednesday	April	3
Barrie	Wednesday	"	10
Whitby	Wednesday	"	17
Brantford	Wednesday	"	24
Simcoe	Thursday	May	2
Owen Sound	Thursday	"	9

To Correspondents.—"A Student." We cannot publish any anonymous communications. He might read the leading article in our last issue with advantage.