DIARY FOR JULY.

2. Mon. County Court term begins. Heir and Devisee sittings begin. Dom. day. Long vacation begins.
6. Sat. . County Court term ends.
7. Sun. Col. Simcoe, Lieut.-Gov,, 1792.
14. Sun. Hon. W. P. Howland, Lieut.-Gov. Ontario, 1868.
16. Tues. Heir and Devisee sittings end.
23. Tues. Union of Upper and Lower Canada, 1840.
24. Wed. Canada discovered by Cartier, 1534.
25. Th . . Battle of Lundy's Lane, 1813.
26. Fri. . Jews first admitted to House of Commons, 1858.
30. Tu . . First English newspaper published, 1588.

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Canada Law Journal.

Toronto, July, 1878.

Mr. Justice Wilson did not take his seat on the Bench last term, having obtained leave of absence to recruit, after many years of most faithful and laborious discharge of his judicial duties. We trust he may return in renewed health and strength.

The unprecedented sight was seen one day during last Term of the Queen's Bench sitting to rise again forthwith for want of work. The judges had in fact got ahead of their work, and occupied the novel position of "driving business, instead of business driving them." This is as it should be, and we cannot but congratulate the litigating portion of the community on the fact.

The Bankrupt Law in the United States has been repealed, and will cease from the first of September next. The *Albany Law Journal* anticipates that benefits will thereby accrue to honest tradesmen and vigilant creditors. It asserts, moreover, that the Bankrupt Act has tended to make trade unsettled and uncertain; that it has destroyed solvent houses, temporarily embarrassed, whilst it has tempted multitudes to be reckless and extravagant. There is a feeling among many mercantile men in this country that the advantages of our Insolvency Law are more than counterbalanced by the evils resulting from it. The question is a large one, and requires serious consideration. At present, however, there would be few to mourn the repeal of the Act, except an army of official assignees and some rascally tradesmen, who fail periodically and gradually grow wealthy. An honest trader is generally protected by his creditors, a dishonest one should have no protection.

A comprehensive mode of arriving at the sense of the country on the Temperance question was suggested by a learned Parliamentary draftsman, and his suggestions were put in the shape of a bill, which however, as a *nullus filius*, never came before the House, the gentleman for whom it was prepared being apparently alarmed at the size of the bantling, and so abandoning it. The plan proposed was to have the question of prohibition answered by electors on the ballot papers at the next general election. The learned gentleman who prepared the bill stated his views on the subject in a memorandum which was printed at the end of the draft bill. He there said:

"The advantage of this plan would be, that the sense of the whole Dominion upon the question would be ascertained at once, and legislation might be adapted to the result, almost without cost of time or money, while separate elections would entail a very heavy expenditure of both. Parliament alone has power to deal with trade and crime. Drunkenness is a crime by Act of the English Parliament passed before Canada became a British Province, and is the parent of all the more violent offences. Where there is power to punish crime there must be power to prevent it. There is morally no crime in carrying arms, or in playing a game of cards in a railway car, and yet Parliament has passed laws to prohibit either, because either may lead to crime,—and in the case of contagious diseases of animals, it has given the Governor in Council power to make provisions on subjects usually entrusted to the municipal authorities (32-33 V., c. 37), and has expressly enacted (s. 21), that the order of the Governor, relative to an infected place, shall supersede any order of a local authority inconsistent with it. It has prohibited the sale of intoxicating liquors where public works are being carried on; and has the same right to prohibit or regulate the sale elsewhere, for the same purpose,—the prevention of crime. Many more instances of such legislation by our Parliament might be adduced. Indeed the avowed purpose of criminal law is to prevent crime rather than to punish it; it is punished to prevent its recurrence."

NOTES ON TIME.

When a statute speaks of a year, it means the whole twelve months as computed by the calendar. Half-a-year consists of one hundred and eighty-two days, for the law does not regard a fraction of a day, *Bishop of Peterborough* v. *Catesby*, Cro. Jac. 166. So a quarter of a year consists of but ninety-one days, for the law does not regard the six hours afterwards: Co. Lit. 135, *b*.

"A twelvemonth," in the singular number, includes all the year; in the plural it may mean only forty-eight weeks: *Crooke* v. *McTavish*, 1 Bing. 307 (Per Park J.)

When a deed speaks of a month it shall be intended to be a *lunar* month, unless the context indicates that a calendar month was meant: *Lang* v. *Gale*, 1 M. & S. 111. And the same rule holds generally in other contracts, unless it be shown that the usual understanding in the particular branch of business is that such bargains contemplate calendar months: *Reg.* v. *Inhabitants of Chawton*, 10 L. J. M. C. 55; *Titus* v. *Preston*, 1 Stra. 652.

But when persons bargain that the purchase of *lands* shall be completed within so many months, calendar months are implied: *Hipwell* v. *Knight*, 1 T. & Col. 401 (Eq. Ex.)

Sir Wm. Grant explained the principle as to including or excluding the day when time is to be computed from an act or event. In *Lester* v. *Garland*, 15 Ves. 247, he points out that the authorities make this distinction, that where the act done is one to which the party against whom the time runs is privy, the day of the act done may reasonably be included; but where it is one to which he is a stranger, it ought to be excluded.

When a month's notice of action is required, the day on which the notice is given and on which the action is begun are excluded: *Young* v. *Higgin*, 6 M. & W. 49.

As a general rule, where a certain number of days' notice of an intention to do an act is necessary, the day of the service of the notice is excluded and that on which the act is to be done is included: *Rex* v. *Cumberland*, 4 N. & M. 378. Where a statute required notice to be given "*within* two days *after* the damage was done," the injury by fire happened on Saturday, and notice was given on Monday following. Lord Tenterden applied the rule laid down by the Master of the Rolls in 15 Ves. and said the computation was to be made from an act not done by the party plaintiff, and of which

he might be at the time wholly ignorant. Here also, he went on to observe, only *two* days are allowed for giving notice, if those two days expired on the Sunday, when would the time have expired if only *one* day had been allowed? It could hardly have been said that the notice must be given on the very day when the fire happened: and if one day could have extended the time to Sunday, two days must extend it to Monday. This was followed in *Webb* v. *Fairman*, 3 M. & W. 477, and it was held there that if a person purchase goods to be paid for in two calendar months, the credit does not expire till the end of the corresponding day of the second month.

When by statute "ten days" notice of appeal is to be given, this is satisfied by reckoning one day inclusive and the other exclusive: *Rex* v. *Justices of West Riding*, 4 B. & Ad., 685. But when "ten *clear* days" are required, then the day of serving the notice and the day of the sitting of the Court are to be both excluded: *Rex* v. *Herefordshire*, 3 B. & Al. 581. The same exclusion of both days obtains when so many days' notice "*at the least*" is to be given: *Mitchell* v. *Foster*, 9. Dowl. 527; *R.* v. *Shropshire*, 8 A. & E. 173; *Beard* v. *Gray*, 3 Chan. Cham. R. 104.

When time is allowed for the doing of an act "*until*," or "*at*" a particular day, that day is included: *Kerr* v. *Jeston*, 1 Dowl. N. S. 538; *Archer* v. *Saddler*, 1 Fost. & Fin. 483; *Rex.* v. *Skiplam*, 1 T. R. 490. Usually when the time is fixed for doing a thing by Statute, as *within two days*, or the like, Sunday is included: *Exp. Simkin*, 29 L. J. M. C. 23; *Peacock* v. *Reg.* 4 C. B. N. S. 264.

When no time is expressly mentioned for the performance of an act, the law allows a reasonable time: *Ellis* v. *Thompson*, 3 M. & W. 456. And this is a question of fact: *Startup* v. *Macdonald*, 2 M. & Gr. 395.

Forthwith, *immediately*, *instantly*, always receive a construction equivalent to as soon after as can reasonably be expected: *Thompson* v. *Gibson*, 8 M. & W. 281; *Simpson* v. *Henderson*, 1 M. & Malk., 300; *Boyes* v. *Bluck*, 1 C. L. R. 223; *Toms* v. *Wilson*, 4 B & S, 442.

From any day *until* another: "From has in this position no settled meaning and may mean either inclusive or exclusive according to the context and subject matter. The Court will construe it so as to effectuate the deeds of parties and not to destroy them: *Pugh* v. *Leeds*, Cowp. 713. In *Ammerman* v. *Digges*, 12 Ir. C. L. R. p. i. (app). in a letter of license from creditors to a debtor "for and during the term of one year from the date" it was held that the day of the date should be excluded from the computation of the year. The cases are reviewed in *Isaacs* v. *Royal Insurance Company*, 18 W. R. 982, and the conclusion is reached that while there is no invariable rule in computing time "*from any day until another*," whether the first is to be included or excluded and the last included or excluded, still the tendency of modern decisions has been to include the last day. See also *Bank of Montreal* v. *Taylor*, 15 C. P. 113.

When a thing is to be done in a time specified "*after*" a particular fact, the day of the fact is to be reckoned as excluded. Three days after service excluded the day of service: *Weeks* v. *Wray*, W. N., 1868, p. 30. The rule was formerly otherwise: see *Berry* v. *Andrews*, 3 O. S. 646; but this case would not now be followed: *Sutherland* v. *Buchanan*, 9 Gr. 135.

When a proceeding has to be taken, in case issue has been joined three weeks "*before*" the sittings of the Court, the computation should include the day on

which issue has been joined: *Wilson* v. *Black*, 6 Prac. R. 130.

A contract to do a thing "*directly*" does not imply that it is to be done *instanter*, but there must be no delay in the performance: *Duncan* v. *Topham*, 8 C B. 225.

A SUMMONS FROM PARNASSUS.

An occasional correspondent, whose feelings of delight at the arrival of the long vacation have got the better of him, sends us the following paraphrase in rhyme of an "original writ." It does him credit, and is, we think, quite as good as his Indenture done into verse, published by us some time since:

"To John Smith,

His servants and agents, Victoria
Sends greeting: we trust that this process won't bore you.
In our Court of Chicanery one Brown doth make
A complaint—*i. e. Chancery*, (printer's mistake)—
However, the said Brown now lately hath filed
A Bill of Complaint here, wherein are compiled
An account of your doings, and saith he is grieved
Thereat; and he prays that he may be relieved,
As against the aforementioned acts of iniquity,
Because they're repugnant to Conscience and Equity.
Now, as it is shown that the truth is the same as is
Fully related by him in the premises,
We've caused this to issue, upon due enquiry
Secundum discretionem boni viri.
And if you should ask us, *Vir bonus est quis?*
Of your grace and mere motion we answer you this,
(To which we may add, you by no means deserve it):—
Qui patrum consulta, qui juraque servat.
Considering, therefore, that Brown hath related
The truth, touching what in his bill hath been stated;
We strictly enjoin upon you to refrain
From the acts we referred to before, under pain
Of incurring our heavy displeasure; and not
Only that, but we'll make it exceedingly hot
For you, the aforesaid iniquitous cove,
For we'll order our Sheriff to nab you, by Jove!*
To conduct you to where we give plain lodging *gratis*,
And watch you with care, till you cry out *jam satis!*
There we'll cause you to live like a very *recluse*,
While we, meanwhile, appropriate to our own use
Your lands that you bought with your hardly earned pelf,
Your carriage and horses, blue china and delf,
Your ormolu clocks, your champagnes and hocks,
Your plate that you keep under two or three locks,
And your profits from money invested in stocks;
Your carpets, and zooks; your piano and books,
Your pictures suspended from silver-gilt hooks.
Your statuettes standing in nice little nooks,
And your mirrors, in which your wife constantly looks;
Your treasures of art, that are dear to your heart,
With which you declare that you never will part.
And we'll do everything we can think of that shocks you,
While Brown looks on coolly, and laughs at and mocks you;
And when we've disposed of your jewels and trinkets,
We've no hesitation in saying you'll think it's
As well to obey our decrees and commands,
And thus save your goods, and your chattels and lands.
Now, to show you that this is not all empty brag,
As witness, our Chancellor Godfrey de Spragge,
Who gauges the rights of each case, as it's put,
By the breadth of his soul, and the length of his foot.
Now glance at the margin—pray look at that seal,
And the stamp, duly cancelled—more proof that you'll feel
Our vengeance, worked out without any compunction,
If you do not choose to obey this injunction.
But if you do Smith, old man, why we'll 'cry quits.'

A. Holmested,
The Clerk of our Records and Writs."

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*The 37 Vict. cap. 37, entitled "An act for the suppression of voluntary and extra-judicial oaths," does not apply. Besides being only *somewhat* judicial, this oath was *involuntary*.

SELECTIONS.

THREE GREAT LAW-BREAKERS.

If a foreigner should accuse the citizens of the United States of a disregard for law, they would probably regard the charge as a gross slander. We are in the habit of pluming ourselves as a law-abiding and order-loving people. And yet it must be conceded that we are a long-suffering people under notorious and shameless infringements of our laws, and that there is a vast amount of "dead-letter law" among us. We have taken pains to speak before on this subject. Our attention is called to it again by the recent and nearly simultaneous death of three very prominent and notorious persons, all long-time residents of the metropolis of this country. It has occurred to us that if a British tourist should have visited our country about three years ago, and should have animadverted upon the lives, employments and influences of William M. Tweed, John Morrissey and Madam Restell, in just and natural terms, the impulse of our people would have been to resent the attack as they resented the attack of Dickens upon the American institution of slavery. Not to say that our people would ever seriously have defended the crimes of political corruption, gambling and abortion, yet so great would have been the sensitiveness of the sore spots that they would have shrunk from the probe of the censor.

The anger of men at the exposure of their vices is much deeper than their pleasure at the approval of their virtues. So all the praise which Dickens bestowed upon our State prison system and our charitable asylums could not allay the irritation which he excited by his just denunciation of slavery.

Doubtless, the foreign tourist would have been in error in assuming that the toleration and prosperity of such persons as Tweed, Morrissey and Restell was a fair index or gauge of the moral state of the community, but he could not have been blamed for remarking such an astonishing spectacle, nor for accusing so supine and indifferent a community of practical participancy in their crimes. That one man should have arisen from the condition of an uneducated mechanic to the rank of State Senator, to the absolute control of a great political party, and the undisputed disposal of millions of the public money, and should for years have controlled elections and made and unmade high officials by his breath, all through the undisguised practice of bribery and corruption; that another man, originally a professional prize-fighter, should have been repeatedly chosen by wealthy and aristocratic constituencies to seats in the State Senate and the lower house of Congress, while all the time the proprietor of a gambling-house; and that a woman, by profession an abortionist, should have lived in a palace on Fifth avenue, and flaunted her showy equipage in Central Park; and that all these persons should for so many years, either not have excited or have escaped the vengeance of the law, certainly argues a very singular condition of morals. In truth there is always a sort of secret sympathy and admiration in every community for successful and brilliant defiance of the law. For how many years did very respectable men quote Tweed's formula, "what are you going to do about it?" with a tacit assent to the idea that it would probably be of little use to try to do anything about it. Even now, there are probably a good many virtuous and respectable people who think rather impatiently of Mr. Comstock's efforts to suppress infanticide and obscene literature. There was a good deal of shrewdness in the reply made by a lawyer whom the writer once detected in the act of purchasing a copy of the *Police Gazette*: "Is it possible that you buy that paper?" "Certainly," was the reply, "what gentleman doesn't?" So long as a crime does not affect ourselves, or involve human life, our sympathies for the sufferers are not apt to be very acute, and in fact are quite apt to be on the side of the offender. Men always like to see the weaker party come off best. That was the feeling which led ladies to visit highwaymen in their cells, and give them flowers on their way to execution. In regard to offences like those of Tweed, it may be added that "what is every-

body's business is nobody's business." Offences against the public treasury are quite generally regarded as venial. In the opinion of a great many very decent people it is not a very heinous offence to smuggle, provided one does not make a business of it; but a little amateur smuggling for one's self or one's friends, accompanied by a little judicious corruption of the revenue officers, is a rather clever achievement. Tweed had the advantage of being a public robber on a grand and audacious scale. What protected Madam Restell in her long career of infamy, on the other hand, was the peculiarly secret character of her offence, and the improbability of the employment of accomplices, or the use of appliances which could be traced, together with the idea so prevalent that the offence of abortion is rather against sentiment than against morals. It would be difficult to say what protected Morrissey in his business, unless it was true, as he was in the habit of declaring, that there was a public demand for well-regulated gambling places. Mr. Morrissey, with his blunted moral perceptions, used to justify himself by declaring that gambling was no worse than stock-jobbing, or for that matter, than trade itself. But when he invited us to come into his club-house at Saratoga some years ago, and see the persons who were his patrons, our acceptance of his invitation convinced us that he was in no danger of prosecution, however erroneous might be his views upon the comparative moral equality of Saratoga and Wall street. If any one is disposed to try the experiment, he may easily experience the sensations of young Goodman Brown, in Hawthorn's weird legend, when he attended the witches' pow-wow and found there the minister, elders, and deacons, and the matrons and maidens of his own Church.

It is true that the community of the metropolis has lashed itself into a spasm of virtue. It has crushed out Tweed and "smashed his ring." It has driven the Restell woman to suicide, and has experienced a holy satisfaction in the reflections incident to that occurrence. The newspapers and the pulpit have had much to say against Morrissey's occupation, but we have not heard up to the hour of going to press, that his place has been shut up except for the funeral. It has thundered awfully. An outraged people has arisen in its majesty and wrath, and overwhelmned the audacious violators of the law, and all that sort of thing. But the question arises: are political corruption and bribery, abortion, and infanticide, and gambling, any less prevalent than before the storm? Are the laws against these crimes any less dead-letter laws? We would that these inquiries might be answered in the affirmative, but we fear that they cannot be. We fear that there is the same individual carelessness about infractions of public rights; the same unrestrained licentiousness; the same greed of gain and love of chance, which rendered possible the career of these three great law-breakers. Law-makers and lawyers cannot convert the spirit of a community, but they can at least do something to preserve law from derision. They can encourage attempts to detect and punish violations of law, and they can punish the guilty. The public authorities have been and are still blamable in this matter. There is a leaven of public sentiment that would sustain them in advances against the strong-holds of such crimes as we have mentioned, and a vigorous and unrelenting prosecution of such offenders would at length create a general public interest which is now lacking. Rain will extinguish a fire, but if you burn powder enough you will produce a rain, as the history of great battles show. There may not be public interest enough to inspire the prosecution of minor offenses, but the faithful discharge of official duty would engender the public spirit which should be the moving cause. —*Albany Law Journal.*

ENGLISH REPORTS.

DIGEST OF THE ENGLISH LAW REPORTS FOR NOVEMBER AND DECEMBER, 1877, AND JANUARY, 1878.

(*From the American Law Review.*)

Account.—See Covenant, 2.

Adjacent Support.

Between the coal-mines of the plaintiff

and those of the defendant there was an intermediate piece of surface land, from under which the coal had long before been extracted by a third party. In the ordinary working of his mine, defendant had dug near the intermediate piece of land, and the latter had given way, thus causing a portion of the surface over plaintiff's mine to subside. *Held*, that the plaintiff was entitled to no relief.—*Corporation of Birmingham* v. *Allen*, 6 Ch. D. 284.

See INJUNCTION, 2.

ADMINISTRATOR.—See EXECUTOR AND ADMINISTRATOR.

ADVANCEMENT.—See HUSBAND AND WIFE, 1; WILL, 3.

ADVERSE POSSESSION.—See COVENANT, 2.

AGREEMENT. - See LEASE.

ANCIENT LIGHTS.

Where an old building having ancient lights was demolished and a new one put in its place, and a skylight put into the new one, substantially where a dormer window in the old one was situated, *held*, under the circumstances, that by 2 & 3 Will. IV. c. 71, § 3, the right to the light was not lost. But where the new building on the servient estate which obstructed the skylight was nearly completed, damages were allowed and an injunction refused.—*National Provincial Plate Glass Ins. Co.* v. *Prudential Ins. Co.*, 6 Ch. D. 757.

ANTENUPTIAL SETTLEMENT.—See SETTLEMENT, 5.

APPOINTMENT. - See WILL, 1, 5.

ATTORNEY AND CLIENT.

1. Rule that a solicitor cannot take a gift from a client while the professional relation exists, applied with rigour.—*Morgan* v. *Minett*, 6 Ch. D. 638.

2. A solicitor who acts for both mortgagor and mortgagee cannot claim a lien upon the title-deeds for costs due him from the mortgagor, so as to entitle him to withhold the deeds from the mortgagee until those costs are paid, although the mortgagee knew that he had such lien as against the mortgagor. —*In re Snell* (*a solicitor*), 6 Ch. D. 105.

3. A client paid her solicitor his bill, and gave her business to other solicitors, who also received the deeds and other documents relating thereto. *Held*, that the first solicitor could retain the client's letters to him relating to the business, and also the press copies of his to her.—*In re Wheatcroft*, 6 Ch. D. 97.

See COMPANY, 7.

BANKRUPTCY.

1. A gas-light company does not come within the words "landlord or other person to whom any rent is due from the bankrupt," in § 34 of the Bankruptcy Act, 1869, although the sum due the company for gas is, in one section of the Gas Works Clauses Act, spoken of as rent, and the special act under which the gas company was organized gives it power to levy by distress for such sums.—*Ex parte Hill. In re Roberts*, 6 Ch. D. 63.

2. Certain traders being in contemplation of bankruptcy, and wishing to raise money, arranged with one S. to draw bills on them, which they accepted. S. then sold the bills, amounting to £1,717, to Jones, the appellant, for £200. Jones was a discounter of bills, but never had bought any before this transaction. He had refused to discount these bills. He supposed the acceptors could not pay in full, and might, by inquiry, have found out their true condition. He knew that they had assets; and on their going, three days afterwards, into bankruptcy, he claimed to prove for the full face of the bills. The County Court in bankruptcy restricted the proof to the £200 paid for the bills; the Chief Judge reversed this, and allowed proof on the face of them; the Court of Appeal reversed the Chief Judge's order; and, on appeal to the House of Lords, *held*, that proof for £200 only could be allowed, as Jones must be held to have had knowledge of the fraud on the part of the maker and acceptors of the bills.—*Jones* v. *Gordon*, 2 App. Cas. 616; s. c. 1 Ch. D. 137; 10 Am. Law Rev. 684.

3. In a marriage settlement, M., the intending husband, assigned a policy on his life, for the benefit of his wife, to the trustees, and covenanted to pay the premiums. At the same time, a fund was set apart, out of which the premiums were to be paid, in case M. failed to pay them, May 8, 1871, M. went into bankruptcy, and from that time the premiums were paid out of the fund. May 15, 1874, the trustees of the settlement had the value of M.'s covenant to pay the premiums estimated, and proved the amount, being £2,052 8*s.*, as a claim against his estate. April 13, 1876, a dividend of 10*s.* was declared on M.'s estate; but before the receipt for this percentage on the above £2,052 8*s.* was signed by the trustees of the settlement, M. died. The amount paid for premiums out of the wife's fund had been £766 5*s.* The court *held* that the trustees of the settlement should receive only the £766 5*s.* actually paid out in lieu of the dividend on £2,052 8*s.* already declared.—*In re Miller. Ex parte Wardley*, 6 Ch. D. 790.

BEQUEST.

Testatrix gave to a charity all her household furniture, pictures, goods, chattels, trinkets, jewellery, and effects which might be in her dwelling-house, and also all her ready money, money at the bankers, and money in the public funds of Great Britain, and also all other of her personal estate and effects which she could by law bequeath to such an institution. Her personal property amounted to about £100,000, and her real to about £50 000. The will contained nothing but this bequest, and the appointment of executors. *Held*, that the bequest to the charity was specific, and that the debts, expenses, and costs must be paid first out of the personal estate undisposed of, then out

of the real estate; but that the heirs having no interest in the probate of the will, the real estate was not in any event liable for the probate duty which must come out of the charitable bequest. The unpaid premium on a long lease, which the testatrix had sold some time before her death, was declared realty.—*Shepheard* v. *Beetham*, 6 Ch. D. 597.

Bill of Lading.—See Mortgage, 2.

Bills and Notes.—See Bankruptcy, 2; Husband and Wife, 2.

Burden of Proof.—See Presumption.

Carrier.—See Common Carrier.

Charity.—See Bequest.

Condition.—See Covenant, 2; Railway.

Consideration.—See Husband and Wife, 3.

Construction.

H. E. died in 1819, leaving a will dated in in 1814. In it he devised real estate to R. F. in tail male, remainder to R. S., second son of Sir T. S., for life, remainder to R. S.'s first and other sons in tail male, remainder successively to J. S. and C. S., younger sons of Sir T. S., in tail male, remainder to his right heirs. In case the said R. S., J. S., or C. S. "shall become the eldest son of the said Sir T. S., then and in such case and so often as the same shall happen" the estate so devised to cease and determine as though "the person so becoming the eldest son of said Sir T. S. was then dead without issue male." There was a name-and-arms clause, by which the party taking should assume at once the testator's name and arms. R. F. died childless in testator's life-time. In 1820, R. S. complied with the name-and-arms clause, and entered into possession of the devised estates. In 1834, C. S., the youngest, died childless. Sir T. S. died in 1841, and his eldest son succeeded to his titles and estate. He died childless in 1863, having disentailed and sold the estates, and R. S. succeeded to the title. He died in 1875 without male issue, and J. S. succeeded to his father's title. In an action by the testator's right heirs against J. S. for possession of the estates under the will, *held*, that J. S. was entitled to them, neither he nor R. S. having "become the eldest son of" Sir T. S., according to the proper construction of the will. "Eldest son" defined.—*Bathurst* v. *Errington*, 2 App. Cas. 698; s. c. *nom. Bathurst* v. *Stanley*, and *Craven* v. *Stanley*, 4 Ch. D. 251; 11 Am. Law Rev. 688.

See Bankruptcy, 1; Devise; Seisin; Will, 2, 3, 4, 6, 7 8.

Contingent Debt.—See Bankruptcy, 3.

Contingent Interest.—See Settlement, 5.

Contract.

Prior to November, 1871, B & Co., colliery owners, had been in the habit of supplying coal to the M. Co., at varying prices, without any formal contract. In that month, pursuant to a suggestion of B. & Co. for a contract, a draft agreement was drawn up, providing for the delivery of coal on terms stated, from Jan. 1, 1872, for two years, subject to termination on two months' notice. The M. Co. prepared this draft agreement, and sent it to B., the senior of the three partners of B. & Co., who left the date blank as he found it, inserted the names of himself and his partners in the blank left for that purpose, filled in the blank in the arbitration clause with a name, made two or three other not very important alterations, wrote "approved" at the end, appended his individual signature, and returned the document to the M. Co. The latter laid it away, and nothing further was done with it. Coal was furnished according to the terms of this document, and correspondence was had, in which reference was often made to the "contract," and complaints made of violations of it and excuses given therefor. In December, 1873, B. & Co. refused to deliver more coal. In an action for damages, they denied the existence of any contract. *Held*, that these facts furnished evidence of the existence of a contract, and B. & Co. were liable for a breach thereof.—*Brogden* v. *Met. Railway Co.*, 2 App. Cas. 666.

Conversion.—See Election.

Conveyance.—See Fraud.

Covenant.

In the reign of Queen Elizabeth, grant of a farm on a yearly rent of 7s 6d. was made, with a proviso that the grantee and his heirs should dig only such an amount of coals from the mines under the premises as should "bee burned and occupied or ymployed in and uppon the same." The grantee granted the farm, "with all . . . mynes, quarries, . . . and appurtenances," in 1629, to the predecessors in title of the plaintiffs, reserving the above rent. The defendant, claiming under a demise from a descendant of the original grantor, had, since 1847, in the *bona fide* belief that he had a right, been taking coals from these mines, having worked into them from the mines on his adjacent land. In 1869, the plaintiffs were advised for the first time that they were entitled to the mines, gave him notice of their claim; but nothing further was done until 1875, when this bill was filed. *Held*, that the proviso was a covenant, and not a condition; that the defendant had acquired no title to the mine by having worked it more than twenty years; that an injunction should be granted, with an account since 1869: and that the defendant was entitled in the account to charge for mining the coal and bringing it to the surface.—*Ashton* v. *Stock*, 6 Ch. D. 719.

Coverture.—See Husband and Wife; Settlement, 3.

Criminal Process.—See Injunction, 1.

Damages.—See Ancient Lights; Mine, 1; Specific Performance, 1.

Date of Will.—See Will, 6.

DIGEST OF ENGLISH LAW REPORTS.

DEBT.—See WILL, 6.

DELAY.—See SPECIFIC PERFORMANCE, 2.

DEVISE.

A testatrix gave property to her daughter and her husband for their lives, and after the death of the survivor to the children of her said daughter who should be living at the testatrix's decease; but provided that, in case any of the children should die "without leaving lawful issue," the portion of those so dying should go to the surviving grandchildren of the testatrix that should "leave such lawful issue." *Held*, that the words "without leaving lawful issue" applied to the period of distribution; that is, the decease of the surviving tenant for life. *Besant* v. *Cox*, 6 Ch. D. 604.

See ELECTION.

DISTRIBUTION.—See DEVISE.

DIVERTING WATERCOURSE.—See MINE, 2.

DOMESTIC RELATIONS. — See HUSBAND AND WIFE.

DOWER.

Mortgage in the ordinary form by D., with power of sale, and release of dower by his wife, made Dec. 24, 1846. Nov. 3, 1854, D. made a second mortgage, in similar form, conveying "freed and discharged of and from all right and title to dower" on the part of his wife, and subject to the mortgage of Dec. 24, 1846. In both mortgages the equity of redemption was limited to D. and his heirs and assigns. Dec. 4, 1858, the second mortgagee paid the first mortgagee, and took a conveyance of the premises from the latter, subject to the equity of redemption in the first mortgage. In October, 1860, default was made on the second mortgage; and the mortgagees sold the property, which brought less than the amount of the mortgages. D. died Nov. 24, 1874, and, Oct. 14, 1875, the wife filed her bill against the mortgagees for the value of her dower in the equity of redemption sold by them. D. and his wife were married before the Dower Act. *Held*, reversing the decision of BACON, V.C., that she was not entitled.—*Dawson* v. *Bank of Whitehaven*, 6 Ch. D. 218; s. c. 4 Ch. D. 639.

ELECTION.

A person entitled, except on an event which never happened, to the proceeds of real estate, devised on a trust to sell and hold the proceeds for him, lived on the property all his life instead of having it sold, and at his death made careful disposition of it by will as real estate. *Held*, in a suit between the devisee and the personal representative, that he had a right to elect to take it as real estate, and that his acts while living, and the disposition made in his will, showed that he had so elected.—*Meek* v. *Devenish*, 6 Ch. D. 566.

See SETTLEMENT, 4; TRUST.

EMBEZZLEMENT.—See JURISDICTION, 3.

EQUITY.—See INJUNCTION, 1.

ESTATE FOR LIFE.—See WILL, 5.

EVIDENCE.—See CONTRACT; PRESUMPTION.

EXECUTOR AND ADMINISTRATOR.

An executor or administrator stands in the relation of gratuitous bailee, and is not to be charged, either at law or in equity, for loss of goods, except through his wilful default. —*Job* v. *Job*, 6 Ch. D. 562.

EXECUTORY DEVISE.—See DEVISE.

FALSA DEMONSTRATIO.—See WILL, 1.

FORFEITURE.

FRAUD.

S., the defendant, sold the plaintiffs a lot of land as freehold. It turned out, after the purchase-money had been paid, that almost the entire lot was copyhold and not freehold. S. alleged that his statement that the land was freehold was *bona fide*. *Held*, that the sale must be set aside, and the purchase-money refunded with interest, and the plaintiff paid the expenses he had incurred in consequence of the misrepresentation. The defendant had committed a "legal fraud."—*Hart* v. *Swaine*, 7 Ch. D. 42.

See BANKRUPTCY, 2.

FRAUDS, STATUTE OF

1. Defendants wrote and signed an offer for the lease of a theatre, which offer was attested by the owner's agent. The owner's name did not appear in the writing, which was addressed to "Sir," without more. The offer was accepted by the agent, by a letter signed by himself, but in which the names of the defendants did not appear. *Held*, that there was not a valid agreement within the Statute of Frauds, and the proposed lessees were not bound to specific performance. —*Williams* v. *Jordan*, 6 Ch. D. 517.

2. A party entitled to declare a trust on certain land wrote to the mother of her infant grandchild a letter, signed with the writer's initials, and enclosed in the envelope another paper, headed "Supplement," beginning, "I quite omitted to tell you," &c., and unsigned. There was no reference in the letter proper to the "Supplement." *Held*, that the unsigned document was not a sufficient declaration of trust under the Statute of Frauds.—*Kronheim* v. *Johnson*, 7 Ch. D. 60.

See LEASE; SPECIFIC PERFORMANCE, 1.

FREIGHT.—See MORTGAGE, 2.

GIFT.—See ATTORNEY AND CLIENT, 1.

GUARANTY.—See HUSBAND AND WIFE, 3.

HUSBAND AND WIFE.

1. A marriage settlement was made on the marriage of J. E., and property transferred thereunder to J. G., T. E., and J. H., trustees. Subsequently, J. E. placed £4,000 railroad debentures in the names of himself, his wife, and J. G., and sixty shares in a railroad company in the names of himself, his wife, and T. E. and J. G. It appeared that the income from the marriage settlement had been decreased about one quarter

On the death of J. E., *held*, that the property so transferred was not an augmentation of the marriage settlement, but an advancement to the wife, who should receive it absolutely, the other parties in whose names the securities stood being trustees for the wife.—*In re Eykyn's Trusts*, 6 Ch. D. 115.

2. A husband and wife, married since the Married Woman's Property Act, 1870, gave a joint and several promissory note. The husband took the money, and afterward became bankrupt. *Held*, that the wife's separate property was liable on the note, and there was no necessity to make the trustees of her estate parties.—*Davies* v. *Jenkins*, 6 Ch. D. 728.

3. The wife of C., a retail trader, who was possessed of separate estate in her own right, without restraint to anticipate, gave a guaranty in writing to the plaintiff, a dealer with whom C. traded, as follows:—"In consideration of you, M., having at my request, agreed to supply and furnish goods to C., I do hereby guarantee to you, the said M., the sum of £500. This guarantee is to continue in force for the period of six years, and no longer." C. had previously dealt with M., and at the time of the guaranty a bill of exchange drawn by M. on C. for a balance had been dishonoured, and another bill was soon coming due. *Held*, that the guaranty applied to any moneys to the extent of £500 which should be due during six years, including the dishonoured bill; that the fact that goods were furnished subsequently created a good consideration to the wife for the guaranty; and that the separate estate of the wife was liable for any balance due M. from C., to the extent of £500.—*Morrell* v. *Cowan*, 6 Ch. D. 166.

See Dower; Settlement.

Infant.

A suit had been begun in the name of some infants by one P., a stranger, and the father had knowledge of the suit. When he learned of the suit, he applied for the removal of P., and substitution of himself, as next friend. Granted.—*Woolf* v. *Pemberton*, 6 Ch. D. 19.

Injunction.

1. Where a statutory board has power to recover a penalty by criminal proceedings for violation of a statute regulation, a court of equity will not interfere by injunction to restrain those proceedings. *Mayor of York* v. *Pilkington* (2 Atk. 302) criticised.—*Kerr* v. *Corporation of Preston*, 6 Ch. D. 463.

2. W. sold S. land adjoining other land of W., under which there were mines. S. purchased the land for the purpose of erecting heavy buildings for an iron foundry thereon, and W. was aware of this fact. Subsequently, W. leased the mines to H. & Co., who began mining. S., having begun to build on his land, applied for an injunction against W. and H. & Co., to restrain the working of the mines in a manner to endanger the support of his buildings. *Held*, that S. was entitled to an injunction.—*Siddons et al.* v. *Short et al.*, 2 C. P. D. 572.

Innkeeper.

By 26 & 28 Vict. c. 41, § 1, no innkeeper is liable for loss of the goods of a guest beyond £30, except where such goods shall have been lost "through the wilful act, default, or neglect of such innkeeper, or any servant in his employ." Section 3 requires every innkeeper to keep section 1 posted in a conspicuous place in his inn, in order to entitle himself to the benefit thereof. The defendant had what purported to be section 1 posted properly in his inn; but, by an unintentional misprint, it read thus: "Through the wilful default or neglect of such innkeeper, or any servant in his employ." *Held*, that the misprint was material, and the innkeeper was not entitled to the benefit of the statute.—*Spice* v. *Bacon*, 2 Ex. D. 463.

Intention.—See Will, 3.

Judicature Act.—See Probate.

Jurisdiction.

1. The court declined jurisdiction where a foreigner brought an action for co-ownership against a foreign vessel, and another foreigner appeared to have the petition dismissed, and the consul of the State where the ship was registered declined to interfere.—*The Agincourt*, 2 P. D. 239.

2. Suit between two foreigners over a foreign vessel, where the court, under the circumstances, assumed jurisdiction for a particular purpose.—*The Evangelistria*, 2 P. D. 241.

3. A clerk employed to collect money, and remit it at once to his employers, collected several sums at a place in Yorkshire, subsequently wrote two letters to his employers in Middlesex, without mentioning the above collections, and afterwards a letter, intended, as found by the jury, to lead his employers to think that he had collected no money in Yorkshire. *Held*, that he could be tried for embezzlement in Middlesex, where the letters were received.—*The Queen* v. *Rogers*, 3 Q. B. D. 28.

See Probate.

Laches.—See Specific Performances, 2.

Lease.

Written agreement by the defendant with the plaintiff, duly signed by both, for the lease of a house for a certain term and price named. It was recited that "this agreement is made subject to the preparation and approval of a formal contract;" but no other contract was ever made. *Held*, that the agreement was only preliminary, and the defendant was not bound to specific performance.—*Winn* v. *Bull*, 7 Ch. D. 29.

See Company, 2; Frauds, Statute of, 1; Specific Performance, 1 2; Vendor and Purchaser.

Legacy.—See Bequest; Wills, 7.

Letters.—See Attorney and Client, 3; Jurisdiction, 3.

LEVY.—See SHERIFF.

LIBEL AND SLANDER.

An editor had been convicted of stealing feathers, and had been sentenced to twelve months' penal labour as a felon, which sentence he had duly served out. Afterwards, a brother editor called him a "felon editor," and justified by asserting the above facts. Replication, that as he, the convict, had served out his sentence, he was no longer "felon." On demurrer, *held*, a good reply. —*Leyman* v. *Latimer*, 3 Ex. D. 15.

LIEN.—See ATTORNEY AND CLIENT, 2 3.

LIFE INSURANCE.—See BANKRUPTCY, 3.

LIMITATIONS, STATUTE OF.—See COVENANT, 2.

MARRIAGE SETTLEMENT.—See SETTLMENT, 1, 2.

MARRIED WOMAN'S PROPERTY ACT, 1870.—See HUSBAND AND WIFE, 2.

MARSHALLING ASSETS.—See BEQUEST.

MINE.

1. Defendant, a mine-owner, diverted the natural course of a stream for his own purposes; and, in an unusually heavy rain which followed, the water overflowed the new channel, and caused damage to an adjoining mine, belonging to the plaintiff. *Held*, that defendant might be liable therefor, although if the injury had happened in the ordinary course of working the mine, from a sudden and unusual natural cause not to be foreseen by a prudent person, no liability would have arisen.—*Fletcher* v. *Smith*, 2 App. Cas. 781.

2. A mining company sank a pit, and intercepted underground water, which had previously flowed in an unascertained course, and threw it upon the land of a neighbour. The water had previously, when left to flow underground of itself, come out upon the neighbour's land. *Held*, that the mining company was liable for the damage.—*West Cumberland Iron and Steel Company* v. *Kenyon*, 6 Ch. D. 773.

See COVENANT, 2.

MISPRINT.—See INNKEEPER.

MORTGAGE.

1. In a suit to redeem by a second mortgagee against the first mortgagee, the latter must answer interrogatories demanding the amount of his claim, and what other security, if any, he holds for it, so that the second mortgagee may know whether it would be worth while to redeem or not.—*West of England and South Wales Bank* v. *Nickolls*, 6 Ch. D. 613.

2. Dec. 1, 1874, M., the owner of a vessel, mortgaged it to appellants for £7,500. Jan. 4, 1875, respondents, in ignorance of the mortgage, advanced M. £3,000 on security of a cargo shipped by M. on nominal freight of 1s. per ton. Feb. 2, 1875, M. again mortgaged the vessel to the appellants for £4,000. February 19, M. and the defendants sold the cargo to J., on terms of freight being paid at 55s. per ton. February 22, the respondents advanced £9,000 more to M. February 26, M. assigned to the respondents the freight at 55s. per ton, as security for their advances. On the arrival of the vessel, the appellants took possession. The respondents acquired J.'s rights. *Held*, that the appellants were entitled to 1s. freight only, according to the bill of lading, and must deliver the cargo to the respondents on payment of freight at that rate.—*Keith* v. *Burrows*, 2 App. Cas. 636; s. c. 1 C. P. D. 722; 2 C. P. D. 163; 11 Am. Law. Rev. 508; 12 *id.* 100.

See ATTORNEY AND CLIENT, 2; DOWER, 5.

MORTMAIN.—See BEQUEST.

NAVIGABLE RIVER.

The right of navigation in a river above tidewater, acquired by the public by user, is, as regards the owner of land through which the river flows, simply a right of way; and the owner of the land may erect a bridge over the river, provided it does not substantially interfere with this right of way for navigation. The property in the river-bed is in the owner of the land.—*Orr Ewing* v. *Colquhoun*, 2 App. Cas. 839.

NEGLIGENCE.—See CHARTER-PARTY; MINE, 1; TELEGRAPH.

NEXT FRIEND.—See INFANT.

NOTICE.—See INNKEEPER.

OMISSIONS IN WILL.—See WILL, 8.

PARTNERSHIP.

In September, 1871, C. gave bonds, in accordance with the rules of *Lloyd's*, to enable his son W. to become a member thereof, and begin the business of underwriter, as he the same month did, carrying on the business in his own name exclusively. In January, 1872, an agreement was made purporting to be between father and son, but executed only by the son, reciting that the father had given the bonds as above, and had also loaned the son £200; and, in consideration therefor, the son covenanted with the father that one H., and no other, should underwrite in W.'s name, and should be paid £200 a year and one-fifth the net profits; that C. should be at liberty to cancel the bond at any time, on notice to C. and H.; that C. should not spend more than £200 a year till he paid his debts; that one-half the net profits, deducting H.'s share, and £25 a year, should belong to C.; that W. should not indorse or speculate until he paid his debts; that W. should repay C. the £200 and interest on demand; that W. should keep a separate account, as underwriter, which should be liable to inspection by C.; and that the profits of business should not be touched before they amounted to £500, and then, with C.'s consent, an agreed sum might be withdrawn on account of W., and a like sum for account of C. None of the creditors knew that the father had anything to do with the business. The son also carried on two other distinct businesses in his own name. In bankruptcy proceedings against the son, *held*, that the father was not a partner in the

underwriting business.—*Ex parte Tennant. In re Howard*, 6 Ch. D. 303.

Patent.

In 1865, a patent for skates was granted in England. Two years before, a foreign book, giving a general description of the invention, was sent to the library of the Patent Office. A few weeks before the granting of the patent, another foreign book, containing a drawing of the invention, was sent to the library. The book was not catalogued, but was in a room open to the public, where a librarian testified that he once noticed it before the date of the patent. *Held*, not to be prior publication.—*Plimpton* v. *Spiller*, 6 Ch. D. 412.

Personal Covenant.—See Covenant, 1.

Pleading and Practice.—See Husband and Wife, 2; Infant; Mortgage, 1.

Possession.—See Specific Performance, 2.

Power.—See Will, 5.

Practice.—See Pleading and Practice.

Presumption.

A respectable farmer and church elder courted a young lady for some years, and they were finally, in 1850, married, while she, to his knowledge, was in an advanced stage of pregnancy. Seven weeks afterwards, she was delivered of a daughter. The matter was kept secret, and the child removed to another part of the country, where the husband supported her till she became able to support herself. In 1875, the girl claimed to be his daughter; and he brought this action to have it declared she was not. Both husband and wife swore to that effect; and the wife told two different stories to account for her pregnancy. *Held*, that the presumption of paternity against the husband was, under the circumstances, almost irresistible, and that the burden was on him to show affirmatively the contrary, and this he had failed to do.—*Gardner* v. *Gardner*, 2 App. Cas. 723.

Privity.—See Telegraph.

Probate.

When an action was brought for sale or partition of estates by a plaintiff, who claimed under an alleged will fraudulently suppressed by the defendant, and for the production of the will and directions as to probate of it, and the defendant denied knowledge of the will, *held*, that the will must first be proved, and, though the judge in chancery had jurisdiction to grant probate, it would not be discreet to do so, and the matter must be referred to the Probate Division.—*Pinney* v. *Hunt*, 6 Ch. D. 98.

See Trust.

Profits.—See Partnership; Specific Performance, 1.

Promissory Notes.—See Husband and Wife, 2.

Proof.—See Bankruptcy, 3.

Proviso.—See Covenant, 1, 2.

Realty and Personalty.

A sale of real estate, one-eighth of which was owned by Mrs. Q., a married woman was ordered by the Court in a suit for partition. The owner of the other shares offered to buy the one-eighth; and the court ordered him to pay into court the price therefor. This he did; but before a conveyance was made, Mrs. Q. died. Q., the husband, took out administration. *Held*, that, by the Partition Act, 1868, § 8, the £1,200 must be considered as realty, and go to the heir subject to the husband's rights by the curtesy.—*Mildmay* v. *Quicke*, 6 Ch. D. 553.

See Bequest; Election; Trust.

Residuary Legatee.—See Will, 4.

Reversion.

Case where the Court of Equity refused to set aside the sale of a reversion by a young man as soon as he became of age, on the ground of inadequacy of price, and the fact that he had no separate legal adviser in the transaction. Powers and practice of the court in this regard considered.—*O'Rorke* v. *Bolingbroke*, 2 App. Cas. 814.

See Tenant for Life, 2.

Sale.—See Reversion; Stoppage in Transitu.

Seisin.

In 1864, R. died intestate, being seised in fee of freehold houses. A., his sole heiress-at-law, did not enter into possession; but R.'s widow, under colour of a pretended will, unlawfully entered, and remained in possession till 1869, when she died, having devised the estates to the defendants, who entered, and remained from that time in possession. A. died in 1871, and by will dated in 1870 devised to plaintiff "all real estate (if any) of which I may die seised." *Held*, that the seisin in law which A. had during her life was lost at her death, and, as the will must be construed according to the technical sense of the word "seisin," the plaintiff was not entitled.—*Leach* v. *Jay*, 6 Ch. D. 496.

Separate Estate.—See Husband and Wife, 2; Settlement, 2.

Settlement.

1. By a settlement made between a widow, her intended second husband, and a trustee for her children by her former marriage, entered into in contemplation of her marriage, the widow covenanted to surrender a certain copyhold messuage to the said trustee, to hold for her benefit during her life, and at her death for the said children; and the intended husband consented thereto. No surrender was, however, made; and, on her death, she devised the messuage. *Held*, that the children by the former marriage could enforce the covenant.—*Gale* v. *Gale*, 6 Ch. D. 144.

2. C. contracted for the purchase of a flax-spinning mill, and then made a partnership with one R.; and they carried on the business as partners. C. also carried on a like

business at another place. In November, 1866, C. being then, as afterwards appeared, in insolvent circumstances, married; by an ante-nuptial settlement, it was recited that C. was indebted to his intended wife in the sum of £20,000; and C. covenanted with the trustees therein that, on or before Dec. 25, 1867, he would pay them the said £20,000; that he would become possessed in fee of the said mills; and that the trustees should then lend C. the £20,000, receiving therefor a mortgage of the mills. The £20,000 was to be held for the benefit of the wife for life, remainder to C. for life, or until (*inter alia*) his bankruptcy, remainder to the children. In default of children, the wife had, during C.'s life, a power of appointment by will. It was not true that C. owed his intended wife anything. C. acquired the fee in the mills; and in 1869 the mortgage to the trustees was executed, reciting that the trustees had advanced C. £20,000 thereon; but, in fact, no money passed. In December, 1872, C. became bankrupt, and his trustee in bankruptcy prayed that the indentures of 1866 and 1869 might be declared void. It appeared that Mrs. C. was a foreigner, and knew very little English, and that she did not understand any thing of the marriage settlement, except that she was to have £20,000. She was ignorant of the recital about the debt and of her husband's insolvent condition at the time of the marriage. *Held*, that the settlement and mortgage were good against the creditors, so far as the wife and children were concerned.—*Kevan* v. *Crawford*, 6 Ch. D. 29.

3. A covenant in a marriage settlement to settle after-acquired property in a certain manner for the wife and children of the marriage was *held* to apply only to property acquired during the marriage, and did not apply to property coming to the widow after the husband's death.—*In re Campbell's Policies*, 6 Ch. D. 686.

4. In a marriage settlement, on the marriage of his daughter, in 1833, N. covenanted that one-third of his property should, on his death, be settled to his daughter and her husband for their respective lives, and then to their children in equal shares. A daughter of this marriage died in 1861, leaving a husband, who died before 1871, and two children. N. died in 1871, leaving a will, by which he directed his "just debts" to be paid, gave several legacies, and finally gave a sum named and a part of the residue to trustees for his nephews and nieces, and the two children of the grand-daughter abovementioned, in equal shares. The will made no mention of the marriage settlement. *Held*, that the children must elect whether to take under the settlement or under the will. The liability under the settlement was not to be reckoned among the "debts" of the testator.—*Bennett* v. *Houldsworth*, 6 Ch. D. 671.

5. In ante-nuptial settlement, H., the intending husband, made a covenant that in case, during the joint lives of himself or his intended wife, "any future portion or real or personal estate" should come to or devolve upon her or him in her right, under a certain will named, or any other will, donation, or settlement, or in any manner, "whether in possession, reversion, remainder, contingency, or expectancy," the husband, and all other necessary parties, would concur with the wife in all reasonable acts to settle "all such future portion, real or personal estate," according to the settlement then being made. The intended wife was entitled at that time, contingently on the happening of two events, to a fund under the will named. These two events happened during her coverture. *Held*, that this fund was subject to the settlement by force of the above covenant.—*In re Mitchell's Trusts*, 6 Ch. D. 618.

6. By a post-nuptial settlement, a husband and wife settled property belonging to the wife to the use of the wife during life, with power of appointment by will in the wife, and, in default of such appointment, to the use of her children. The wife had power during her life to lease at rack-rent, which power was to continue in the trustees for twenty-one years after her death; and the trustees could, with her consent, during her life, sell and exchange the property, and, after her death, could sell and exchange it in their discretion. There were children. *Held*, that the settlement was for valuable consideration, under 27 Eliz. c. 4, and good against a subsequent mortgage.—*In re Foster and Lisler*, 6 Ch. D. 87.

See HUSBAND AND WIFE.

SHERIFF.

Held, that a sheriff had made in substance a levy, and was entitled to his poundage and fees, where he went to the debtor's house with a warrant and demanded payment, and told the debtor he should go on to sell if the amount was not paid, and the debtor paid.—*Bissicks* v. *The Bath Colliery Company, Limited. Ex parte Bissicks*, 2 Ex. D. 450.

SHIFTING CLAUSE.—See CONSTRUCTION.

SLANDER.—See LIBEL AND SLANDER.

SOLICITOR.—See ATTORNEY AND CLIENT.

SPECIFIC BEQUEST.—See BEQUEST; WILL, 7.

SPECIFIC PERFORMANCE.

1. An agreement for a lease for thirty years was duly executed Sept. 5, 1876, but it did not state when the lease was to begin. It appeared that the proposed lessor knew the purpose for which the premises were leased and to be used; but he refused to complete the lease, and the lessee was kept out for a good many weeks. On a suit for specific performance and for damages, *Held*, that the agreement was a sufficient memorandum under the Statute of Frauds, and under it the lease must be held to commence immediately, and that there must be specific performance and damages for the plain-

tiff's loss of profits in the business which he leased the premises to carry on, during the time he was kept out.—*Jaques* v. *Millar*, 6 Ch. D. 153.

2. Dec. 23, 1861, M. took a lease from A. of certain premises for ten years, with the option in M. at any time during the term to purchase the premises for £3,500, upon payment of which to A. the lease should determine, and M. should be entitled to an assignment thereof. Jan. 23, 1863, A. mortgaged the premises to G. In July, 1867, after some negotiations looking to a purchase by M., the latter, by his solicitor, gave notice to A and G. that he intended to purchase. A draft of a conveyance of the premises to M. was prepared, but was not completed, owing to a failure between A. and G. to agree as to whom the purchase money should be paid. This was the subject of a correspondence between July, 1867, and March, 1868. In July, 1868, G. gave M. notice to pay the rent to him; and M. made him some payments at odd times, the receipts whereof, both before and after the date for the termination of the lease, were generally expressed to be for rent. In November, 1872, A. went into bankruptcy; and, May 1, 1873, the trustee in bankruptcy informed M. that he proposed to sell the premises, and gave M. the first chance. M said nothing about having already agreed to purchase until after a second interview, when he set up the claim, and in July, 1873, filed his bill for specific performance. Therein he set up the additional fact, that he had, with the knowledge of both A. and G., expended about £300 in improvements on the premises since 1867. *Held*, that the optional clause in the lease, followed by the notice given in 1867, formed a good contract; but that M., through his delay in acting from March, 1868, to May, 1873, had lost his right to specific performance, and the fact that he was in possession did not alter the case, as he was in during that time, not under the contract as purchaser, but as tenant under the lease.—*Mills* v. *Haywood*, 6 Ch. D. 196.

See Frauds, Statute of, 1; Lease.

Statute.—See Bankruptcy, 1; Injunction, 1; Innkeeper.

Statute of Frauds.—See Frauds, Statute of.

Statute of Limitations.—See Limitations, Statute of.

Stoppage in Transitu.

W. a trader in Falmouth, purchased goods of B., a merchant in London. On Oct. 27, 1876, B. sent an invoice to W. The goods were put on board the same day. The steamer sailed October 29, and arrived at Falmouth October 31, when the goods were put into the warehouse of C., wharfinger and agent of the steamer company. In the evening of October 30,, or the morning of October 31, the bill of lading arrived. October 30, W. absconded, and November 4, he was adjudged bankrupt. The same day, B. telegraphed to C. not to deliver the goods. It appeared that C. was in the habit of receiving goods and holding them at the risk of the consignee, and that he had the exclusive right as against the steamer company of delivering the goods. One condition of delivery was, that the freight should be paid. C. testified that he considered himself in all cases the agent of the consignee from the time of the arrival of the goods on the wharf. *Held*, that the goods were still in transit when B's message arrived. C. was not agent of the consignee.—*Ex parte Barrow. In re Worsdell*, 6 Ch. D. 783.

Telegraph.

Held, affirming the decision of the Common Pleas Division, that an action cannot be maintained against a telegraph company by the receivers of a telegram, for negligence in the delivery thereof, in consequence of which negligence the receivers suffer damage.—*Dickson* v. *Reuters Telegraph Co.*, 3 C. P. D. 1; s. c. 2 C. P. D. 62.

Tenant for Life.

1. I. N., under a trust, tenant for life, impeachable for waste, cut trees "in due course of management" only, paid the proceeds into court, and received the income therefrom for her life. *Held*, that the next tenant for life, who was not impeachable for waste, was entitled to have the sum in court paid out to him.—*Lowndes* v. *Norton*, 6 Ch. D. 139.

2. A testator gave his property, consisting *inter alia*, of leasehold estates, a part being leased for lives and a part for years, to trustees, in trust for his son W. for life, remainder in tail male. The son was one of the trustees. The will provided for the renewal of leases for lives only. W., the tenant for life, purchased the reversion of a lease for lives (of which W.'s was one), and it was conveyed to the trustees to the uses of the will. He also purchased the reversion of a similar estate, which was conveyed to himself upon the trusts of the will; the reversion of certain leases for years, which were conveyed to himself upon the trusts of the will; and a similar estate, which was conveyed to him absolutely, with no mention of the trusts of the will. All these leases were parts of the estates settled by the will. The purchase money for all these estates was paid by W. personally, and there was evidence that he expressed an intention to charge the same on the estates in his favour. The purchases were all of advantage to the residuary estates. The question was, whether the personal representative of W. was entitled to be repaid the sums paid by W. for these reversions. *Held*, that he was entitled to repayment; that the reversion of the leasehold conveyed to W. absolutely belonged to the personal representative of the tenant in tail; and that this personal representative was entitled to an interest in the lease for years, the reversion of which

was conveyed upon the trusts of the will, equal to the value of that lease to the tenant in tail.—*Isaac* v. *Wall*, 6 Ch. D. 706.

TENANT IN TAIL.—See TENANT FOR LIFE, 2.

TITLE-DEEDS.—See ATTORNEY AND CLIENT, 2.

TRESPASS.—See COVENANT, 2.

TRUST.

G. gave freehold and copyhold estates, and also personal estate, to two trustees, in trust as to the real estate to sell it, and stand possessed of the proceeds of it, together with the personal, in trust for his wife for her life, and then for his son C. absolutely. The wife and one of the persons named as trustees died in the testator's lifetime. The testator died March 7, 1867. The other person named as trustee renounced probate, and did not act as trustee, though he made no formal disclaimer of the trust. He died in 1870. May 2, 1867, the son C. took out letters of administration with the will annexed, and partly administered. C. received the rents of the real estate, but never entered on the copyhold, and no tenant was admitted thereto. He gave no leases, the property being let on yearly tenancy. Jan. 18, 1876, he died intestate. His next of kin took out letters on his estate, and claimed that the real estate must be treated as converted. His heir-at-law claimed it, on the ground that C. had elected to take it as real estate. *Held*, that, when the person named as trustee renounced probate, the legal estate devolved on C., and that, independently of that, C. must be held to have elected to take the property as real estate. —*In re Gordon. Roberts* v. *Gordon*, 6 Ch. D. 531.

See ELECTION; FRAUDS, STATUTE OF, 2.

TRUSTEE —See HUSBAND AND WIFE, 1; TENANT FOR LIFE, 2.

VENDOR AND PURCHASER.

A tenant for life without power to lease, undertook to grant a sixty years' lease at 6*d.* rent, with a covenant for quiet enjoyment, the lessee to erect a house, as he in fact did. The lessee died, and his son paid rent to H., who had come into possession of the fee. Subsequently, H. conveyed the property to the plaintiff, subject to the sixty years' lease, which he supposed valid. The plaintiff sued for immediate possession. *Held*, that he was entitled.—*Smith* v. *Widlake*, 3 C. P. D. 10.

See INJUNCTION, 2; STOPPAGE IN TRANSITU.

VENUE.—See JURISDICTION, 3.

VESTED INTEREST.—See WILL, 2.

VOLUNTEER.—See SETTLEMENT, 1, 6.

WASTE.—See TENANT FOR LIFE, 1.

WATERCOURSE.—See MINE, 2.

WILL.

1. A testator gave "all that part of Rigby's estate, purchased by me, consisting of" L., F., K., G., B., and M., being six closes, with the mines thereunder, to his son for life, with power of appointment by will. The son, by his will, recited that his father left him "all that part of Rigby's estate purchased by him," with power of appointment, without enumerating the closes in the recital. He then proceeded to appoint, under the power in his father's will, all the property "described as that part of Rigby's estate purchased by my said father, consisting of L., K., F., and M.," except the mines, in a certain manner. The mines he appointed otherwise. There was no other mention of the omitted closes G. and B., which lay between those named in the appointment. *Held*, that the whole of the six closes were duly appointed. — *Travers* v. *Blundell*, 6 Ch. D. 436.

2. Testator left £6,000 in trust for his two daughters J. and A., for their respective lives, in equal moieties, and "from and immediately after the several deceases of each of them leaving lawful issue or other lineal descendants her or them surviving," upon trust to pay, assign, and transfer the principal fund "of her or them so dying unto her or their child or children, or other lineal descendants, respectively, . . . such child or children, or other lineal descendants, to take *per stirpes* and not *per capita*, . . . to be paid . . . to them respectively when and as they respectively shall attain the age of twenty-one years." The income to be applied meantime, if necessary, for their support; "nevertheless, the . . . shares of the said child or children," in the principal, "shall be absolute vested interests in him, her, or them immediately on the decease of his, her, or their respective parent or parents." In case a daughter should die without leaving "issue or lineal descendants her surviving," there was a gift over to the other daughter and her issue and lineal descendants, in similar form; and, in case both daughters should so die, a gift over to third persons. *Held*, that the children of a daughter who died before their mother's death did not take.—*Selby* v. *Whittaker*, 6 Ch. D. 239.

3. A testator gave property to trustees for sale, and to stand possessed of the proceeds, to pay his son £3,000, and to invest £28,000, and pay the income of £10,000 thereof to his widow during widowhood, and pay the income of six portions, of £3,000 each, to his six daughters respectively and their children. At the death or marriage of the widow, the £10,000 was to fall into the residue. The residue was to be divided "into as many equal shares as I shall have children living at the time of the death or second marriage of my said wife (which shall first happen), or then dead, leaving issue;" £1,000 out of one share was to be held in trust for his son and his son's wife during their respective lives, and then go to their children. The balance of the share was to be paid to the son. One daughter's share was to be held in trust; the shares of the others to be paid to each of them living at the decease or second marriage of the widow. There was a provision that any advances made should be deducted from the amount

of residue due the child to whom the advance had been made. *Held*, that the son was entitled to the £3,000 at once, although he was indebted to his father in a sum nearly equal to his share of the residue; and that the words "living at the time of the death or second marriage of my said wife" must be struck out, as inconsistent with the rest of the will; so that the children living at the testator's death took vested interests in the residue.—*Smith* v. *Crabtree*, 6 Ch. D. 591.

4. Testator began as follows: "As to my estate, which God has been pleased in his good providence to bestow upon me, I do make and ordain this my last will and testament as follows (that is to say)." He then devised a farm; then, in an informal way, another farm; he then made seven money bequests and a gift of shares in a company, gave his executors £100 each, and made M., R., and O. his "residuary legatees." He possessed other freehold lands besides those mentioned in the will. *Held*, that such lands passed to M., R., and O., as "residuary legatees."—*Hughes* v. *Pritchard*, 6 Ch. D. 24.

5. Testator gave his brother J. S. all his real and personal estate, with full power to give, sell, and dispose of it in any way he should see fit, and appointed him sole executor. The will then proceeded thus: "But provided he shall not dispose of my said real and personal estate, or any part thereof, as aforesaid, then, and not otherwise, I do hereby give, devise, and bequeath my said real and personal estate, or such part or parts thereof as he shall not so dispose of, in the manner following." The testator then proceeded to dispose of his property by a series of trusts, entails, and contingent remainders; and, after some specific legacies, gave to H. and D., two of the beneficiaries, the household furniture, &c., to hold in trust as heirlooms for whoever should succeed under the provisions of the will to the property in the house; gave the residue of his property to the said H. and D., upon trust to sell and convert "with all convenient speed after the death of the survivors" of himself or his said brother J. S.; and the said H. and D. were, in this part of the will, appointed executors. The expression, "the survivor of myself and my said brother" J. S., occurred in several places in the will. J. S. died in the testator's lifetime. *Held*, that the gift to J. S. was a gift for life, with power of appointment and a gift over on J. S.'s failure to appoint, or on his death in testator's lifetime: and this latter event having happened, the gift over took effect on the death of the testator.—*In re Stringer's Estate. Shaw* v. *Jones-Ford*, 6 Ch. D. 2.

6. A testator recited that his son had become indebted to himself in various sums, and bequeathed to the son the sums mentioned, and released him from payment thereof. Between the date of the will and the testator's death, the son became still further indebted to his father. *Held*, that these sums were not covered by the will, under the Wills Act (1 Vict. c. 26).—*Everett* v. *Everett*, 6 Ch. D. 122.

7. A testator gave, devised, and bequeathed "all the real and personal estate which I am or shall or may be entitled to under the will of my late uncle J. M." to the defendants. He bequeathed to the plaintiff the residue of his personal estate. Between the date of the will and the testator's death he received £800 from his uncle's estate, and invested £600 thereof in railway stock. He purchased before his death £3,500 more of this stock; and at his death the whole £4,100 stock was standing in his name. *Held*, that the defendant was entitled to the £600 stock.—*Morgan* v. *Thomas*, 6 Ch. D. 176.

8. A testator provided that his residuary estate should be divided into sevenths, gave one-seventh to each of his two sons absolutely, and the remaining five-sevenths to trustees to pay the income to his five daughters, Elizabeth, Sarah, Eliza, Mary, and Hannah, during their respective lives, in equal shares. Upon the decease of Elizabeth, the trustees shoul pay one-fifth of the fund to the children of Elizabeth; upon the decease of Sarah, one-fifth to the children of Sarah; upon the decease of Eliza, one-fifth to the children of Mary; and upon the decease of Hannah, one-fifth to the children of Hannah. The testator made mention in a subsequent part of the will "of the issue of any of" his daughters, without discriminating. *Held*, that the will must be construed by interpolating a provision for the children of Eliza on her death similar to that made for the others, and a clause stating that the provision for the children of Mary should take effect on the death of Mary, instead of on the death of Eliza.—*In re Redfern. Redfern* v. *Bryning*, 6 Ch. D. 133.

See Construction; Devise; Seisin; Settlement, 4; Trust.

Words.

"*Approved.*"—See Contract.

"*Eldest Son.*"—See Construction.

"*Felon.*"—See Libel and Slander.

"*Landlord or other person to whom rent is due.*"—See Bankruptcy, 1.

"*Seised.*"—See Seisin.

"*Without leaving lawful issue.*"—See Devise.

CORRESPONDENCE.

To the Editor of Canada Law Journal.

Sir,—With reference to your late paper on "Dissenting Judgments," it seems to me that the views therein expressed, and the objections of the "Legal News" would be equally satisfied, by simply

stating in the head note of a reported case, that Judges A. & B. dissented from the decision of their brothers. Thus, the opinion of the minority would not be misrepresented.

Yours truly,
G. A. W.

LAW STUDENTS' DEPARTMENT.

To the Editor of CANADA LAW JOURNAL.

SIRS.—I notice that you have commenced publishing "Examination Questions" for the aid of law students. As yet you have given none of the questions of the Primary.

Could you not publish some of the classical and mathematical papers, and thereby greatly aid many students who have not, as yet, passed the primary?

Yours, &c.,
J. L. H.

[We should be glad to oblige our young friends in this matter, but we have not space. That which is at our disposal must be used for matters of more strictly professional interest. —ED. C. L. J.]

EXAMINATION QUESTIONS.

We continue the publication of Osgoode Hall Examination Questions.

FOR CERTIFICATE OF FITNESS: EASTER TERM, 1878.

Equity.

1. What is meant by the doctrine of Illusory Appointments? Give an illustration.

2. In the case of a parol contract for the sale of lands for $1,000, and of a parol contract for the sale of goods for $1,000, what effect, if any, has the payment of the purchase money in each case? Give authority for your answer.

3. State the general principles on which the Court proceeds in decreeing or refusing to decree specific performance of awards.

4. In the case of a parol contract for the sale of lands, under what circumstances does possession of the lands in question amount to such performance as to take the case out of the statute?

5. A cause being at issue more than three weeks before the commencement of the examination and hearing, at the place where the venue is laid, in what different ways (if at all) may the defendant have the case brought on for hearing?

6. What is the rule as to evidence being or not being admissible according to the course taken by the defendant?

7. A person desires to establish that he is the legitimate child of his parents. Is there any way by which he can have the matter judicially investigated and declared? And if such declaration were obtained, what would be its effect? Give authority for your answer.

8. How may a creditor of one member of a firm obtain payment of his claim out of the partnership assets?

9. A. leases certain lands to B., the lease containing a proviso that B. should be at liberty to purchase the lands during the term upon giving a certain notice, and upon payment of a sum named upon a named day. B. gives the notice, but does not pay the money on the exact day named, but tenders it on the next day. A. refuses to accept the money, or to carry out the purchase, on the ground of B.'s default in payment. Give your opinion as to whether or not B. can compel A. to convey the land.

10. A person is tenant of lands adjoining other lands owned by himself, and with no fraudulent intent removes the line fences which alone marked the boundary. At the expiry of the lease it becomes impossible to shew the position of the boundary between the two parcels. To what land is each entitled?

11. What is meant by "ademption of legacies?" Give an illustration.

LEITH'S BLACKSTONE.—REAL PROPERTY STATUTES.

1. Grant to A for 50 years', remainder to the heirs of B in fee. Is this a good remainder?

2. What is the effect of the statutory provisions as to auction sales of real estate?

3. Can one joint tenant bring any action

against his co-joint tenant in respect of the joint estate? If so, for what, and under what circumstances?

4. What do you understand by an estate in co-parcenary? Can it now arise? Explain.

5. In what different ways may prescription be pleaded? What must be proved under each plea?

6. Explain and illustrate the maxim: Falsa demonstratio non nocet.

7. Discuss the question as to whether it is necessary that a deed should be signed as well as sealed.

8. In what different ways may dower be barred?

9. What are the rules by which it may be determined whether covenants run with the land?

10. What was deemed to be the necessity for the Statute of Enrolments? What was the effect of it? What was substituted for it? Is any analagous statute now in force?

Leake on Contracts.

1. Defendant represented to plaintiff that a horse he was about to sell by auction was sound, and next day the plaintiff, relying on the representation, purchased the horse at auction, at which it was put up for sale, without a warranty. Discuss the question of the liability or non-liability of the defendant on his representation and the principles on which the same depends.

2. On what grounds may a foreign judgment be questioned in our Courts?

3. A by writing agrees to transfer a farm to B, on certain specified terms. What would be the effect of a contemporaneous oral agreement, that the written agreement was to be void if C, the landlord of the farm, did not consent?

4. A is the holder of shares in a bank; the bank makes false representations to B which induce him to buy the shares of A. What effect will this have on the validity of the sale and purchase?

5. What effect will the insanity of one of the parties to a contract have (*a*) on the validity, (*b*) on the right to compel specific performance of a contract?

6. What is the effect, and why, of a promise on the part of a holder of an overdue note, to extend the time on payment of six per cent. interest?

7. A, in consideration of $1,000, binds himself in a bond conditioned to make a lease for the life of the obligee before a day certain, or to pay him $1,000, and the obligee dies before the stated time. What is the effect of the bond?

8. In how far will a release, not under seal, but upon good consideration, be a good defence to an action on a contract, other than a bill of exchange or promissory note? Explain your answer fully.

9. Who was the proper party at Common Law to sue on a contract of a deceased person, the benefit of which he had assigned, during his lifetime, and who now? Explain your answer.

10. What would be the measure of damages in an action for breach of warranty of description of goods contracted for?

Smith's Mercantile Law.—Common Law Pleading and Practice.—The Statute Law.

1. Is community of profit a complete criterion of a contract being one of partnership? Explain your answer fully.

2. Under what circumstances, and why, will Courts of Equity reform joint securities executed by partners, so as to bind executor of a deceased partner?

3. Under what circumstances will an action of assumpsit lie against a Corporation? State fully the ground of your answer.

4. In how far is the rule that "*there can be no indemnity between wrongdoers*" applicable to the case of an agent obeying the commands of his principal, and seeking indemnity therefor?

5. What distinction is there between the liability of principal and agent respectively for acts done by the agent, in the name of his principal (*a*) in cases of contract, and (*b*) in cases of tort?

6. Is there any, and if so what, difference between the law relating to promissory notes and that relating to other simple contracts in regard to consideration?

7. If the exportation of articles of which a cargo is to consist, be prohibited, what effect will this have on the contract of affreightment? Will it make any difference if prohibition by foreign Government? Explain your answers.

8. What is meant by *adjustment* of loss in marine insurance cases, and what effect has it on the defence of the underwriter against the claim in respect to which it takes place?

9. A plaintiff is entitled to sign final judgment by default in an action of replevin. What considerations should operate on his decision in regard to signing final judgment then, and what other course is open to him? Explain your answer fully.

10. In an action of contract the non-

joinder of a person as co-defendant is pleaded in abatement, what course is open to the plaintiff as to amending, and what will be the consequence of his amending, as to costs or otherwise?

REVIEWS.

THE CONSTABLES' MANUAL, being a summary of the Law, relating to the rights, powers and duties of Constables. By S. R. Clarke, of Osgoode Hall, Barrister-at-Law. Toronto: Hart & Rawlinson, 1878.

This useful little book is, in effect, a continuation of the author's Magistrates' Manual; but is published separately for the benefit of Constables, who can thus obtain for a small sum the information they require on most of the points on which difficulties are likely to arise in the discharge of their duties. The author refers frequently to "The Constables' Guide," published many years ago by Mr. Adam Wilson, Q. C., now the Senior Puisne Judge of the Queen's Bench. Constables in this country are not perhaps, as a class, as dense as story books say that their brethren in Great Britain are, but we can well fancy that a daily dose of this manual would do them no harm. We recommend them to try it. They might spend some of their fees to worse advantage.

MAYNE'S TREATISE ON DAMAGES. Third edition. By John D. Mayne, of the Inner Temple, Barrister.at-Law, and Lumley Smith, of the Inner Temple, Barrister-at-Law, late Fellow of Trinity Hall, Cambridge. London: Stevens & Haynes, Law Publishers, Bell Yard, Temple Bar, 1877.

The first edition of this standard work was published in 1856, and the second in 1872. The last edition, somewhat more bulky than its predecessor, is in many respects a new book, the additions, alterations and omissions being numerous. Owing to the large number of English and Irish cases that required notice, no American cases decided since the previous edition are referred to. In fact, these are so multitudinous that it would have been impossible, with any regard to the aim of the author, to have noted them, even in the most cursory manner.

This text book is so well-known, not only as the highest authority on the subject treated of, but as one of the best text books ever written, that it would be idle for us to speak of it in the words of commendation that it deserves. Suffice it to say that its reputation will not suffer from the labours of the learned authors in this last edition. It is of course a work that no practising lawyer can do without; and probably before this is read all those who pretend to have *any* "implements of trade," they will have provided themselves with a copy of it. If not, we should advise them at once to procure it. The excellence of the matter is equalled by the excellence of the manner in which its enterprising publishers present it to the public.

AMERICAN LAW REVIEW. Boston: Little, Brown & Co. April, 1878.

This is one of the most welcome of our exchanges. The number before us begins with a sketch of a new plan of electing a President for the United States. The writer advocates election by lot. The present mode can scarcely be said to be perfect. Our neighbours are beginning to find that democracy is not such a splendid system after all. They may be said, however, to be still "young and foolish," being only a hundred years old, and will learn wisdom as they grow in years. The best part, perhaps, of this publication is the book reviews. They are of the most discriminating character—full, fair, and candid. Other interesting matters of information are the Digests of English and American Cases, quarterly list of new law books, summary of events, &c.

THE ENGLISH QUARTERLY REVIEWS AND BLACKWOOD. Leonard Scott Publishing Company: 41 Barclay Street, New York. Hart & Rawlinson: Toronto.

There is no literary series that has been so uniformly excellent as these.

They still hold sway in England, and are as vigorous as their many imitators started in later years. It may not be amiss to give a sketch of their origin and general scope.

The *Edinburgh Review* was commenced in the year 1802. Its founders and earliest contributors were Sidney Smith, Francis Jeffrey, and Brougham, the latter of whom is said to have written six articles in the first number. In those days, however, some of the articles were very short—not more than two or three pages in length; sometimes a number contained nineteen articles, now there are rarely more than ten. In the first twenty numbers Jeffreys wrote seventy-five articles, Sidney Smith twenty-three, Francis Horner fourteen, and Brougham eighty. Its political principles were in accordance with those of the Whigs, and they were advocated with such ability that the Tories felt the necessity of establishing a rival organ, and in 1809 the first number of

The *Quarterly Review* made its appearance. Its success was immediate; the circulation is said to have risen soon to 12,000 copies. Wm. Gifford was the editor; and among its contributors were Canning, Walter Scott, John Wilson Croker, John Hookham Frere, and Southey. Jeffrey of the *Edinburgh*, and Gifford of the *Quarterly*, held absolute sway in the critical world for many years. Gifford died in 1826; Jeffrey in 1850. Lockhart, the son-in-law of Walter Scott, succeeded Gifford as editor.

The *Westminster Review* was started in 1823 by Jeremy Bentham, with Sir Wm. Molesworth, John Bowring, James Mill, and Roebuck for principal contributors, as the organ of the Reformers, advocating Public Economy, Free Trade, Law Reform, and Catholic Emancipation. Subsequently the *London Review* came out in the same cause. The *Foreign Quarterly Review* made its appearance in 1827, and occupied itself, as implied by its name, with Continental Literature. In 1836 the *London* and the *Westminster* were combined, and published as "*The London and Westminster Review.*" A change of proprietorship occurring in 1840, the word "*London*" was dropped, and the original title "*Westminster Review*" restored; and finally, in 1846, the *Foreign Quarterly Review* was united with the *Westminster*, and at the same time the section known as Contemporary Literature was commenced, giving short notices of recent works, both foreign and domestic.

The *British Quarterly Review* was commenced in 1845. It was founded by the Rev. Dr. Vaughan, a distinguished Congregational minister, who considered that the numerical strength and literary resources of the Nonconformists justified the establishment of a first-class quarterly review.

Blackwood's Magazine was projected by Wm. Blackwood, a bookseller in Edinburgh, in the year 1817, in the interests of Toryism. The *Edinburgh Review* had proved so potent an auxiliary of the Whigs, that it was felt important to establish some check to its influence in Edinburgh. W. Laidlaw and Thomas Pringle, with occasional material furnished by Walter Scott, took charge of the early numbers; but the editorship soon passed into the hands of Professor Wilson (the far-famed Christopher North), round whom rallied a band of young men of talent, scholarship and ambition, who soon gave the Magazine an influence and reputation which have attended it up to the present time. Wilson died in 1854.

The Voters' Lists Act with Notes; together with some remarks upon the Voters' Lists Finality Act, by the Junior Judge of the County of Simcoe. Barrie: Wesley & King. 1878.

This is a most useful little work. Judge Ardagh's "Suggestions to Municipal Officers; relating chiefly to their duties in respect to Voters' Lists, was so well received that he was encouraged to proceed further. Most accurate in his information, which is given with great clearness, we shall hope to receive from the pen of this author, when he can find time, a more ambitious volume on this or some other subject with which he is familiar. We recommend all who are interested in the subject, and they are legion, these election times, to procure a copy of it.

Law Society of Upper Canada.

OSGOODE HALL,

HILARY TERM, 41ST VICTORIA.

During this Term, the following gentlemen were called to the Bar, viz.:—

GEORGE FERGUSSON SHEPLEY.
WILLIAM JAMES CLARKE.
WILLIAM EGERTON HODGINS.
JAY KETCHUM.
ROBERT SHAW.
HAMILTON PARKE O'CONNOR.
WILLIAM CAVEN MOSCRIP.
JAMES JOSEPH ROBERTSON.

The following gentlemen were called to the Bar under 39 Vict. chap. 31. :—

DANIEL O'CONNOR.
JOSEPH BAWDEN.

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

Graduates.

ALEXANDER DAWSON, B.A.
THOMAS DICKIE CUMBERLAND, B.A.,
WILLIAM BANFIELD CARROLL, B.A.

Matriculants.

FRANCIS BADGELEY WILLIAM MOLSON GILBERT LILLY.
JOSEPH MARTIN.
J. A. C. REYNOLDS.

Junior Class.

HUGH ARCHIBALD MACLEAN.
WILLIAM BURGESS.
LOUIS F. HEYD.
JAMES FOSTER CANNIFF.
JOHN DOUGLAS GANSBY.
GEORGE CORRY.
EDMUND WALLACE NUGENT.
CHARLES PATRICK WILSON.
DAVID MCARDLE.
THOMAS HISLOP.
WILLIAM ALEX. MCLEAN.
ALEXANDER JOSEPH WILLIAMS.
JAMES JOSEPH PANTON.
WILLIAM MELVILLE SHOEBOTHAM.
JAMES GAMBLE WALLACE.
GEORGE MOREHEAD.
WILLIAM GEORGE SHAW.
ROBERT PATTERSON.
HARRY HYNDMAN ROBERTSON.
JAMES ALEX. SHETTLE.
MOSES MCFADDEN.
ARTHUR B. FORD.
GEORGE HIRAM CAPRON BROOKE.

Articled Clerk.

HENRY WHITE.

PRIMARY EXAMINATIONS FOR STUDENTS-AT-LAW AFD ARTICLED CLERKS.

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

All other candidates for admission as students-at-law shall give six weeks' notice, pay the prescribed fees, and pass a satisfactory examination in the following subjects :—

CLASSICS.

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

MATHEMATICS.

Arithmetic ; Algebra, to the end of Quadratic Equations ; Euclid, Bb. I., II., III.

ENGLISH.

A paper on English Grammar ; Composition ; an examination upon "The Lady of the Lake," with special reference to Cantos V. and VI.

HISTORY AND GEOGRAPHY.

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

Optional Subjects instead of Greek:

FRENCH.

A Paper on Grammar. Translation of Simple Sentences into French Prose. Corneille, Horace, Acts I. and II.

Or GERMAN.

A Paper on Grammar. Museaus, Stumme Liebe. Schiller, Lied von der Glocke.

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

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

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

All examinations of students-at-law or articled clerks shall be conducted before the Committee on Legal Education, or before a Special Committee appointed by Convocation.

INTERMEDIATE EXAMINATIONS.

The Subjects and Books for the First Intermediate Examination hall be:—Real Property, Williams; Equity, Smith's Manual; Common Law, Smith's Manual; Act respecting the Court of Chancery (C. S. U. C. c. 12), C. S. U. C. caps. 42 and 44, and Amending Acts.

The Subjects and Books for the Second Intermediate Examination shall be as follows:—Real Property, Leith's Blackstone, Greenwood on the Practice of Conveyancing (chapters on Agreements, Sales, Purchases, Leases, Mortgages, and Wills); Equity, Snell's Treatise; Common Law, Broom's Common Law, C. S. U. C. c. 88, and Ontario Act 38 Vic, c. 16, Statutes of Canada, 29 Vic. c. 28, Administration of Justice Acts 1873 and 1874.

FINAL EXAMINATIONS.

FOR CALL.

Blackstone, Vol. I., containing the Introduction and the Rights of Persons, Leake on Contracts, Walkem on Wills, Taylor's Equity Jurisprudence, Stephen on Pleading, Lewis's Equity Pleading, Dart on Vendors and Purchasers, Taylor on Evidence, Byles on Bills, the Statute Law, the Pleadings and Practice of the Courts.

FOR CALL, WITH HONOURS.

For Call, with Honours, in addition to the preceding:—Russell on Crimes, Broom's Legal Maxims, Lindley on Partnership, Fisher on Mortgages, Benjamin on Sales, Hawkins on Wills, Von Savigny's Private International Law (Guthrie's Edition), Maine's Ancient Law.

FOR CERTIFICATE OF FITNESS.

Leith's Blackstone, Taylor on Titles, Smith's Mercantile Law, Taylor's Equity Jurisprudence, Leake on Contracts, the Statute Law, the Pleadings and Practice of the Courts.

Candidates for the Final Examinations are subject to re-examination on the subjects of the Intermediate Examinations. All other requisites for obtaining Certificates of Fitness and for Call are continued.

SCHOLARSHIPS.

1st Year. — Stephen's Blackstone, Vol. I., Stephen on Pleading, Williams on Personal Property, Hayne's Outline of Equity, C. S. U. C. c. 12, C. S. U. C. c. 42, and Amending Acts.

2nd Year. —Williams on Real Property, Best on Evidence, Smith on Contracts, Snell's Treatise on Equity, the Registry Acts.

3rd Year.—Real Property Statutes relating to Ontario, Stephen's Blackstone, Book V., Byles on Bills, Broom's Legal Maxims, Taylor's Equity Jurisprudence, Fisher on Mortgages, Vol. I. and chaps. 10, 11, and 12 of Vol. II.

4th Year. —Smith's Real and Personal Property, Harris's Criminal Law, Common Law Pleading and Practice, Benjamin on Sales, Dart on Vendors and Purchasers, Lewis's Equity Pleading, Equity Pleading and Practice in this Province.

N.B.—After Easter Term, 1878, Best on Evidence will be substituted for Taylor on Evidence; Smith on Contracts, for Leake on Contracts.